



WOJCIECH RAFAŁ WIEWIÓROWSKI  
ASSISTANT SUPERVISOR

[...]  
Executive Director  
European Insurance and Occupational  
Pensions Authority - EIOPA  
Westhafen Tower  
Westhafenplatz 1  
60327 Frankfurt am Main  
GERMANY

Brussels, 7 August 2017  
WW/ALS/ktl/ D(2017)1696 C **2017-0466**  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all  
correspondence

**Subject: Prior-check Opinion on EIOPA's Whistleblowing Policy - Case 2017-0466**

Dear [...],

On 3 May 2017, the European Data Protection Supervisor (“EDPS”) received a notification for prior checking relating to the Whistleblowing Policy from the Data Protection Officer (“DPO”) of the European Insurance and Occupational Pensions Authority (“EIOPA”) 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. For aspects not covered in this Opinion, the EDPS has, based on the documentation provided, no comments.

EDPS recommendations and reminders are highlighted in bold below.

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<sup>1</sup> The case was suspended for further information from 10 May 2017 to 21 June 2017, and for comments from the DPO from 20 July 2017 to 1 August 2017. The EDPS shall thus render his Opinion no later than 28 August 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)

## **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. EIOPA's Whistleblowing Policy states, under 2.4.1.(13) page 4, that when it concerns internal whistleblowing, the recipient of the information is obliged to transmit the information received "without delay" to OLAF. In contrast, paragraph 2.9.1.(56) mentions that the Anti-Fraud Officer shall transmit to OLAF the whistleblowing report "as soon as reasonable possible following an assessment of veracity and relevance to OLAF's mandate".

In the light of this, the EDPS points out that OLAF is the competent body to investigate fraud against the EU budget and alleged serious misconduct. Since the scope of the whistleblowing procedure is not limited to potential fraud only, there is a possibility that EIOPA may receive information that it is not within the competence 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. This is mentioned in paragraph 2.9.1.(59) of the Policy but should be clarified under paragraph 2.4.1.(13). Therefore, **EIOPA should assess first whether there is a need to transfer the personal information to OLAF, on a case-by-case analysis, and subsequently whether all data to be transferred are necessary for the purpose (data quality check). The Whistleblowing Policy should be adapted accordingly.**

### **2. Information to data subjects**

The EDPS welcomes that EIOPA's Whistleblowing Policy explicitly states the exemptions under which certain information might be restricted (see 2.10.1.(65 a-e)) as listed in Article 20(1) of the Regulation. The Article as such is however not mentioned so for the sake of clarity, **EIOPA should refer to Article 20(1) of the Regulation under this part of the Policy.**

The Privacy Statement includes all necessary information that is required under Article 11 and 12, with the exception of the legal basis of the processing.<sup>3</sup> **EIOPA should therefore add this information to the Privacy Statement.**

The notification, the Whistleblowing Policy and the Privacy Statement mention a number of possible recipients of personal data, such as the OLAF, European Court of Auditors, EU Courts and the European Ombudsman. **For your information, under Article 2(g) of the Regulation, authorities which would only receive data in the context of specific targeted inquiries are not considered "recipients" and do not need to be mentioned in the privacy statement.**<sup>4</sup> While transfers to OLAF are indeed part of the procedure (and OLAF should thus be mentioned as a possible recipient), the others do not have to be.

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<sup>3</sup> See articles 11(1)(f)(i) and 12(1)(f)(i) of the Regulation.

<sup>4</sup> This is an exception to the information obligations in Article 11 and 12, but not to the rules on transfers in Articles 7 to 9. In practice, this means that authorities such as the European Ombudsman or the EDPS do not need to be mentioned in the privacy statement (unless the processing operation in question involves transfers to these organisations as part of the procedure); however, the applicable rules on transfers will always need to be respected.

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In light of the accountability principle, the EDPS trusts that EIOPA will ensure that these considerations and recommendations are fully implemented. The EDPS has therefore decided to **close case 2017-0466**.

Yours sincerely,

**(signed)**

Wojciech Rafał WIEWIÓROWSKI

Cc: [...] , Data Protection Officer