

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1263

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 28/08/2014

CASE NUMBER: 2014-0828

INSTITUTION: EUROPEAN OMBUDSMAN

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

EUROPEAN OMBUDSMAN,
1, AVENUE DU PRÉSIDENT ROBERT SCHUMAN
CS 30403
F-67001 STRASBOURG CEDEX

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

Personnel, Administration and Budget Unit (PAB Unit)

3/ NAME OF THE PROCESSING

Whistleblowing procedure

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing operation is to enable the reporting of fraud, corruption or other serious professional wrongdoing in the European Ombudsman's Office, to establish reporting channels for whistleblowers, to manage and follow-up reports, and to ensure protection and adequate remedies for whistleblowers, in accordance with Article 22(c) of the Staff Regulations, as well as the Conditions of Employment of Other Servants of the European Union.

Detailed description:

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

The European Ombudsman has adopted (draft) internal rules about whistleblowing by members of her staff. The rules aim to safeguard the rights and interests of whistleblowers and provide adequate remedies if they are not treated correctly and fairly in relation to their whistleblowing.

Definitions:

A *whistleblower* is a person who, in good faith, reports facts which he or she honestly and reasonably believes suggest the existence of serious misconduct in the Ombudsman's Office. *Serious misconduct* includes, for example, fraud, corruption, theft, serious violation of rules on public procurement, and serious violation of professional obligations.

Disclosure is made *in good faith* if the whistleblower honestly and reasonably believes that the information disclosed, and any allegation contained in it, is substantially true. Good faith is presumed unless and until proven otherwise.

Manager means a head of unit, director, or the secretary general of the Ombudsman's Office

Procedure

In accordance with Article 22a of the Staff Regulations, members of the Ombudsman's staff have the obligation to report, in writing, suspicions of serious misconduct.

Such reports may be made to a manager, or to the Ombudsman.

Article 22a of the Staff Regulations also provides for the possibility to report to the European Anti-Fraud Office (OLAF).

Article 22b of the Staff Regulations provides for the additional possibility to report to the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, if certain conditions are met.

Guidance and support

Potential whistleblowers may approach a designated staff member to seek guidance and support.

The Ombudsman acknowledges the important role played by the Staff Committee and may request that it propose one of its members, or another staff member of its choice, to fulfil this role. Where the Staff Committee is not in a position to comply with such a request, the Ombudsman shall designate such a staff member.

Potential whistleblowers may also approach a manager, normally their immediate superior, for guidance and support.

To the maximum extent permitted by the Staff Regulations, guidance and support to potential whistleblowers shall be provided in confidence.

Where a report of serious misconduct has been made, the whistleblower may request guidance and support, which shall be provided to the maximum extent possible in the circumstances.

Information guarantees

A whistleblower who reports to a manager or to the Ombudsman has the following information rights:

(i) to be provided with an acknowledgement of receipt as rapidly as possible and, in any event, within five working days;

(ii) to be told which staff member is responsible for dealing with the matter;

(iii) to be told, as soon as possible and, in any event, no later than 60 days following receipt of the report, of the time it will take the Ombudsman's Office to take appropriate action;

(iv) to be informed of any major steps taken in the course of any internal investigation based on the whistleblower's report, including the result of this investigation and any referral to OLAF. This information shall be provided within 30 working days.

Protection of whistleblowers

The Ombudsman shall protect a whistleblower against any acts of retaliation or reprisal.

When an individual who is involved in serious misconduct subsequently decides to blow the whistle, the fact of having reported the matter shall be taken into account, in his or her favour, in any disciplinary procedure.

Confidentiality

The Ombudsman shall protect the identity of a whistleblower and the confidentiality of the report received to the greatest extent possible. The name of a whistleblower shall not be disclosed to any person potentially implicated in the reported misconduct or to any other person, except where absolutely necessary, for example, where procedural fairness requires identification of the source of the information.

Where a manager or the Ombudsman refers the matter to OLAF, the identity of the whistleblower shall not normally be disclosed to OLAF.

Whistleblowers who consider that the Ombudsman has not adequately protected their confidentiality and their related personal data may complain to the European Data Protection Supervisor.

Appraisal and promotion

Managers shall ensure that, when appropriate, whistleblowing is favourably recognized in staff appraisal and promotion procedures.

They shall ensure that whistleblowers suffer no adverse consequences in this context.

Whistleblowing shall only be mentioned in the whistleblower's staff report, if he or she explicitly requests or agrees that such a reference should be included.

Remedies

Members of the Ombudsman's staff who blow the whistle and who consider that they have not received adequate support and protection may request assistance in accordance with Article 24 of the Staff Regulations.

An express decision, including reasons, shall be given to the whistleblower as rapidly as possible and in any event no later than two months after he or she submitted the request.

Where the whistleblower regards the decision as unsatisfactory, he or she may make a complaint, within three months, under Article 90(2) of the Staff Regulations.

If the whistleblower so requests, the Ombudsman shall offer the opportunity to present the complaint orally. The whistleblower has the right to be accompanied by a member of the Staff Committee and/or any other person at a meeting for this purpose.

In dealing with Article 90(2) complaints the Ombudsman may, with the whistleblower's agreement, consult a person or persons from outside the Ombudsman's Office in order to ensure that the procedure is as fair and equitable as possible.

Unless a longer period is justified in the circumstances, the Ombudsman's express decision on the complaint shall be given to the whistleblower no later than two months after he or she submitted the complaint.

Rights of persons implicated

Staff members implicated in reports of serious misconduct shall be informed in good time of the allegations made against them. Where there is a substantial risk that such notification would jeopardise the ability of the Ombudsman to effectively investigate the allegation or gather the necessary evidence, notification may be deferred as long as such risk exists.

Upon termination of any internal investigation, the staff members concerned shall be informed as rapidly as possible of the results of the investigation.

These obligations apply where the whistleblower reports to a manager or to the Ombudsman. Where a whistleblower reports to OLAF, it is for the latter to decide how to proceed.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects are the following:

- All staff members of the European Ombudsman's office, including seconded national officials and trainees;
- Third parties (for instance, contractors, sub-contractors and their employees)

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 are contained in the report submitted by the whistleblower and any subsequent document drawn up in response to that initial report. These documents may contain names, contact details, and other personal data. In principle, special categories of data (Article 10) should not be included.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information to data subjects is provided in the (Draft) Decision of the European Ombudsman on internal rules concerning whistleblowing (the "Decision"), as well as in the Specific Privacy Statement available on the Ombudsman's Intranet. A copy of both documents should be given to individuals who make a report. Moreover, as foreseen in Article 14 of the Ombudsman's internal rules, the relevant procedures shall be drawn to the attention of persons when they join the Ombudsman's staff and not less than once a year thereafter.

With regard to external whistleblowers, every person who enters into a contract with the Ombudsman's Office shall be informed (i) that it is possible to raise suspicions of suspected serious irregularities either with the Ombudsman or with OLAF and (ii) that making use of this possibility in good faith will not result in any retaliation, reprisal or other negative action on the part of the Ombudsman's Office.

Privacy Statement

"Regulation 45/2001³ (hereinafter the Regulation) applies to the processing of personal data by the European Ombudsman in the context of whistleblowing procedures. The controller is the European Ombudsman and the collected data shall be processed solely for the whistleblowing procedure as well as for any legitimately foreseen follow-up action in relation thereto. The data collected and further processed concern primarily the whistleblower and the individuals allegedly implicated in the serious wrongdoing.

The personal data are contained in the report submitted by the whistleblower and any subsequent documents drawn up in response to that initial report. These documents may contain names, contact details, and other personal data. In principle, special categories of data (Article 10) should not be included. Personal data should be limited to the data which is strictly and objectively necessary to verify the allegations made. Everyone should be aware that a malicious or frivolous report does not

³ OJ L 8/1, 12.1.2001.

constitute whistleblowing and may lead to disciplinary measures, particularly if false accusations are made.

The Ombudsman shall protect the identity of a whistleblower and the confidentiality of the report received to the greatest extent possible. The name of a whistleblower shall not be disclosed to any person potentially implicated in the reported misconduct or to any other person, except where absolutely necessary, for example, where procedural fairness requires identification of the source of the information. Where a manager or the Ombudsman refers the matter to OLAF, the identity of the whistleblower shall not normally be disclosed to OLAF.

Access to the data is granted on a strict need to know basis. The recipients of the data are potentially the following: the Head of Unit concerned, the Head of the PAB Unit, the individual member of staff designated by the Staff Committee or the Ombudsman, the Directors, the Secretary-General, the European Ombudsman. These individuals are reminded that only data which is strictly and objectively necessary to verify the allegations made may be further processed and only for the purpose for which they were transmitted. Data may also be disclosed to Disciplinary Board members, the Internal Auditor, the European Court of Auditors, the Civil Service Tribunal (other EU Courts), the EDPS, OLAF and national judicial authorities.

The processing of the operation is manual. Irrespective of the communication channel used by the whistle-blower, a paper file is prepared by the PAB unit, and stored in a safe of the PAB Unit. Electronic documents related to the procedure are stored on a network drive accessible only to authorised staff members of the PAB unit. In order to decide on the appropriate course of action, the Ombudsman, the Secretary General as well as the Directors and the Head of Unit concerned may request a paper copy of the file for consultation and will be reminded to destroy all copies and related documents. Consultation by any other authorised person shall take place in the premises of the PAB unit.

Data subjects have the right to access and to rectify their personal data by contacting the Head of the PAB Unit. The right to rectify data can normally only apply to factual data processed. Individuals may have the possibility to complement data by means of the respective appeal procedures. Staff members implicated in reports of serious misconduct cannot use their right of access to obtain information about the identity of the whistleblower.

Staff members implicated in reports of serious misconduct shall be informed in good time of the allegations made against them. Where there is a substantial risk that such notification would jeopardise the ability of the Ombudsman to effectively investigate the allegation or gather the necessary evidence, notification may be deferred as long as such risk exists.

Upon termination of any internal investigation, the staff members concerned shall be informed as rapidly as possible of the results of the investigation.

The legal basis of the processing operation are Articles 22a, 22b and 22c of the Staff Regulations as well as the (Draft) decision of the European Ombudsman on internal rules concerning whistleblowing

The time limit for data stored in paper files, as well as electronic files, is the following:

- Files which do not lead to the opening of an inquiry ('non-case') will be kept for a period of 2 years from the date on which the European Ombudsman decides to close the file without follow up.*
- Files on the basis of which an administrative enquiry or disciplinary procedure are opened should be kept in line with the retention periods foreseen for those files.*

Whistleblowers who consider that the Ombudsman has not adequately protected their confidentiality and their related personal data may complain to the European Data Protection Supervisor. More generally, data subjects have the right to have recourse at any time to the Data Protection Officer of the European Ombudsman or to the European Data Protection Supervisor.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

Data subjects are informed of their rights and of how to exercise their rights via the Ombudsman's internal rules on whistleblowing and the specific privacy statement.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing of the operation is manual. Irrespective of the communication channel used by the whistle-blower, a paper file is prepared by the PAB unit, and stored in a safe of the PAB Unit. Electronic documents related to the procedure are stored on a network drive accessible only to authorised staff members of the PAB unit.

In order to decide of the appropriate course of action, the Ombudsman, the Secretary General as well as the Directors and the Head of Unit concerned may request a paper copy of the file for consultation and will be reminded to destroy all copies and related documents. Consultation by any other authorised person shall take place in the premises of the PAB unit.

The personal data is used solely for the purpose for which it was provided, namely the whistleblowing procedure and any subsequent procedures directly triggered by it, such as disciplinary procedures.

10/ STORAGE MEDIA OF DATA

Data is stored in paper files kept in a safe. Electronic files are stored on a network drive of the PAB Unit with restricted access.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

Article 22a, 22b and 22c of the Staff Regulations.

(Draft) decision of the European Ombudsman on internal rules concerning whistleblowing

Lawfulness:

The processing operation is lawful on the basis of Article 5(a) of Regulation (EC) No 45/2001 (the processing is necessary for the performance of a task carried out in the public interest, namely the management and functioning of the institution)

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

Access is granted on a strict need to know basis.

The recipients of the data are potentially the following:

The Head of Unit concerned, the Head of the PAB Unit, individual members of staff designated by the Staff Committee or the Ombudsman, the Directors, the Secretary-General, the European Ombudsman, Disciplinary Board members, the Internal Auditor, the European Court of Auditors, the Civil Service Tribunal (other EU Courts), the EDPS, OLAF and national judicial authorities.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

- Files which do not lead to the opening of an inquiry ('non-case') will be kept for a period of 2 years from the date on which the European Ombudsman decides to close the file without follow up.
- Files on the basis of which an administrative enquiry or disciplinary procedure are opened should be kept in line with the retention periods foreseen for those files.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

Upon a justified request by the data subject: 30 days.

(Please, specify the time limits for every category, if applicable)

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

The Ombudsman's Office retains anonymous data for statistical purposes. The Ombudsman's Office pays particular attention to preserve anonymity of personal data for these purposes, especially to all the measures necessary to avoid indirect identification.

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

Not applicable.

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 health and to suspected offences, offences, criminal convictions or security measures,)

Article 27.2.(b)

(Processing operations intended to evaluate personal aspects relating to 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

Enclosure:

The (draft) Decision of the European Ombudsman on internal rules concerning whistleblowing

PLACE AND DATE: BRUSSELS, 28/08/2014

DATA PROTECTION OFFICER: ROSITA AGNEW

INSTITUTION OR BODY: EUROPEAN OMBUDSMAN