

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 23/01/2017

CASE NUMBER: 2017-0109

INSTITUTION: ENISA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Professor Udo Helmbrecht, Executive Director, ENISA, PO Box 1309, 710 01 Heraklion, Crete, Greece.

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

Department of Stakeholder Relations and Administration (SRAD)

3/ NAME OF THE PROCESSING

Whistleblowing Policy

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 ENISA. This requires establishing reporting channels for whistleblowers, managing and following-up reports, and ensuring protection and adequate remedies for whistleblowers. Article 22(a), 22(b) and 22(c) of the Staff Regulations, as well as the Conditions of Employment of Other Servants of the European Union provide the rules on whistleblowing. ENISA has drafted guidelines on its internal procedure (see draft whistleblowing policy - attached to the notification).

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Anyone working at ENISA, including staff members, seconded national experts, trainees and interims. Depending on the case, the data subject may be a whistleblower, an alleged wrongdoer, a witness or third party.

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

Personal data relating to any person implicated in a whistleblowing report, including potentially data on suspected offenses, offenses, criminal convictions and security measures, as well as data on professional conduct and behaviour.

Special categories of data may appear in an ad-hoc basis in the context of a whistleblowing report. In such cases, any information that is not clearly of interest or relevance to the allegations will be immediately deleted and not further processed.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information on whistleblowing procedures and the relevant processing of personal data will be provided following a two-step procedure. As a first step, a general data protection statement will be available at ENISA's intranet site for all staff (see draft privacy statement - attached to the notification).

As a second step, all individuals affected by a particular whistleblowing procedure will be directly provided with specific information as soon as practically possible (see section 6.4.1 of draft whistleblowing policy).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

Right of access and rectification will be granted on a case-by-case basis after having assessed the status of the requester (whistleblower, alleged wrongdoer, witness, third party), the stage of the investigation and the type of information held (see section 6.4.2 of draft whistleblowing policy).

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Whistleblowing reports may be submitted via (encrypted) email or in paper forms (sealed envelopes). Any further communication will follow the same path (electronic or paper-based).

10/ STORAGE MEDIA OF DATA

Dedicated storage media (electronic and non-electronic) will be used for the storage of whistleblowing-related information. Whistleblowing cases will not be filed under the regular ENISA filing (and storage) system.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The legal basis is the Staff Regulation “SR” of Officials of the European Union, in particular Articles 22(a), (b) and (c), as well as the Conditions of Employment of Other Servants of the European Union “CEOS”.

The processing operation is lawful under Article 5(a) of Regulation 45/2001/EC, as the whistleblowing policy aims to facilitate the reporting of serious professional wrongdoing at ENISA based on the aforementioned legal basis.

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

Recipients include specific persons within ENISA (Head of Units, Executive Director) to whom a whistleblowing report is submitted. They may also involve other persons within ENISA who are directly or indirectly implicated in a whistleblowing case.

External recipients include primarily OLAF. In some cases a whistleblowing report might need to be transmitted to other recipients, such as judicial authorities, in the course of a disciplinary or other procedure.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Different conservation periods apply depending on the information in the report and how the case is dealt with (see also section 6.4.4 of draft whistleblowing policy).

Firstly, personal information that is not relevant to the allegations should not be further processed.

Secondly, when an initial assessment is carried out but it is clear that the case should not be referred to OLAF or is not within the scope of the whistleblowing procedure the report will be deleted as soon as possible. In any case, personal information will be deleted no later than two months of completion of the initial assessment.

Thirdly, if it is clear after the initial assessment that a report should be transferred to OLAF, ENISA will carefully follow what actions OLAF takes. In case OLAF decides not to start an investigation, the information should be deleted without delay and in any case no later than 2 months after OLAF’s decision is made. In case OLAF starts an investigation, ENISA will maintain this information until the case is closed by OLAF.

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

The personal information of third parties such as informants, whistleblowers or witnesses will be removed from the documents except in exceptional circumstances if the whistleblower authorises such a disclosure, if this is required by any subsequent criminal law proceedings or if the whistleblower maliciously makes a false statement.

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

Any whistleblowing- related personal information retained for statistical purposes will be made anonymous, ensuring that the direct or indirect identification of any of the implicated persons is not possible by any means.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

No such transfers will be carried out under this procedure.

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,

Personal data related to suspected offences, offences, criminal convictions or security measures are likely to be processed in the context of a whistleblowing case and, thus, the procedure is subject to prior check based on article 27.2(a).

↑ Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

Personal data with regard to professional conduct are likely to be processed in the context of a whistleblowing case and, thus, the procedure is subject to prior check based on article 27.2(b).

↑ Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

These classes of data will not be processed under this procedure.

↑ Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

These classes of data will not be processed under this procedure.

↑ Other (general concept in Article 27.1)

17/ COMMENTS

PLACE AND DATE: ATHENS, 23/01/2017

DATA PROTECTION OFFICER: ATHENA BOURKA

INSTITUTION OR BODY: ENISA