

Specific Privacy Notice regarding Administrative Inquiries and Disciplinary Proceedings at the EBA

The European Banking Authority ('EBA') processes your personal data based on Regulation (EU) 2018/1725 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (hereinafter "the EUDPR"). We provide you with the information that follows based on Articles 15 and 16 of the EUDPR.

Who is the controller and processor?

The EBA, represented by the Executive Director, is the controller of the data. It can be contacted at the following email address: ExecutiveOffice@eba.europa.eu.

The data is processed by the Human Resources Unit of the EBA, which can be contacted at the following email address: hrteam@eba.europa.eu.

What personal data do we process and who can access it?

Personal data we process

As staff member concerned, the following of your personal data may be collected: name, surname, address, age, hiring date, name of line manager, contact details, information regarding your career, allegations, declarations, sensitive data (such as data concerning health, e-mails exchanged by the affected individuals with trade unions or with the EU Sickness insurance scheme, etc.) if necessary. The EBA may also collect personal data concerning other person who could bring information relevant to the case (such as witnesses).

Who can access it?

The data collected will only be disclosed to the absolute minimum of persons involved in the administrative inquiry and/or disciplinary proceedings.

This could involve amongst others the staff members concerned, the Appointing Authority (i.e. the EBA Executive Director), the Director of Operations or a person designated by the Appointing Authority to coordinate the disciplinary procedures, Human Resources, the Ethics Officer, the investigator(s), the person(s) designated to hold the hearing, the members of the Disciplinary Board (including Secretariat), the Legal and Compliance Unit, the Data Protection Officer or any other person

involved in the procedure. All internal recipients of the data shall be required to sign a specific confidentiality declaration.

For what purpose do we process your personal data?

The purpose of this processing is to analyse the collected information in order to establish the facts and circumstances of the case, with a view to determining whether there is a breach of the obligations under the Staff Regulations.

What is the legal basis for processing your personal data?

The legal bases for the processing activities are:

- Article 5(1)(b) of Regulation EU 2018/1725: processing is necessary for compliance with a legal obligation to which the controller is subject;
- Article 86 of the Staff Regulations and its Annex IX;
- Article 110 of the Staff Regulations;
- Articles 50a and 119 of the Conditions of Employment of Other Servants;
- Decision of the EBA Management Board on the Secondment of National Experts EBA/DC/2016/135.

How long do we keep your personal data?

Retention schedules for files related to administrative enquiries and disciplinary procedures:

- Files that have not given rise to administrative investigations 2 years
- Investigations with disciplinary consequences 20 years
- Investigations without disciplinary consequences 5 years
- Disciplinary procedures 20 years

Retention periods for disciplinary sanctions:

A staff member against whom a disciplinary penalty, other than removal from post, has been ordered may request for the deletion from his personal file of all reference to such measure as follows:

- In the case of a warning addressed to them: the staff member may submit a request for the deletion from his personal file of all reference to such measure after one and a half years;
- In the case of a written warning or reprimand: the staff member may submit a request for the deletion from his personal file of all reference to such measure after three years;
- In the case of any other penalty: the staff member may submit a request for the deletion from his personal file of all reference to such measure after six years.
- In all the above-mentioned cases, the Appointing Authority shall decide whether to grant this request.

What are your rights regarding your personal data?



The EBA will ensure that affected individuals are provided with this privacy notice as soon as it is practically possible and document this by way of acknowledgment of receipt.

Procedures to grant rights of data subjects are, in principle, as follows:

Administrative inquiry:

As soon as an administrative inquiry suggests that a staff member may be personally involved in an affair, that person shall be informed provided that information does not hinder the inquiry (see the section below *Possible restrictions*).

The staff member has the right to be accompanied to any hearing by a person of his/her choice. The staff member has the right to receive a copy of the hearing record with a signed acknowledgement of receipt.

Where absolute secrecy is required by the aims of the inquiry requiring investigative procedures which are the responsibility of a national judicial authority, the obligation to invite the staff member to express an opinion may be deferred by the Appointing Authority. In that eventuality, no disciplinary procedure may be opened until the staff member concerned has been able to express an opinion.

Conclusions referring to a staff member by name may not be drawn at the end of the inquiry unless he/she has had the opportunity to express an opinion on all the facts that relate to him/her to the IIS. The conclusions shall record that opinion.

The Appointing Authority shall inform the staff member concerned of the conclusion of the inquiry together with the conclusions of the inquiry report and, on request, communicate all documents directly linked to the allegations made, subject to the protection of the legitimate interests of third parties.

The EBA will ensure that affected individuals are provided with information on the closing of the administrative inquiry related to them and document this in the file, i.e. through a copy of the note given to the person concerned to close the inquiry.

Pre-Disciplinary Procedure:

On the basis of the investigation report, or whenever there is sufficient evidence of responsibility, the Appointing Authority may decide to conduct interviews with certain persons following the hearing referred to in Article 3 of Annex IX to the Staff Regulations. The staff member will be notified of all evidence in the files by registered letter with acknowledgement of receipt.

After the aforementioned notification, the Appointing Authority hears the staff member.

If the staff member wishes not to be present or cannot be heard, he/she may be asked to comment in writing or may be represented by a person of his/her choice.

The record of the hearing shall be forwarded to the staff member by registered letter with acknowledgement of receipt, for signature. The staff member shall forward the signed record and/or his/her comments.

If further interviews have to be conducted following this hearing, the staff member concerned shall receive a copy of the signed records of those interviews.

Disciplinary proceedings:

Disciplinary proceedings are initiated by the Appointing Authority who informs the persons concerned in a note notifying her/him of the accusations against her/him and the choice of procedure to be followed (referral or not to the Disciplinary Board).

The person concerned has the right to receive her/his complete personal file and to make copies of all relevant documents.

The Disciplinary Board receives the report of the Appointing Authority. It can organise hearings. It drafts an opinion to address to the staff concerned and the Appointing Authority.

The right of access:

The rights of access and rectification are enforceable rights of the data subject. Articles 17 and 18 of Regulation (EU) 2018/1725 are the general rule and any application of the limitations foreseen in Article 25 must be considered on the basis of a case by case analysis (see the section below *Possible restrictions*).

The right of rectification:

In granting the right of rectification, objective data should be distinguished.

Inaccurate objective data should be rectified without delay upon the data subject's request made to the controller in accordance with Article 18 of Regulation (EU) 2018/1725. This does not only refer to factual inaccuracies, but also to the fact that affected individuals should be allowed to add second opinions and include their comments as well as any additional testimonies, or other relevant documents to their inquiry file (i.e. a legal recourse or appeal decision)¹.

¹ E.g.: "this is not the statement I made in my hearing" as opposed to "this is an incorrect inference from the statement I made in my hearing" - for the latter case, review procedures or the possibility to provide second opinions are the appropriate way of remedying any issues.

Possible restrictions:

Please note that in some cases restrictions under Article 25 of Regulation (EU) 2018/1725 may apply, in accordance with the Decision laying down Internal rules on restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of European Banking Authority (EBA) (EBA/DC/2021/377).

For example, informing the person under investigation about the inquiry or the disciplinary proceeding at an early stage may be detrimental to the investigation. In these cases, the EBA might need to restrict the information to the person under investigation to ensure that the inquiry or disciplinary proceeding is not jeopardised.

The right of access of a person under investigation to the identity of a witness may be restricted in order to protect the witness' rights and freedoms. Without prejudice to the above, if the witness maliciously makes a false statement, disciplinary measures could then be a possible consequence of their malicious act.

A witness of the case might ask to have access to the final decision of the inquiry; yet, it is possible that the final decision does in the end not include personal data of that witness; it would thus be out of scope for a request for access from that person.

The EBA will inform the person under investigation or the witness of the principal reasons on which the application of the restriction is based as well as of their right to have recourse to the EDPS. In some specific circumstances, it might be also necessary to defer the provision of such information so that the investigation process will not be harmed.

In cases where the EBA decides to apply a restriction under Article 25(1) point (f) of the Regulation, such a decision will be taken strictly on a case by case basis and the reasons for taking such decision will be documented (i.e. motivated decision). These reasons must prove that the restriction is necessary to protect one or more of the interests and rights listed in the Regulation, and they must be documented before the decision to apply any restriction or deferral is taken.

Any personal data will be processed solely for the purpose of establishing the facts and circumstances and determining whether there has been a failure to comply with the obligations incumbent on the staff of the Authority, after which the necessary sanctions can be imposed.

Data subjects are entitled to have recourse at any time to the European Data Protection Supervisor:
<http://www.edps.europa.eu>

Further information regarding processing of personal data in the context of Administrative inquiries and disciplinary proceedings may be found in the [Decision laying down internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the European Banking Authority \(EBA/DC/2021/377\)](#).

Contact details for enquiries regarding your personal data

Should you wish to obtain access to your personal data, their rectification, or deletion or to object, please contact:

- Human Resources by email (HRteam@eba.europa.eu), or;
- The Data Protection Officer at the EBA by email (dpo@eba.europa.eu) or by letter: The EBA Data Protection Officer (Confidential), Europlaza, 20 Avenue André Prothin, La Defense, Paris, France.

All questions or complaints concerning the processing of your personal data can be addressed to the EBA's Data Protection Officer (dpo@eba.europa.eu).