

REGISTER NUMBER: 1415

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 23/11/2016

Case number: 2016-1083

Institution: EMCDDA

Legal basis: article 27-5 of the regulation CE 45/2001⁽¹⁾

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and address of the controller

Dante Storti, Head of Unit, Administration
EMCDDA
Praça Europa, 1 Cais do Sodré
1249-289 Lisboa Portugal

2/ Organisational parts of the institution or body entrusted with the processing of personal data

The recipients of the data are the actors who need to intervene in the procedure, as the possible addresses and/or actor of the reporting process on “a need-to know basis”, namely: the whistle-blower, the immediate superior/line manager of the latter, the EMCDDA Director, the Chairperson of the EMCDDA Management Board, OLAF, and, where and as required by the guidelines at stake, the President of the European Commission, of the EU Council, of the European Parliament, of the European Court of Auditors and the European Ombudsman. All recipients of the data are reminded of their obligation not to use the data received for any further/other purpose than the one for which they were transmitted.

3/ Name of the processing

EMCDDA internal procedures and guidelines on whistleblowing

4/ Purpose or purposes of the processing

The purpose of the processing is exclusively the management of the EMCDDA's whistleblowing arrangements. The data received cannot be used for any further/other purpose than the one for which they were transmitted.

5/ Description of the category or categories of data subjects

All EMCDDA staff members.

While the procedures and guidelines on whistleblowing do not apply, *stricto sensu*, to seconded national experts, trainees, interim staff and local agents, these categories of staff are also encouraged to make use of these procedures and guidelines and the Agency undertakes to protect these categories of staff against retaliation if they do so in good faith.

6/ Description of the data or categories of data (*including, if applicable, special categories of data (article 10) and/or origin of data*)

Without prejudice to the specific duties and guaranties for confidentiality required by the procedures at stake, the information collected includes personal data which are necessary and relevant to the allegations in question and may relate to the whistle-blower, to the person(s) against whom the allegations have been made, as well as to possible witnesses and third parties. The report of the whistle-blower is also considered in principle as personal information of the whistle-blower.

7/ Information to be given to data subjects

According to Article 22b of the Staff Regulations, OLAF or the Agency must inform the whistle-blower about the time needed to take appropriate action. If no action is taken within that period of time, or if the whistle-blower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may address his or her concerns to one of the other institutions referred to above.

It should be noted that the whistle-blower is entitled to be informed within 60 days of the time needed to take appropriate action, but that it is up to OLAF and/or the Agency to determine the appropriate course of action. While reporting serious irregularities is an obligation under the Staff Regulations, some staff may be reticent to come forward and report their concerns. In order to help staff members who are unsure of whether or not certain facts should be reported, the Agency offers confidential and impartial guidance and support to (potential) whistle-blowers.

Guidance to potential whistle-blowers in an early stage also helps to avoid ill-advised reporting, which may cause frustration to the staff member concerned and may be detrimental to the interests and the reputation of the Agency. This guidance therefore lessens the risks of disclosure-related conflicts.

The guidance and support function was until recently offered by the judicial and legal advice unit in OLAF. However, experience suggests that this is best carried out by a point of contact not connected with the investigation function of OLAF, taking account of the fact that, in particular, support to whistle-blowers is essentially the responsibility of the Agency as employer.

The members of the service of the Agency in charge of HR management will provide confidential and impartial guidance on, for example, whether the information in question is covered by the whistleblowing rules, which reporting channel may best be used for the information concerned, and which alternative procedures are available if the information concerned does not qualify for whistleblowing ('signposting'). They will also be able to provide advice and guidance to staff members on protective measures that the staff member may wish to seek following the reporting.

This guidance function is without prejudice to the possibility of staff members to consult their line manager.

In addition, the web-based Fraud Notification System of OLAF gives potential whistle-blowers who hesitate to come forward the opportunity to enter into a dialogue with OLAF investigators, which allow these staff members to verify whether the information in their possession fall within the remit of OLAF.

In case of doubt, staff members are encouraged to seek the guidance offered to them when contemplating a disclosure under the present procedures and guidelines on whistleblowing.

In order to increase the awareness of staff about the procedures and guidelines on whistleblowing, adequate publicity of the latter will be given through the internal communication channels of the Agency and they will be addressed the training on ethics and integrity.

8/ Procedures to grant rights of data subjects (*rights of access, to rectify, to block, to erase, to object*)

Regulation (EC) 45/2001 safeguards your right to access your data at any time and to rectify any inaccurate or incomplete personal data. You also have the right to require the Controller to erase data if the processing is unlawful. The Controller shall deal with your request for rectification of data within one month from the introduction of the request. As far as requests for blocking and erasure, the Controller disposes of three calendar months to give follow up to the request from the moment of its reception. Furthermore, you are free to address the European Data Protection Supervisor at any time.

9/ Automated / Manual processing operation

Only manual processing operation.

10/ Storage media of data

Data will be stored, as required, in locked cabinets placed in the offices of the ADM-Human resources management sector and/or in protected electronic folders. A limited number of duly authorised staff from the ADM-Human resources management sector is responsible for this storage.

11/ Legal basis and lawfulness of the processing operation

The processing of data falls within Article 5(a) of Regulation (EC) No 45/2001, which provides that 'processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities (...) or in the legitimate exercise of official authority vested in the Community institution'. Provision is, furthermore, made in the preamble (recital 27 of the Regulation) that this processing 'includes the processing of personal data necessary for the management and functioning of those institutions and bodies'.

The legal base for the processing is the 'EMCDDA internal procedures and guidelines on whistleblowing', as approved by the EMCDDA Director.

12/ The recipients or categories of recipient to whom the data might be disclosed

The recipients of the data are the actors who need to intervene in the procedure, as the possible addresses and/or actor of the reporting process on "a need-to know basis", namely: the whistle-blower, the immediate superior/line manager of the latter, the EMCDDA Director, the Chairperson of the EMCDDA Management Board, OLAF, and, where and as required by the guidelines at stake, the President of the European Commission, of the EU Council, of the European Parliament, of the European Court of Auditors and the European Ombudsman. All recipients of the data are reminded of their obligation not to use the data received for any further/other purpose than the one for which they were transmitted.

13/ retention policy of (categories of) personal data

Personal information which is not relevant to the allegations made will not be further processed and kept. Whenever it is clear that the case should not be referred to OLAF, or is not within the scope of the whistleblowing procedure, the reported personal data will be deleted as soon as possible and in any case within two months from the completion of the aforementioned assessment. If the case is to be referred to OLAF and the latter starts an investigation, the reported personal data will be kept for the period corresponding to the duration of this investigation and of the process required for the follow up to the conclusion of the latter. In case OLAF decides not to start any investigation, the aforementioned information will be deleted as soon as possible.

13 a/ time limits for blocking and erasure of the different categories of data
(on justified legitimate request from the data subject)
(Please, specify the time limits for every category, if applicable)

Personal information which is not relevant to the allegations made will not be further processed and kept. Whenever it is clear that the case should not be referred to OLAF, or is not within the scope of the whistleblowing procedure, the reported personal data will be deleted as soon as possible and in any case within two months from the completion of the aforementioned assessment. If the case is to be referred to OLAF and the latter starts an investigation, the reported personal data will be kept for the period corresponding to the duration of this investigation and of the process required for the follow up to the conclusion of the latter. In case OLAF decides not to start any investigation, the aforementioned information will be deleted as soon as possible.

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,

N.a.

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*):

Other (general concept in Article 27.1)

In the opinion of the EMCDDA DPO, taking into account the specific nature of this extremely delicate procedure, both from the perspective of the alleged wrong doer and the informing staff member, this processing operation presents specific risks justifying prior checking from the EDPS services, even if, as informed by the EMCDDA Data Controller, the internal procedure has been closely inspired in the current procedure previously set up by the European Commission.

17/ Comments