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ASSISTANT SUPERVISOR

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Brussels, 07 February 2017  
WW/ALS/sn/D(2017)0279 C 2016-1173  
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**Subject: Prior-check Opinion on EBA's Whistleblowing Policy - Case 2016-1173**

Dear Mr Farkas,

On 16 December 2016, the European Data Protection Supervisor ("EDPS") received a notification for prior checking relating to the Whistleblowing procedure from the Data Protection Officer ("DPO") of the European Banking Authority ("EBA") under Article 27 of Regulation (EC) No 45/2001 (the "Regulation").

According to Article 27(4) of the Regulation, this Opinion must be delivered within a period of two months, not counting suspensions for requests for further information<sup>1</sup>. Since the EDPS has issued Guidelines on how to process personal information within a whistleblowing procedure<sup>2</sup>, the description of the facts and of the legal analysis will only mention those aspects which differ from these Guidelines or otherwise need improvement.

EDPS recommendations and reminders are highlighted in bold below.

**Description and assessment**

1. **Transfer information on a case-by-case basis**

Whistleblowing procedures are intended to provide safe channels for anyone who becomes aware of and reports potential fraud, corruption, or other serious wrongdoings and irregularities.

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<sup>1</sup> The case was suspended for further information from 3 January 2017 to 6 January 2016, and for comments from the DPO from 23 January 2017 to 3 February 2017. The EDPS shall thus render his Opinion no later than 2 March 2017.

<sup>2</sup> Available on the EDPS website on the following link:

[https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/16-07-18\\_Whistleblowing\\_Guidelines\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/16-07-18_Whistleblowing_Guidelines_EN.pdf)

EBA's Whistleblowing Policy mentions, under *4. Reporting Procedures, para. 13*, that the recipient of the information is obliged to transmit the information without delay to OLAF. The EDPS points out that OLAF is the competent body to investigate fraud against the EU budget. Since the scope of the whistleblowing procedure is not limited to cover potential fraud, there is a possibility that EBA will receive information that it is not within the competences of OLAF. In accordance with Article 7(1) of the Regulation, the transfer of personal information should only take place when necessary for the legitimate performance of tasks covered by the competence of the recipient. Therefore, **EBA should assess the requirements for transferring the personal information to OLAF on a case-by-case basis and adapt its Whistleblowing Policy and privacy statement accordingly.**

## 2. Ensure confidentiality of all persons implicated in a whistleblowing report

The EDPS welcomes the fact that EBA guarantees the protection of the identity of the whistleblower and of the staff members implicated by a report. One way of doing so is to limit the access to the reports. In the notification, potential recipients are mentioned strictly on a need-to-know basis, such as the Ethics Officer, Member of the Anti-Fraud Team, Legal Unit, HR, Head of Unit concerned, Head of Department concerned, officers appointed for the internal administrative investigation and the Executive Director. Additionally, the Whistleblowing Policy states, under *section 4.1 para. 11 and section 9.1, para. 54*, the immediate superior and managers as recipients of the reports. Without knowing the exact situation at EBA, this could entail further categories of recipients than EBA referred to in the notification and the privacy statement. Furthermore, there is a risk that with more people mentioned as first contact points, the reporting channel becomes less clear and defined, which might have an impact on the whistleblower's willingness to report.

Internal access to the information processed must be granted on a strictly need-to-know basis. **The EDPS points out that it is crucial to keep as few people as possible involved in order to protect the confidentiality of personal information processed within a report.** Furthermore, in light of the above, **EBA should align the notification, the Whistleblowing Policy and the privacy statement so that it is clear to the data subjects who the recipients of the reports are.**

## 3. Information to data subjects

According to Article 11(1)(c) of the Regulation, the data subject (whistleblower) has the right to receive information about the recipients or the categories of recipients of the data.

The notification states under section 7 that "*whistleblowers will be informed about possible recipients or categories of recipients of the whistleblowers personal information [...]*". The privacy statement, however, does not clarify the reporting channels and which members of the EBA staff that will have access to the personal information in the reports. Therefore, **EBA should add detailed information about the recipients in the privacy statement and, as mentioned above, align it with the notification and the Whistleblowing Policy as regards the recipients.** Furthermore, *para. 6. of the privacy statement*, refers to a procedure (salary adjustment by the HR) which might be initiated after an investigation has been carried out as a result of a disciplinary procedure. This is not covered by the purpose of a whistleblowing procedure and the **EBA should therefore remove this paragraph from the privacy statement.**

4. Security measures

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In light of the accountability principle, the EDPS trusts that EBA will ensure that these considerations and recommendations are fully implemented. The EDPS has therefore decided to **close case 2016-1173**.

Yours sincerely,

**(signed)**

Wojciech Rafał WIEWIÓROWSKI

Cc: Data Protection Officer EBA