

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1346

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 2/12/2015

CASE NUMBER: 2015-1065

INSTITUTION: Community Plant Variety Office

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Mr. Carlos GODINHO
CPVO/OCVV
3 Boulevard Foch
CS 10121
49101 ANGERS CEDEX 2
FRANCE

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

Human Resources service

3/ NAME OF THE PROCESSING

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

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 CPVO, 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.

Description:

The CPVO is about to adopt guidelines on whistleblowing, applicable to the members of its staff. The rules aim to safeguard the rights and interests of whistleblowers and provide adequate remedies if they are not treated correctly and fairly in relation to their whistleblowing.

Definitions:

A **whistleblower** is a member of staff, acting in good faith, who reports facts discovered in the course of or in connection with his or her duties which point to the existence of serious irregularities. **Serious irregularities** are illegal activities, including fraud and corruption and serious professional wrongdoings.

Disclosure is made in good faith if the whistleblower reasonably and honestly believes the transmitted information to be true. Good faith is presumed unless and until proven otherwise.

Procedure:

In accordance with Article 22a of the Staff Regulations, members of the CPVO's staff are obliged to report suspicions of serious irregularities affecting the CPVO's Office. Such reports should be made in writing and may be made either internally within the CPVO's office or externally to OLAF. Any such report, whether made internally or to OLAF, should contain all the available facts and/or evidence in order to facilitate a full investigation of the matter.

Internal whistleblowing – first option

Staff members who, in the course of or in connection with their duties, discover that serious irregularities may have occurred or may be occurring, are obliged to report this discovery forthwith and in writing to either their immediate superior or to their President or Head of Unit/Service.

Internal whistleblowing – second option

If there is a concern that this disclosure may lead to retaliation or that the intended recipient of the report is personally implicated in the serious irregularities, then the staff member may also bypass this direct means of internal reporting and address his or her report to the Secretary-General or directly to OLAF. OLAF may also be notified through the Fraud Notification System.

In any case, the recipient of the information is in turn obliged to transmit the information thus received without delay to OLAF. Therefore, while the staff member concerned has a choice of reporting channels, the information should ultimately reach OLAF in a short period of time.

External whistleblowing – option of last resort

Upon receipt of the information reported internally, OLAF or the CPVO must give the whistleblower within 60 days of receipt of the information an indication of the period of time that it considers reasonable and necessary to take appropriate action.

If no action is taken within that period of time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may make use of the possibility of external whistleblowing as provided for in Article 22b of the Staff Regulations.

Under this Article, if neither the CPVO nor OLAF has taken appropriate action within a reasonable period, the staff member who reported the wrongdoing has the right to bring his or her concerns to the attention of the President of either the Council, the Parliament or the Court of Auditors, or to the Ombudsman. In this case, the whistleblower protection continues to apply.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects are the following:

- All staff members of the CPVO, including seconded national experts, trainees and interim staff

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 other personal data. In principle, special categories of data (Article 10 of Regulation 45/2001) should not be included

In cases where the information provided by a whistleblower contains personal data that are clearly not needed for examining the issues raised in the report, these data will be erased from the report, if necessary after consulting the whistleblower, to the extent that this is possible without resulting in the substantive examination being unduly delayed. Investigators handling the files are informed that they first have to check the reports as soon as possible to ensure this obligation is complied with.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information to data subjects is provided in CPVO Guidelines on Whistleblowing, as well as in the

Specific Privacy Statement available on the CPVO's sharepoint. Ethics training touching upon the topic has been provided in 2014 and is planned to take place regularly in the future.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

- i) for the whistleblower right of access etc. follows the CPVO procedure defining accessing, correcting, erasing and blocking of personal data
- ii) for personal data referring to individuals incriminated in the whistleblowing, information about processing personal data and right of access etc. follows the principles outlined in the administrative inquiry procedure

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing operation is manual. Irrespective of the communication channel used by the whistleblower, a paper file is prepared by the Head of Unit or the Human Resources service, depending on whom the report is addressed to.

10/ STORAGE MEDIA OF DATA

Data is stored in paper files kept in a locked filing cabinet. Electronic files are stored on a server with restricted access. Once reports are submitted to OLAF, OLAF's relevant policies apply.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

Article 22a, 22b and 22c of the Staff Regulations.

CPVO Guidelines on Whistleblowing

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

Access is granted on a strict need to know basis.

The recipients of the data are potentially the following:

The immediate superior, the Head of Unit/Service concerned, the President the Human Resources service, and OLAF. If the whistleblower so decides, he may contact ethics correspondents.

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 months from the date on which the person to whom the alleged incident had been reported 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.

The retention period differs depending on in which file the documents are stored.

For the personal data which are gathered during the inquiry, therefore kept in the Disciplinary file, all working documents, including decisions, and personal data, in paper or electronic format, processed during the inquiry of the Investigation Panel and the procedure before the Disciplinary board shall only be stored within the Disciplinary file of the staff member created for this purpose. They shall be destroyed after a retention period of 20 years in the case of a disciplinary follow-up starting on the date of the final decision. If a charge is not brought before the Disciplinary board, a retention period of 5 years is applicable starting on the date of the final decision.

For the personal data which are stored in your Personal file, only the copy of the decision sanctioning the staff member, the copy of the decision closing the case and the copy of the decision withdrawing the charge are stored within the Personal file of the staff member. These documents fall therefore under the decision of the President of the CPVO dated 8 June 2011 on the retention period applicable to documents in Personal files, that is to say 10 years starting on the date of the end of the contract.

When the appointing Authority decides to close a case without imposing any disciplinary penalty, no traces of the acquittal decision should be stored in the personal file unless the staff member concerned requests so (Article 22 of Annex IX to the Staff Regulations).

A staff member against whom a disciplinary penalty other than removal from post has been ordered may, after three years in a case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure.

The appointing

Authority shall decide whether to grant this request (Article 27 of Annex IX to S.R.)

It should be noted that if the retention period applicable to the Personal file is terminated, the Disciplinary file of the staff member are not kept longer.

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

15 days (as defined in related CPVO procedure)

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

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.

na

PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

15/

na

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 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 :

PLACE AND DATE: ANGERS, 30.11.2015

DATA PROTECTION OFFICER: GERHARD SCHUON

INSTITUTION OR BODY: CPVO

(To be filled out in the EDPS' office)

EDPS OPINION

OF DATE:

CASE NUMBER:

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

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

