

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1317

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 09/07/2015

CASE NUMBER: 2015-0569

INSTITUTION: EFCA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Fisheries Control Agency, Avda. Garcia Barbon, 4, E-36201 Vigo

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

Unit - A, Resources, HR Section
Contact person: Wilhelm Scherzer, HR Officer

3/ NAME OF THE PROCESSING

Whistle-blowing 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 Fisheries Control Agency (EFCA), to establish reporting channels for whistle-blowers, to manage and follow-up reports, and to ensure protection and adequate remedies for whistle-blowers, in accordance with Article 22(c) of the Staff Regulations, as well as Articles 11 and 81 of the Conditions of Employment of Other Servants of the European Union.

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects are the following:

- All staff members of the European Fisheries Control Agency (TA, CA), seconded national experts 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 whistle-blower 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 of R. 45/2001) should not be included.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

A specific privacy statement is published on the EFCA intranet (Annex I).

All individuals affected by a particular whistleblowing procedure will be directly provided with the privacy statement as soon as practically possible. Affected individuals will usually include whistle-blowers, witnesses, members of staff and the accused person(s). In most cases, informing the accused person at an early stage may be detrimental to the investigation and specific information might need to be deferred (see Article 20(1)(a) of R. 45/2001). Deferral of information should be decided on a case by case basis. The reasons for any restriction should be documented (see Point 8 of Draft Administrative Board Decision on the Guidelines on whistleblowing in the European Fisheries Control Agency, Annex II).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

Without prejudice to point 7 above and to Article 22(a) and 22(b) of the Staff Regulations, the staff member is informed of his right of access to various documents concerning him in the event of a disciplinary proceeding.

The staff member can request access and copies of all documents directly related to the allegations made against him, except documents for which disclosure could jeopardize the privacy and right to data protection of third parties, or the legitimate guarantees given to the “whistle-blowers”. When disclosure of the full document is not possible for the reasons explained above, the staff member should have access, whenever it is possible, to at least an abridged version or excerpts of the documents.

The staff member has the right to rectification in order to ensure completeness of his disciplinary file. This may be done, inter alia, by allowing him to add his comments.

Any exceptions to the right of access of staff members should be strictly applied in light of necessity and they should be balanced in relation to the right of defence.

Particularly, in the case of “whistle-blowers”, informants or witnesses, any restriction to the right of access should not be allowed unless such restriction is made in accordance with Article 20 of the Data Protection Regulation. In any case, the identity of “whistle-blowers” should be kept confidential in as much as this would not contravene national rules regarding judicial procedures.

When replying to data subjects' access request, EFCA should bear in mind that personal data does not only relate to information about an individual's private life in a strict sense, but also to information regarding an individual's activities, such as his or her working relations and economic or social behaviour. Information can relate to an individual because of its content, the purpose of its use and the result of its use.

When considering access rights, EFCA should also consider the status of the requester and current stage of the investigation.

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 HR section, and stored in an armoured cupboard in the HR section. Electronic documents related to the procedure are stored on a network drive accessible only to authorised staff members of the HR section.

In order to decide of the appropriate course of action, the Executive Director 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 HR section.

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

Paper files are kept in an armoured cupboard in the HR Office which is locked during absences of HR Section staff. Electronic documents are stored in restricted part of p-drive with access to HR Section only.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The processing of data with regard to whistleblowing procedures is an obligation in accordance with Articles 22a, 22b and 22c of the Staff Regulations, Articles 11 and 81 CEOS.

Draft Administrative Board Decision on the Guidelines on whistleblowing in the European Fisheries Control Agency.

Article 5(a) R. 45/2001, processing that is "necessary for performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instrument adopted on the basis thereof", namely the whistleblowing procedure at EFCA.

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

Human Resources Section
Head of Unit concerned
Head of Unit Resources
Legal Officer
Executive Director
Investigators
Members of the Disciplinary Board
Ethics correspondents

Personal data may in the course of an investigation be transmitted to OLAF as evidence of fraud and following an administrative inquiry conducted by OLAF.

Where the disciplinary decision has a financial impact or involves a change in the grade it is forwarded to the HR Section for the adjustment of the salary. The HR Section then requests the salary adjustment to the Paymaster's Office.

If the staff member contests an Executive Director's decision, the disciplinary file may be referred to the Court of Justice of the European Union.

It may happen that data are transferred to the competent national authorities such as a national Court where there is an infringement of national law. In such instances, if data are transferred at the request of a national authority, it must establish the 'necessity' for the transfer. If, on the other hand, data are transferred on the sole initiative of EFCA, it will be for the latter to establish the 'necessity' for the transfer in a reasoned decision.

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 EFCA 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

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

15 days following legitimate request.

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 EFCA may retain anonymous data for statistical purposes. The EFCA 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

N/A

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

EFCA will process data related to (suspected) offences and carry out an evaluation of the accused persons' conduct.

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

PLACE AND DATE: VIGO, 7 JULY 2015

DATA PROTECTION OFFICER: CLARA EUGENIA FERNÁNDEZ

INSTITUTION OR BODY: EFCA