

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1221

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 06/02/2014

CASE NUMBER: 2014-0178

INSTITUTION: REA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Research Executive Agency (REA)
COV2
B-1049 BRUSSELS
BELGIUM

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

For organisational reasons, the role of the data controller is exercised by Ms Mariann KARCZA, Head of Sector "Legal Affairs and Internal Control Standards" (REA.A0.01).

Mariann KARCZA
Research Executive Agency (REA)
Unit: REA.A0.01 (Legal Affairs and Internal Control Standards)
COV2 18/147
B-1049 Brussels

3/ NAME OF THE PROCESSING

Whistleblowing procedure in the REA and the relevant internal fraud issues.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

4/ PURPOSE OR PURPOSES OF THE PROCESSING

In the frame of the processing operation for whistleblowing in the REA and the relevant internal fraud issues, personal data is collected and/or processed based on articles 22a (internal whistleblowing) and 22b (external whistleblowing) of the Staff Regulations.

In particular, the objectives of the whistleblowing procedure in the REA is to reduce the risk of impropriety by imposing on all staff the obligation to report suspected serious wrongdoing and/or possible illegal activity.

Thus, the purpose of the processing operation in the REA is to:

- Provide safe channels to staff to report fraud, corruption or other serious wrongdoings in the REA;
- Ensure the whistle-blower's protection;
- Provide feedback to the whistle-blower;
- Offer guidance and support to (potential) whistle-blowers.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

All REA staff members, irrespective of their administrative position acting as (potential) whistleblowers.

The persons concerned by the suspicion of serious wrongdoing/irregularity are not considered as data subjects under this notification, as the investigation related to the relevant internal fraud issues is conducted by OLAF and not by the REA. These persons are data subjects in the relevant notifications of OLAF ("Internal Investigations" n° DPO-176) and/or in case of administrative inquiries and/or disciplinary proceedings in the relevant REA notifications ("Administrative inquiries and disciplinary proceedings" under reference REA-DPN-2013-07).

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

The categories of personal data that may be collected and/or processed depending on the context and on a case-by-case analysis are the following:

- Identification data: last name, first name, e-mail address, phone number(s), etc.;
- Data relating to the data subject's professional details: position within the entity, etc.;
- Data relating to the alleged serious wrongdoing/irregularity: description, source of information, causes of the presumed irregularity, impact on EU interests, amount involved, actions (taken/planned) to mitigate the irregularity, etc.

Special categories of data

- Data relating to suspected offences, offences, criminal convictions and/or security measures.

The categories of data listed above shall be collected and/or processed on a case-by-case basis depending on the content of the reporting by the whistle-blower.

The persons in charge of the above-mentioned processing operation in the REA are reminded not to collect and further process special categories of data which are clearly not relevant for the purposes of the processing operation. They are also reminded not to collect and further process data which are not relevant in relation to what is necessary and proportionate in order to process the files relating to the whistleblowing procedure in the REA.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The controller provides data subjects with information on the processing operation of whistleblowing procedure in the REA and the relevant internal fraud issues, in the form of a Specific Privacy Statement (SPS) which is published under the REA Intranet (section "Policy and procedure on whistleblowing").

The SPS is also provided to the data subjects in the acknowledgement of receipt sent to them by e-mail after their reporting.

The data controller provides further information on the whistleblowing scheme on REA intranet: http://intranet-rea.cea.ec.eu.int/sites/rea/ics/standards/ics_2/Pages/ics_2_3.aspx.

The persons concerned by the suspicion of serious wrongdoing/irregularity are informed in due time by OLAF, as the investigation related to the relevant internal fraud issues is conducted by OLAF and not by the REA. Information to these persons is provided according to the relevant notification of OLAF ("Internal Investigations" n° DPO-176) and/or in case of administrative inquiries and/or disciplinary proceedings according to the relevant REA notifications ("Administrative inquiries and disciplinary proceedings" under reference REA-DPN-2013-07).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

The data subjects have the right to access/rectify/erase/block (where applicable) their personal data by contacting the respective data controller.

However, the REA may decide that restrictions and exceptions apply as laid down in article 20 (1) (a), (b) or (c) of the Regulation (EC) No 45/2001.

The persons concerned by the suspicion of serious wrongdoing/irregularity are allocated rights of access/rectification/erasure/blocking by OLAF, as the investigation related to the relevant internal fraud issues is conducted by OLAF and not by the REA. The rights of those persons are referenced in the relevant notification of OLAF ("Internal Investigations" n° DPO-176) and/or in case of administrative inquiries and/or disciplinary proceedings in the relevant REA notification ("Administrative inquiries and disciplinary proceedings" - REA-DPN-2013-07).

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Personal data in the above-mentioned processing operation are processed manually and by automated means.

i. Main principles

According to the Decision of the Steering Committee of the Research Executive Agency concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests (article 3§1), any official or servant of the Research Executive Agency or member of Staff not subject to the Staff Regulations who becomes aware of possible illegal activity or serious wrongdoing in connection with the performance of duties, should report it through the established channels.

According to the draft guidelines on whistleblowing in the REA based on the “Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing” (SEC (2012) 679 final), the following main principles are established:

-Members of staff of the Agency (data subjects in this processing operation) have a duty to report serious irregularities.

- For this purpose, data subjects must have a choice between a numbers of reporting channels for whistleblowing. The principal channel is the normal chain of hierarchical command. If a data subject considers it to be safer to bypass the normal chain of hierarchical command, they must be able to do so. Under certain conditions, data subjects may address their concerns to another EU institution as an option of last resort.

-Data subjects who report serious irregularities in good faith must not under any circumstances be subject to retaliation for whistleblowing. They must be protected and their identity must remain confidential if they so desire.

-The reported facts must be verified in the appropriate manner and, if they are confirmed, the Agency will take all necessary steps to ensure the appropriate follow-up.

-The rights of defence of any person implicated by the reported incidents must be respected.

-Malicious or frivolous denunciations will not be tolerated.

Data subjects are obliged to report in writing and without delay evidence which gives rise to the presumption of:

-the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the European Union, or

-conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials or servants of the European Union liable to result in disciplinary or, in appropriate cases, criminal proceedings or a failure to comply with similar obligations of members of staff not subject to the Staff Regulations.

The obligation of reporting by the whistle-blower of alleged serious irregularities and/or wrongdoing covers also cases where staff members from other EU Institutions/Bodies/Agencies are involved in the alleged irregularity/wrongdoing, as long as the conditions of article 22a of the Staff Regulations are fulfilled.

ii. Cases outside of the scope of the whistleblowing rules

The draft guidelines identify a number of areas which normally fall outside the scope of the whistleblowing rules (e.g. information already in the public domain, unsubstantiated rumours or

hearsay, matters of trivial nature, personnel issues when staff has a personal interest in the outcome, harassment claims, etc.).

According to article 22a of the Staff Regulations of Officials of the European Communities (article 22a of the future Staff Regulations: Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community), if a data subject becomes aware of facts about serious wrongdoings and/or illegal activity, in the course of or in connection with the performance of his/her duties, he is obliged to report them. Nevertheless, according to the draft Guidelines on whistle-blowing in the REA, based on the "Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing", SEC (2012)679 (point 1.4), if the information is not linked to the performance of one's duties, the whistle-blowing rules do not apply. This case is excluded from the scope of this notification.

iii. Reporting procedures

Data subjects report to:

- Their immediate superior or the Director of the Agency (Internal whistleblowing – first option);
- The Chairman of the Steering Committee or directly to OLAF (Internal whistleblowing – second option);
- Presidents of the Council, or of the Commission, or of the European Parliament, or of the Court of Auditors or the European Ombudsman (External whistleblowing – option of last resort).

In addition, specifically in the context of financial management and control of transactions involving the data subject, according to article 66 (8) of the Financial Regulation (Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002): If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principle of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform his or her hierarchical superior accordingly. If the hierarchical superior fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the authorising officer by delegation in writing. If that officer fails to take action, the member of staff shall inform the relevant panel referred to in Article 73(6), which is the Financial Irregularities Panel³.

iv. Protection for whistle blowers

According to the Staff Regulations (articles 22a§3 and 22b§1), the person who discloses information should not suffer any prejudicial effects, provided that he/she acted reasonably and honestly. The following specific protective measures apply:

- Information regarding the identity of the whistle-blower will be treated in confidence. This means that their name will not be revealed to the person(s) potentially implicated in the alleged wrongdoings or to any other person without a strict need to know, unless the whistle-blower personally authorises the disclosure of his/her identity or this is required by national law in the context of further investigation or subsequent judicial proceedings.

³ In accordance with article 35 of the Standard Financial Regulation applicable to Executive Agencies, the Financial Irregularities Panel set up by the Commission is also competent in respect of the agency as it does in respect of Commission departments.

-The rights of defence of a person concerned by the suspicion of serious wrongdoing/irregularity are ensured by the disciplinary rules of the Agency which are referred in the REA notification: "Administrative inquiries and disciplinary proceedings" under reference REA-DPN-2013-07.

-If the member of staff concerned wishes to be moved to another department or unit in order to safeguard himself/herself against potential hostile reactions from his or her immediate work environment, then the Agency will take reasonable steps to facilitate such a move.

-Particular care will be taken during staff appraisal and promotion or reclassification procedures to ensure that the whistle-blower suffers no adverse consequences in this context.

v. Transmission of cases of internal fraud to OLAF

The REA does not conduct investigations with regard to internal fraud cases. In case information concerning possible internal cases of fraud, corruption and/or other illegal activities is reported by a whistle-blower, the recipient of this information shall liaise with the internal audit team leader (after April 2014, the Head of Internal Audit Sector (REA 0.1)) in his/her quality of OLAF correspondent for internal investigations with a view of transmitting the respective information to OLAF through encrypted e-mail. The OLAF correspondent ensures the cooperation of REA with OLAF and the follow-up of the cases transmitted to OLAF. He does not create nor receive reports from OLAF. Data relating to internal fraud cases are not processed/stored/retained by him.

However, the final OLAF report on internal cases for which information was transmitted by the REA, may be sent to the Director of the Agency after a case is closed by OLAF.

The processing operation involving personal data in the context of external cases of potential fraud and/or other irregularities is described in a separate notification ("External cases of potential fraud and/or other financial irregularities" - REA-DPN-2013-12).

10/ STORAGE MEDIA OF DATA

Data in electronic format is stored on the REA servers (limited access) and only metadata is stored on the servers (ARES) of the European Commission.

Data/reports in paper format are stored in locked/secure cupboards.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

-Articles 22a and 22b of the Staff Regulations of the Officials of the European Communities of 1st May 2004 (articles 22a, 22b of future Staff Regulations: Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community);

-Decision of the REA Steering Committee on the adoption of the implementing rules to the Staff Regulations (REA/SC (2009)10) of 20 October 2009;

-Communication to the Commission: Communication (SEC (2012)679) on 6 December 2012 from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing;

-Draft guidelines on whistleblowing in the REA based on the "Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing" (SEC (2012) 679 final);

- Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes;
- Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes;
- Council Regulation (Euratom, EC) N° 2185/1996 of 11 November 1996 concerning on-the-spots checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities;
- Decision of the Steering Committee of the Research Executive Agency (REA/SC(2008)5 rev.1) of 20 February 2008 on measures to combat fraud and irregularities, concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests;
- Regulation (EU, Euratom) n° 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;
- Regulation (EC) n° 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF);
- Commission Decision (C(2008)3980) of 31 July 2008 delegating powers to the Research Executive Agency with a view to performance of tasks linked to implementation of the specific Community programmes People, Capacities and Cooperation in the field of research comprising, in particular, implementation of appropriations entered in the Community budget;
- Commission decision C (2002)845 of 9 April 2002 on raising concerns about serious wrongdoings;
- Article 5 (a) (Lawfulness of processing) of Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data.

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

Data may be disclosed to the following recipients:

REA

- Director of the Agency;
- Chairman of the REA Steering Committee;
- Authorised members of the REA staff;
- Hierarchical superior (s) of the whistle-blower.

Other potential recipients

- European Anti-Fraud Office (OLAF);
- Internal Audit Service (IAS) of the European Commission;
- Council of the European Union;
- European Commission;
- European Parliament;
- European Ombudsman;
- Financial Irregularities Panel (FIP), including the contact persons in the FIP Secretariat;
- European Court of Auditors (ECA);
- Investigation and Disciplinary Office of the Commission (IDOC);

- Disciplinary Board members;
- The Court of Justice of the European Union (Court of Justice, the General Court and the Civil Service Tribunal);
- European Data Protection Supervisor (EDPS).

This transmission will be restricted to the information necessary for the competent authority to carry out its task. All data recipients are reminded not to process the data received for any other purpose other than the one for which they are transmitted to them, as required under article 7(3) of Regulation (EC) No 45/2001.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Data collected and/or processed in the frame of this processing operation and transmitted to OLAF is kept:

- For cases closed without investigation: 5 years;
- For cases which result in administrative inquiries and/or disciplinary proceedings: The retention period is in accordance with the respective REA notification in the context of “Administrative inquiries and disciplinary proceedings” (REA-DPN-2013-07).

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

Requests for accessing, blocking, rectifying or erasing (where applicable) of the different categories of data will be evaluated on a case-by-case basis.

In that respect, the REA may decide that restrictions in blocking/rectification/erasure of data are applicable, as laid down in Article 20(1) (a), (b) or (c) (prevention, investigation, detection and prosecution of criminal offences, an important economic or financial interest, etc.) of Regulation (EC) No 45/2001.

Time limit to rule on a request: 15 working days (beginning from the reception of the request).

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

Not applicable.

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 suspected offences, offences, criminal convictions or security measures,

-Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct.

-Other (general concept in Article 27.1)

17/ COMMENTS

Related/Relevant documents

- Specific Privacy Statement (SPS) relevant to the processing operation of “Whistleblowing procedure in the REA and the relevant internal fraud issues”.

Documents to be treated as confidential

- Nomination of OLAF correspondents within the Research Executive Agency of 6 April 2009;

- REA "whistleblowing" reporting template (ICS 2.3);

- Draft guidelines on whistleblowing in the REA based on the “Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing” (SEC (2012) 679 final);

PLACE AND DATE: 04 FEBRUARY 2014

DATA PROTECTION OFFICER: EVANGELOS TSAVALOPOULOS

INSTITUTION OR BODY: RESEARCH EXECUTIVE AGENCY (REA)