

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1142

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 31/07/2013

CASE NUMBER: 2013-0916

INSTITUTION: TEN-T EA

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Name: Mr Marcos Roman Parra, Head of Unit, Resources Unit T1
Address: W910 03/042, Trans-European Transport Network Executive Agency (TEN-T EA),
Chaussée de Wavre 910, B-1049 Brussels

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Resources Unit T1, Human Resources Sector

3/ NAME OF THE PROCESSING

Whistleblowing procedure

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing operation is to report fraud, corruption or other serious wrongdoing in TEN-T EA, establish reporting channels for whistleblowing, manage and follow-up reports and to ensure protection of whistle-blowers in line with the Guidelines. It is necessary for the Agency and for its staff that fraud, corruption and other serious wrongdoing are treated within a legal framework.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

All staff (CA, TA, interim staff, trainees), staff of other EU institutions, external stakeholders (contractors of the Agency, Beneficiaries of grants managed by the Agency)

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

The personal data processed is contained in the report submitted by the whistle-blower. It may contain names, contact details other personal data and may be related to suspected offences, offences, criminal convictions or security measures, evaluation of personal aspects of the data subject (e.g. abilities, efficiency and conduct).

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information to data subjects is provided in the Specific Privacy Statement, in the Internal guidelines on whistleblowing and the Ethic guidelines published on the intranet.

Information is provided also on Myintracomm

(FAQ)https://myintracomm.ec.europa.eu/hr_admin/en/appeals/Pages/index.aspx

Draft Decision of the Steering Committee on whistleblowing guidelines.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

As mentioned in the Specific Privacy Statement, and in line with the Implementing Rules on data protection, data subjects may exercise their rights by addressing a written request to the data controller.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

1. Area of activity for the processing operation:

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

It is the Agency's duty to have regard for the interests of officials ("devoir de sollicitude"), and to ensure that members of staff who report serious wrongdoings or concerns in good faith are treated with the utmost confidentiality and greatest degree of protection against any retaliation as a result of their whistleblowing. Providing guidance on whistle-blowing is part of the Agency's overall ethics policy, which aims inter alia at clarifying the rules regarding professional ethics in the Agency.

Accordingly, the Agency has adopted by analogy the following guidelines issued by the Commission, in agreement with OLAF. The Agency's whistleblowing rules and guidelines apply to all members of staff of the Agency, irrespective of their administrative position.

The main principles are the following:

- Members of staff of the Agency have a duty to report serious irregularities.
- Members of staff have a choice between a number of reporting channels for whistleblowing.

The principal channel is the normal chain of hierarchical command, however if staff considers it

safer to bypass the normal chain of hierarchical command, they must be able to do so. Under certain conditions, staff may address their concerns to another EU institution as an option of last resort.

- Members of staff who report serious irregularities in good faith must not under any circumstances be subject to retaliation for whistleblowing. They must be protected and their identity must remain confidential if they so desire.
- The reported facts must be verified in the appropriate manner and, if they are confirmed, the Agency will take all necessary steps to ensure the appropriate follow-up.
- The rights of defence of any person implicated by the reported incidents must be respected.
- Malicious or frivolous denunciations will not be tolerated.

2. Definitions:

"Whistle-blower" is a 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 serious irregularities. The reporting should be done in writing and without delay.

"Good faith" can be taken to mean the belief in the veracity of the reported facts, i.e. the fact that the member of staff reasonably and honestly believes the transmitted information to be true. Good faith is presumed unless and until proven otherwise.

"Retaliation" is defined as any direct or indirect action or threat of action which is unjustly detrimental to the whistle-blower and resulting from the whistleblowing, including, but not limited to, harassment, discrimination, negative appraisals and acts of vindictiveness.

"Confidentiality of identity" means that the identity of the whistle-blower is known to the recipient of the information, but is kept confidential vis-à-vis the person(s) potentially implicated in the serious irregularity reported and used on a strict need-to-know basis.

"Anonymity" refers to the situation whereby the identity of the source of the information is not known to the recipient.

Staff members who make a report in bad faith, particularly if it is based knowingly on false or misleading information, shall not be protected and shall normally be subject to disciplinary measures. The burden of proof in this context is on the Agency.

3. Scope of whistle-blowing:

Under the whistleblowing rules, staff members are obliged to report serious irregularities (i.e. illegal activities, including fraud and corruption, and serious professional wrongdoings). As the whistleblowing arrangements are essentially a detection mechanism to bring cases to the attention of OLAF, the duty to report concerns only serious professional wrongdoings, and particularly those that may be detrimental to the financial interests of the European Union.

The whistle-blowing rules are not intended to apply to the reporting of the following types of information:

- Information already available in the public domain (for example: newspaper articles, publicly available audits);
- Unsubstantiated rumours and hearsay;
- Matters of a trivial nature;
- Disagreements over legitimate policy;
- Information not linked to the performance of one's duties.
- Personnel issues where staff have a personal interest in the outcome. In these cases, staff may wish to exercise their statutory rights, for example by lodging a request or complaint with under Article 90 of the Staff Regulations ;
- Harassment claims and personal disagreements or conflicts with colleagues or hierarchy. In appropriate cases, staff may wish to address themselves to the Agency's unit responsible for human resources (HR Unit) or to lodge a request for assistance under Article 24 of the Staff Regulations .
- Abusive disclosures (repeated disclosures of alleged facts aimed merely at paralysing a service);

- Malicious, frivolous or potentially defamatory disclosures (i.e. false or unverifiable accusations with the aim of harming another person's integrity or reputation).

4. Reporting Channels:

4.1 Internal whistleblowing – first option

Staff members who, in the course of or in connection with their duties, discover that serious irregularities may have occurred or may be occurring, are obliged to report this discovery forthwith and in writing to either their immediate superior, to the Ethic correspondent through the anonymous postal box (a locked letter box put at staff members' disposal in the Agency's cafeteria, which is accessible only to the Ethics Correspondent), and the Director of the Agency.

4.2 Internal whistleblowing – second option

If there is a concern that this disclosure may lead to retaliation or that the intended recipient of the report is personally implicated in the serious irregularities, then the staff member may also bypass this direct means of internal reporting and address his or her report to the Chair of the Steering Committee of the Agency or directly to OLAF. OLAF may also be notified through the Fraud Notification System.

In any case, the recipient of the information is in turn obliged to transmit the information thus received without delay to OLAF. Therefore, while the staff member concerned has a choice of reporting channels, the information should ultimately reach OLAF in a short period of time.

4.3 External whistleblowing – option of last resort

Upon receipt of the information reported internally, OLAF or the Agency must give the whistle-blower an indication of the period of time that it considers reasonable and necessary to take appropriate action, within 60 days of receipt of the information.

If no action is taken within that period of time, or if the whistle-blower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may make use of the possibility of external whistleblowing as provided for in Article 22b of the Staff Regulations.

Under this Article, if neither the Agency nor OLAF has taken appropriate action within a reasonable period, the staff member who reported the wrongdoing has the right to bring his or her concerns to the attention of the President of the Commission, or the Council, or the Parliament or the Court of Auditors, or to the Ombudsman. In this case, the whistle-blower protection continues to apply.

However, the duties of discretion and of loyalty imply that this is an option of last resort, justifiable only if the official concerned honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and if s/he has allowed the Agency or OLAF a reasonable period of time to take the appropriate action.

While the obligation to report serious wrongdoings applies to staff members of the Agency, the Staff Regulations also impose a duty on staff to act with discretion and circumspection.

External disclosure to other EU institutions, which are clearly able to hold the Agency to account because of their institutional role, but are also themselves subjected to the duty of discretion, therefore strikes an effective balance between the public interests of confidentiality and loyalty and those of transparency and accountability.

It is up to the staff member to choose the most appropriate channel for reporting the serious irregularities that they must disclose. However, if a matter is reported to a Agency's unit that is not competent to deal with it, it is up to that unit to transmit, in the strictest confidence, the relevant information and documents to the competent unit and to inform the member of staff accordingly.

In case the report is directly submitted to OLAF the Agency does not process any personal data until it is eventually contacted by OLAF.

5. Internal Procedure (for points 4.1 and 4.2):

- The letter box is checked once a week by the Ethics Correspondent.
- On the basis of the reports a confidential file is opened. Hard copies are stored in a safe and electronic copies are protected with a password with access by the Ethics Correspondent only.
- Reports are transmitted to the Ethics Correspondent (if not received through the letterbox) and then to the Director in a sealed and confidential envelope.
- After transmission the person receiving the report (immediate superior) is reminded to destroy all copies and related documents.
- A meeting is held between the Director and the Ethics Correspondent to analyse the situation. The Head of the Legal Team and if necessary, IDOC may be consulted.
- It may be decided to forward the report to OLAF, IDOC or to close it.
- In case OLAF is consulted this is coordinated by the OLAF correspondent (Head of Legal the Team).
- Files on reports considered to be a "no case" are destroyed after two years.

10/ STORAGE MEDIA OF DATA

Data is stored in paper files kept in a safe, and electronic files on the drive of the Human Resources sector with restricted access, always protected with a password, with accessible by the Ethics Correspondent only.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

Article 22a and 22b of the Staff Regulations.

Guidelines of Whistleblowing adopting by analogy the Commission Guidelines on Whistleblowing (SEC(2012) 679 of 6 December 2012, Communication to the Commission from Vice-President Šef ovi to the Commission on Guidelines on Whistleblowing) and the respective Decision of the TEN-T EA Steering Committee adopting the Guidelines by analogy (draft annexed)

Article 11 of the Conditions of Employment of other Servants of the European Communities.

Judgment of 15 May 1997, N / Commission (T-273/94, RecFP_p._II-289) (cf. point 81).

Lawfulness:

Regulation (EC) No 45/2001, Article 5(a) in conjunction with Recital 27: the processing is necessary for the legitimate exercise of official authority vested in the Community institution or body and/or Article 5 (b) the processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties or other instruments adopted on the basis thereof.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

Access may be granted strictly on a need to know basis, subject to necessity.

Head of Unit concerned, Director (AIPN), Head of Human Resources, Ethics Correspondent, Head of the Legal Team, Legal Adviser, Investigation and Disciplinary Office of the Commission (IDOC), Disciplinary Board members, Internal Auditor, IAS, European Court of Auditors, Legal Service, Civil Service Tribunal (other EU Courts), EDPS, OLAF.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Reports on the basis of which no follow-up took place (no case) for 2 years following the receipt. Reports on the basis of which an administrative enquiry or disciplinary procedure was opened are kept in line with the respective retention period for those files:

Files in cases where a decision has been taken to open disciplinary proceedings will be kept for 20 years from the date on which the Director of the Agency decides to close the disciplinary proceedings.

Records of enquiries closed without disciplinary action being taken will be kept for 5 years from the date on which the Director of the Agency decides not to take action.

Other cases falling into the 5 year category will include those closed without further action being taken at the end of the investigation phase (Article 3 of Annex IX of the Staff Regulations), those where a warning is issued after the investigation phase under Article 3 of Annex IX of the Staff Regulations and those where it has not been recommended opening an additional inquiry following positive or negative recommendations by OLAF.

Files which did not lead to the opening of an enquiry ('non-case') will be kept for a period of 2 years from the date on which the Director of the Agency decides to close the file without follow-up. Reports which are relevant for OLAF cases with follow-up actions are retained for 20 years.

Files of OLAF cases containing an investigation report, but closed without follow-up action are retained for 10 years.

Files transmitted to OLAF and closed without investigation are retained for 5 years.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS
30 days from receipt of justified legitimate request.

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

The Agency retains anonymous data for statistical purposes.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

N/A

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING (*Please describe*):

AS FORESEEN IN:

Article 27.2.(a)

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

Article 27.2.(b)

The processing operation relates to evaluation of personal aspects of the data subject.

Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

↑ Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

↑ Other (general concept in Article 27.1)

17/ COMMENTS

The draft Agency Guidelines aim at adopting by analogy the Commission Guidelines on Whistleblowing (SEC(2012) 679 of 6 December 2012, Communication to the Commission from Vice-President Šef ovi to the Commission on Guidelines on Whistleblowing).

PLACE AND DATE: BRUSSELS 15/7/2013

DATA PROTECTION OFFICER: ZSÓFIA SZILVÁSSY

INSTITUTION OR BODY: TRANS-EUROPEAN TRANSPORT NETWORK EXECUTIVE AGENCY

