

(To be filled out in the EDPS' office)
Register number: 1446

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NOTIFICATION FOR PRIOR CHECKING

Date of submission: 15/03/2017

Case number: 2017-0303

Notification of: EMSA

Legal basis: Article 27-5 of the regulation CE n° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

Name and address of the controller

Markku Mylly
Executive Director
European Maritime Safety Agency
Praça Europa
1249-206 Lisbon, Portugal

Organisational parts of the institution or body entrusted with the processing of personal data

Unit A.1 Human Resources

Name of the processing:

Whistleblower policy

Description:

Having procedures for raising concerns about fraud, corruption or other serious wrongdoing is relevant for all responsible organisations and for the people who work there. While good internal control systems can reduce the probability of something going seriously wrong, this risk can never be reduced to zero. Where this risk materialises, the first people to realise or suspect the problem will often be those who work in or with the organisation. Yet unless the culture is one where employees believe that it is safe and accepted that such concerns are raised, the risk is that people will stay silent. This denies the organisation an important opportunity to detect and investigate the concern, to take any appropriate action and to protect its assets, integrity and reputation.

The most effective way to encourage staff to report concerns is to provide assurance of protection of their position. Clearly defined channels for internal reporting as well as safe and accepted routes

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

through which staff may raise concerns outside the organisation as an option of last resort should be in place.

Viewed in this way, having whistleblowing procedures and whistleblower protection in place is simply a question of good management and a mean of putting into practice the principle of accountability. They contribute to improving the diligence, integrity and responsibility of an organisation.

Purpose or purposes of the processing

The purpose of this Whistleblower Policy is to provide staff with all relevant information on whistleblowing and at the same time to ensure members of staff who report serious wrongdoings or concerns in good faith that they are afforded the outmost confidentiality and greatest degree of protection against any retaliation as a result of their whistleblowing.

The policy also addresses the protection of the personal data of the whistleblowers, the alleged wrongdoers, the witnesses and any other persons involved in the reported case.

Description of the category or categories of data subjects:

Affected individuals will usually include

- Whistleblowers: any member of staff, acting in good faith, who reports facts discovered in the course of or in connection with his or her duties which point to the existence of fraud or serious irregularities,
- Witnesses,
- Third parties (members of staff or others that are merely quoted) and the person(s) against whom the allegations has been made.

Description of the data or categories of data (including, if applicable, special categories of data (Article 10) and/or origin of data):

- Name and information related to work environment and to the facts that are the basis of the procedure
- Factual data concerning the events or (alleged) fraud.

Information to be given to data subjects:

A data protection clause + more elaborate information (attached, Annex III) on DPO Intranet page.

Moreover, there will be a dedicated entry on the Human Resources Intranet which will contain:

- The EMSA whistleblower policy (attached: Annex I);
- The information about who is the EMSA OLAF Correspondent.

Procedures to grant rights of data subjects:

The protection of a person reporting a serious irregularity in good faith shall be guaranteed first of all by the fact that their identity will be treated in confidence. This means that under no circumstances their name will be revealed to the person(s) potentially implicated in the alleged wrongdoings or to any other person without a strict need to know, unless the whistleblower personally authorises the disclosure of his/her identity or this is a requirement in any subsequent criminal law proceedings. Also, exception is made where the whistleblower maliciously makes a false statement. In this case the whistleblower's identity may be revealed to the person falsely accused.

In all other cases, EMSA is committed to keeping the identity of the whistleblower confidential. To this end, EMSA will ask OLAF not to include the identity of the whistleblower in the information about investigations that OLAF transmits to EMSA. In this respect the Court has ruled that disciplinary procedures that are opened on the basis of information of which the source is not revealed are regular, as long as it does not affect the possibility of the person who is subject to a subsequent disciplinary procedure to comment on the facts or documents transmitted, or on the conclusions that the Institution/Agency draws from them. The disciplinary rules allow EMSA to keep the identity of the whistleblower confidential, while ensuring that the rights of defence of the person concerned are fully respected.

The data subjects can direct queries to the data controller, Executive Director, and will be able to exercise their rights (access, corrections, blocking – if justified)

Automated / manual processing operation:

Manual

Legal basis of the processing operation:

Art. 22a and 22b of the Staff Regulations,

The recipients or categories of recipient to whom the data might be disclosed;

- The HR OLAF Correspondent;
- Head of Unit A1,
- Head of Department A 'Corporate Services',
- Executive Director
- In case of formal procedure also investigation team or expert(s)
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- OLAF

General indication of the time limits for blocking and/or erasing of the different categories of data (Please, specify the time limits for every category, if applicable):

The personal data shall be deleted as soon as possible.

Historical, statistical or scientific purposes:

none

Proposed transfers of data to third countries or international organisations:

none

The processing operation presents specific risk which justifies prior checking (*Please describe*):

as foreseen in:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Article 27.2.(b)

Processing of personal data is intended to evaluate personal aspects relating to data subjects, including in particular their conduct in the case of an informal procedure and their ability to perform the function (in case of selection of confidential counsellors)

Place and date: Lisbon, 25/01/2017

Data Protection Officer: Radostina NEDEVA-MAGERLEIN

Institution or body: European Maritime Safety Agency