

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1343

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 19-11-2015

CASE NUMBER: 2015-1029

INSTITUTION: EUROPEAN CHEMICALS AGENCY

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 Chemicals Agency (ECHA), Annankatu 18, 00100 Helsinki, Finland

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

Director of Resources, Shay O'Malley

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 Chemicals Agency (ECHA), 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 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 usually include whistleblowers, witnesses, members of staff and the accused person(s). More in particular the whistleblowing guidelines apply to all staff members of the European Chemicals Agency (TA, CA) and in a wider sense also seconded national experts, trainees and interims.

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 data relating to the conduct, action or inaction of the accused person(s).

In principle, special categories of data (Article 10 of R. 45/2001) should not be included. In any event, the Director of Resources should ensure that staff members, and in particular, investigators handling information on potential fraud and other serious wrongdoings, are aware of the following: data and in particular, special categories of data that clearly are not relevant for the purposes of investigating fraud, corruption or other serious wrongdoings through the whistleblowing procedure, should not be further processed and should be erased. This requires carrying out a first check of the report as soon as possible.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

A specific privacy statement is published on the ECHA intranet pages (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 whistleblowers, 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 Reg. 45/2001). Deferral of information should be decided on a case by case basis. The reasons for any restriction should be documented.

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, any person involved in the whistleblowing procedure has the right to be informed about the processing of his/her personal data, and is entitled to access and rectify that data.

However, following Article 20 of the Data Protection Regulation, these rights may be restricted (e.g. where such restriction is necessary for the prevention, investigation, detection and prosecution of criminal offences or for the protection of the rights and freedoms of others, including whistleblowers, informants or witnesses). In that case the staff member will be informed of the

principal reasons for applying such restrictions and shall have the right of recourse to the European Data Protection Supervisor. Any restrictions shall be applied strictly and balanced with the right of defence. Especially the identity of whistleblowers shall be kept confidential as far as this does not contravene national rules regarding judicial proceedings.

A staff member can request access and copies of all documents directly related to the allegations made against him/her, except documents for which disclosure could jeopardize the privacy and right to data protection of third parties, or the legitimate guarantees given to the whistleblowers. When disclosure of the full document is not possible for the reasons explained above, the staff member can request access, whenever it is possible, to at least a redacted version or excerpts of the documents.

When replying to an access request, ECHA shall 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, ECHA shall also consider the status of the requester and current stage of the investigation.

The person(s) potentially implicated in the alleged wrongdoings, as well as all third parties mentioned in the report (e.g. witnesses) also have a right of confidentiality as regards their identity. This protection shall be guaranteed first of all by the fact that their identity will be treated in confidence. This means that their name will not be revealed to any other person without a strict need to know, unless this is a requirement in any subsequent criminal law proceedings. In all other cases, the Agency is committed to keeping the identity of the person potentially implicated in the alleged wrongdoings and the identity of third parties mentioned in the report confidential.

When an administrative inquiry or disciplinary proceeding is opened, the staff member(s) can also exercise the following rights (see also ECHA's prior checking notification C-2010-0741):

1. Administrative inquiry

The staff member(s) concerned shall be kept informed about the administrative inquiry as soon as it becomes clear that the staff member may be personally involved provided that the information does not hinder the inquiry. He/she shall be given the opportunity to express his/her opinion before the investigator closes his report and to add any comments. A copy of the conclusions of the report is sent to the staff member(s) concerned and on request access to all documents directly related to the allegations is given, subject to the legitimate interests of the third parties.

2. Hearing

Before any decision is taken on the follow-up of the investigation report, a hearing of the staff member(s) concerned shall be held and prior access to all the evidence in the files shall be granted at this point. He/she may add comments to the record of the hearing and on request also receive a copy of the records of interviews with other persons that have been heard.

3. Disciplinary proceedings

If disciplinary proceedings are initiated, the report from the Authority Authorised to Conclude Contracts (AACC) to the Chairman of the Disciplinary Board shall be forwarded to the staff member(s) concerned. He/she shall be heard by the Board. At the hearing, he/she may submit observations in writing or orally. The AACC shall take its final decision only after hearing the staff member(s) concerned.

Staff members also have the right of rectification in order to ensure completeness of their disciplinary file. This may be done, inter alia, by adding their comments. Staff members are allowed to include a recourse or appeal decision in their disciplinary file as well as their personal file, and where appropriate, to ask that the decision be replaced or removed from the file.

To exercise the above mentioned rights, staff members can contact the Director of Resources who exercises the tasks of the data controller, via his personal email address to ensure confidentiality.

When experiencing difficulties in exercising these rights, staff members can contact ECHA's Data Protection Officer (data-protection-officer@echa.europa.eu) or have recourse to the European Data Protection Supervisor.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing of the operation is both manual and electronic. Irrespective of the communication channel used by the whistleblower, a paper file is prepared by the Director of Resources, and stored in a locked cupboard in the HR Unit. Electronic documents related to the procedure are stored on a restricted section of the electronic document management system (SharePoint). Both paper and electronic files are accessible only and where appropriate to the Executive Director and the bare minimum number of authorised staff members needed to process the report (e.g. staff members from the HR Unit, Legal Affairs Unit of Finance Unit). Consultation of the paper file by any authorised staff member shall take place in the premises of the HR Unit (no copies shall be taken) or restricted access shall be given to the electronic file (with instructions not to print the file). Access rights shall be revoked as soon as they are no longer needed and version control and audit trail functionalities shall be enabled. The HR Unit also keeps a register of all consultations taking place in the premises of the HR Unit, indicating the name and function of the person consulting and the date. The staff member appointed to make a prior assessment of the allegations put forward by the whistleblower will submit a report (on paper) to the Authority Authorised to Conclude Contracts (AACC, i.e. the Executive Director), who will then decide on the further actions to take (e.g. open an administrative inquiry).

The security classification "Highly Restricted" (the highest classification) is applied to whistleblowing files, in accordance with the ECHA information security classification.

The Director of Resources is responsible for granting and reviewing the access to the paper and electronic files, in accordance with the procedures described in this notification. In each case, before providing access to the files, the authorised HR staff actively checks with the Director of Resources whether access could be granted to the person in question.

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 a locked cupboard in the HR Unit. Electronic documents are stored in restricted parts of the Agency's electronic document management system (SharePoint) with access to authorised staff 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.

ECHA Management Board Decision on the Guidelines on whistleblowing (MB/27/2015, see annex 2).

Article 5(a) Reg. 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 Staff Regulations and the ECHA Management Board decision on the whistleblowing procedure.

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

The direct recipient of the whistleblowing report shall forward it, as appropriate, to the Director Resources, who will prepare a file accessible only and where appropriate to the Executive Director and the bare minimum number of authorised staff members needed to process the report (e.g. staff members from the HR Unit, Legal Affairs Unit or Finance Unit).

Once an administrative inquiry is opened, the provisions from that procedure will apply (see also ECHA's prior checking notification on this topic, C-2010-0741).

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 ECHA, 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 administrative inquiry ('non-case'), i.e. which relate to alerts found to be unsubstantiated by ECHA, should be deleted without delay from the date on which the ECHA decides to close the file without follow up and at the latest two months after such decision.
- Files on the basis of which an administrative inquiry or disciplinary procedure are opened should be kept in line with the retention periods foreseen for those files (see also ECHA prior checking notification on this topic, C-2010-0741).

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 working days following a 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.

ECHA may retain anonymous data for statistical purposes. ECHA 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):*

ECHA 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,

17/ COMMENTS

18/ MEASURES TO ENSURE SECURITY OF PROCESSING³ :

³ Not to be published in the EDPS' Register (Art. 27(5) of Regulation (EC) N°: 45/2001)

PLACE AND DATE:
HELSINKI, 11 NOVEMBER 2015

DATA PROTECTION OFFICER:
BO BALDUYCK

INSTITUTION OR BODY: ECHA

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EDPS OPINION

OF DATE:

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FOLLOW UP *(in case of acting measures to be taken)*