

Data Protection Privacy Statement

on the processing of personal data in the context of an administrative inquiry or disciplinary procedure at EMSA

The protection of privacy is of high importance to the European Maritime Safety Agency ('EMSA'). EMSA is responsible for the personal data it processes. Therefore, we are committed to respecting and protecting the personal data of every individual and to ensuring efficient exercising of data subject's rights. All the data of personal nature, namely data that can identify an individual directly or indirectly, will be handled fairly and lawfully with the necessary due care.

This processing operation is subject to Regulation (EU) No. 2018/1725 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. The information in this Privacy Statement is given pursuant to Articles 15 and 16 of the Regulation (EU) No. 2018/1725.

1. Nature and the purpose(s) of the processing operation¹

The purpose(s) of the processing of personal data is to enable the Appointing Authority to follow up, as appropriate, on staff members' failure to comply with their obligations under the Staff Regulations/CEOS, in accordance with Article 86 of the Staff Regulations and in this context to give the opportunity to the staff member(s) concerned to have the necessary information to exercise their rights as data subjects.

EMSA will not reuse the personal data for another purpose that is different to the one stated above.

2. Categories/types of personal data processed

The categories/types of personal data processed are the following:

Personal details

- Name, address, date of birth, nationality(ies), place of recruitment and place origin, gender, marital status;
- Further personal data as relevant for the purpose of the administrative inquiry or disciplinary procedure

Employment details

- Personnel number, position, category, grade, contract type, seniority in grade;
- Further employment details as relevant for the purpose of the administrative inquiry or disciplinary procedure

¹ Please, provide a brief description of the processing operation and clearly define the purpose(s).

Data likely to be found in the course of an administrative inquiry or disciplinary procedure, including pre-disciplinary procedure; prohibition, in principle, of processing special categories of data according to Article 10(1) of the Regulation (EU) No. 2018/1725, except in the circumstances mentioned in the EDPS guidelines on the processing of personal data in administrative inquiries and disciplinary proceedings by EU bodies, para. 2 Processing of special categories of data.

3. Processing the personal data

The processing of the personal data is carried out under the responsibility of the Head of Unit 4.1. Human Resources and Internal Support acting as delegated EMSA data controller.

Personal data are processed by members of the Inquiry Team appointed by the Executive Director for the administrative inquiry concerned.

The Appointing Authority may mandate a person, who may be a member of the inquiry team, to conduct the hearing pursuant to Article 3 of Annex IX to the Staff Regulations on its behalf (pre-disciplinary hearing) and personal data may be processed in that context.

In the case of a disciplinary procedure, personal data are processed by members of the Disciplinary Board/Common Disciplinary Board including the Secretariat, the person mandated by the appointing authority to represent the latter before the Disciplinary Board and the representative of the person concerned, should that be the case.

4. Access to and disclosure of personal data

The personal data may be disclosed to the following recipients on a need-to-know basis:

- Members of the Inquiry Team as appointed by the Executive Director,
- A person mandated by the Appointing Authority to conduct the hearing pursuant to Article 3 of Annex IX to the Staff Regulations,
- Executive Director as Appointing Authority,
- Chair of the Administrative Board, in his/her role of exercising disciplinary authority over the Executive Director and Heads of Department, as well as any members of the Administrative Board appointed for this purpose
- Disciplinary Board/Common Disciplinary Board (including Secretariat),
- The person mandated by the appointing authority to represent the latter before the Disciplinary Board, who may be a member of the inquiry team, pursuant to Article 16(2) of Annex IX of the Staff Regulations,
- The representative of the person concerned before the Disciplinary Board, should that be the case,
- Data Protection Officer,
- Head of Department 4, Corporate Services
- Head of Unit 4.1, Human Resources and Internal Support Unit,
- Head of Unit 4.2, Legal, Finance and Facilities Unit,
- HR Officer/Senior HR Officer acting as contact point
- OLAF on the basis that before the opening of an administrative inquiry, EMSA shall consult OLAF to ascertain that it is not conducting an investigation for its own purposes and/or does not intend to do so.

Regarding witness statements provided in the course of an administrative inquiry or disciplinary procedure including pre-disciplinary procedure, information may be provided to the person concerned in order for the latter

to exercise the right to his/her defence, provided that the legitimate expectations of the witness(es) would not be compromised.

The data are not used for any other purposes nor disclosed to any other recipient.

The information in question will not be communicated to third parties, except to national authorities where necessary for the purpose(s) of further judicial proceedings, or to OLAF in the event of the latter undertaking an investigation on the same matter.

Access will be given to EU staff with the statutory right to access the data required by their function, i.e. the European Ombudsman, the Civil Service Tribunal, the Internal Audit Service, the European Court of Auditors, OLAF, the European Public Prosecutor's Office and the European Data Protection Supervisor

Personal data are not intended to be transferred to third countries.

5. Protecting and safeguarding personal information

EMSA implements appropriate technical and organisational measures in order to safeguard and protect data subjects' personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to them.

All personal data related to the payroll are stored in secure IT applications according to the security standards of the Agency as well as in specific electronic folders accessible only to the authorised recipients. Appropriate levels of *access are granted* individually only to the above-mentioned recipients.

All EMSA staff persons dealing with personal data in the context of the procedure, at any stage, sign a confidentiality declaration that is kept in the folder of the procedure or in his/her personal file.

6. Access, rectification, erasure or restriction of processing of personal data

Data subjects have the right to access, rectify, erase, and receive their personal data, as well as to restrict and object to the processing of the data, in the cases foreseen by Articles 17 to 24 of the Regulation (EU) No. 2018/1725.

If data subjects would like to exercise any of these rights, they should send a written request explicitly specifying their query to the delegated data controller, the Head of the Unit 4.1 Human Resources and Internal Support.

The right of rectification can only apply to inaccurate or incomplete factual data.

The above requests will be answered without undue delay, and in any event within one month of receipt of the request. However, according to article 14 (3) of the Regulation (EU) No. 2018/1725, that period may be extended by two further months where necessary, taking into account the complexity and number of the requests. EMSA shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay.

It should be noted however that in line with the Decision of the EMSA Administrative board of 18/03/20 on *The internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the European Maritime Safety Agency (EMSA)*, the Agency may be obliged to restrict the information to data subject and other data subject's rights to protect, in particular, its own

investigations, the investigations and proceedings of other public authorities, as well as the rights of other persons related to its investigations or other procedures. The Agency may thus restrict the information for the purpose of protecting the investigation and the fundamental rights and freedoms of other data subjects

7. Legal basis for Data processing

Processing is based on Article 5 (a) of the Regulation (EU) No. 2018/1725 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, providing that:

- (a) a task carried out in the public interest or in the exercise of official authority vested in EMSA (including management and functioning of the institution).

Processing is necessary for the performance of tasks carried out in the public interest on the basis of the Article 10.2(i) and Article 15.2(e) of the Regulation (CE) n° 1406/2002 of the European Parliament and of the Council establishing a European Maritime Safety Agency (as amended).

The personal data are collected and processed in accordance with Staff Regulations of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, as amended, in particular Article 86, Annex VII to the Staff Regulations and Annex IX to the Staff Regulations and Articles 49, 50 and 119 of the CEOS, as well as in accordance with the Decision of the Administrative Board of EMSA of 23 March 2022 laying down General Implementing Provisions on the conduct of administrative inquiries and disciplinary proceedings.

8. Storing Personal data

EMSA does not keep personal data longer than necessary for the purpose(s) for which that personal data is collected.

Retention schedules for files related to administrative enquiries and disciplinary procedures:

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| - | Files that have not given rise to administrative investigations | 2 years |
| - | Investigations with disciplinary consequences | 20 years |
| - | Investigations without disciplinary consequences | 5 years |
| - | Disciplinary procedures | 20 years |

Retention periods for disciplinary sanctions:

A staff member against whom a disciplinary penalty, other than removal from post, has been ordered may request for the deletion from his personal file of all reference to such measure as follows:

- In the case of a warning addressed to them: the staff member may submit a request for the deletion from his personal file of all reference to such measure after one and a half years;
- In the case of a written warning or reprimand: the staff member may submit a request for the deletion from his personal file of all reference to such measure after three years;
- In the case of any other penalty: the staff member may submit a request for the deletion from his personal file of all reference to such measure after six years.

A dedicated folder for administrative inquiries has been created in ARES with strictly limited access.

Disciplinary files in a locked safe in the office of the Senior Human Resources Officer for 20 years on account of Article 10 (h) and (i) of Annex IX of the Staff Regulations.

Warnings and sanctions issued will be recorded in the e-personal file of the staff member in line with the retention periods mentioned below, where access is restricted on a need to know basis to members of the Human Resources and Internal Support Unit.

In the case of transfer of an official to another Institution or Agency, or a 2(f) temporary agent or 3(a) contract agent moving to another Agency through the inter-Agency Job Market, the personal file will be transferred to the new Agency.

In the event of further legal proceedings, all data held should be retained until the completion of those proceedings.

9. Data protection points of contact

EMSA has established a specific functional mailbox allowing written requests and confidentiality in the context of administrative inquiries, i.e. admininquiries@emsa.europa.eu

In addition, should data subjects have any queries/questions concerning the processing of their personal data, they should address them to the data controller, the Head of Unit 4.1. Human Resources and Internal Support.

Any data subject may also consult EMSA Data Protection Officer at: DPO@emsa.europa.eu.

Recourse:

Complaints, in cases where the conflict is not resolved by the Data Controller and/or the Data Protection Officer, can be addressed at any time to the European Data Protection Supervisor: edps@edps.europa.eu.