

RECORDING OF PROCESSING ACTIVITY

NOTIFICATION TO THE DATA PROTECTION OFFICER (ARTICLE 31 REGULATION 1725/2018)

NAME OF PROCESSING ACTIVITY¹: Management of the Whistleblowing procedure at EMSA

1)	Controller(s) ² of data processing operation (Article 31.1(a))
<p>Controller: European Maritime Safety Agency (EMSA)</p> <p>Organisational unit responsible³ for the processing activity: Unit 4.1, Human Resources and Internal Support.</p> <p>Data Controller: Cristina Romay Lopez, Head of Unit 4.1, Human Resources and Internal Support.</p> <p>Data Protection Officer (DPO): Radostina Nedeva-Maegerlein: dpo@emsa.europa.eu</p>	
2)	Who is actually conducting the processing? (Article 31.1(a)) ⁴
<p>The organisational unit conducting the processing activity within EMSA is: Unit 4.1 Human Resources and Internal Support at EMSA.</p>	
<p>The data is processed by a third party (contractor) or the processing operation is conducted together with an external third party: <input checked="" type="checkbox"/></p> <ul style="list-style-type: none"> European Anti-Fraud Office (OLAF) – all whistleblower files must be transmitted to OLAF who are responsible for investigations into fraud, corruption and financial irregularities committed and recommend what action should be taken by the agency. If the case is about professional misconduct, the case is referred back to the Agency for the disciplinary investigation procedure. EMSA designated and limited staff: The Head of Department 4 Corporate Services as the Single Contact Point to OLAF The Internal Control Coordinator as the anti-fraud correspondent at EMSA 	

¹ **Personal** data is any information relating to an identified or identifiable natural person, i.e. someone who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity. This information may, for example, be the name, date of birth, a telephone number, biometric data, medical data, a picture, professional details, etc.

Processing means any operation or set of operations which is performed on personal data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

² In case of more than one controller (e.g. joint operations), all controllers need to be listed here

³ This is the unit that decides that the processing takes place and why.

⁴ Is EMSA itself conducting the processing? Or has a provider been contracted?

- HR Senior Human Resources Officer Unit 4.1 - Human Resources and Internal Support Unit as contact point for confidential and impartial guidance and support to (potential) whistleblowers

3) Purpose of the processing (Article 31.1(b))

Why are the personal data being processed? Specify the rationale and underlying reason for the processing and describe the individual steps used for the processing.

The purpose of the processing activity is to enable EMSA staff to report concerns about fraud, corruption or other serious wrongdoing in accordance with the [Decision of the Administrative Board on Guidelines on Whistleblowing \(Ares\(2018\)3642181 - 09/07/2018\)](#) , while ensuring the necessary protection to whistleblowers.

Reporting procedure:

- **Internal whistleblowing – first option:**

Staff members are required to report any serious irregularities they discover to their immediate superior or the Executive Director.

- **Internal whistleblowing – second option:**

If there's a fear of retaliation or if the superior is implicated, the report can be made to the Chair of the Administrative Board or directly to OLAF (European Anti-Fraud Office). The recipient must then forward the information to OLAF promptly.

In both first and the second options, 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.

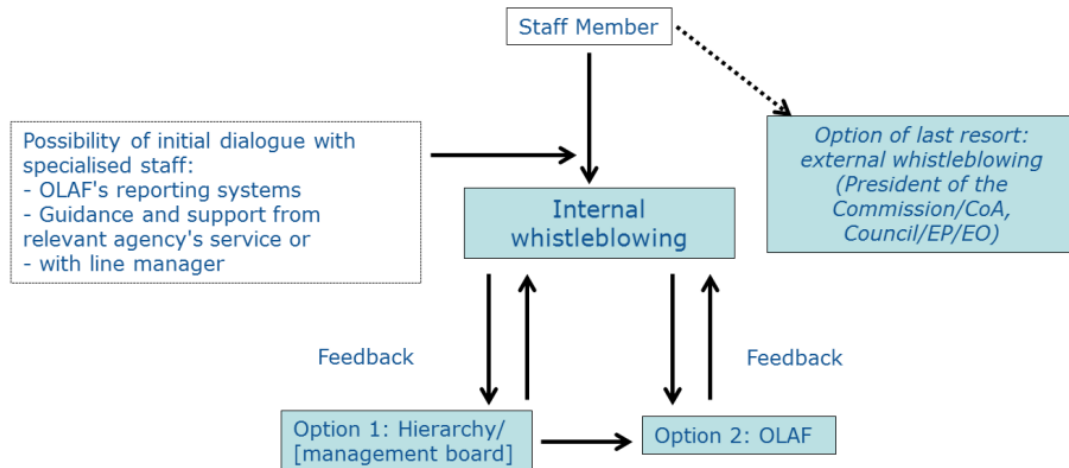
- **External whistleblowing – option of last resort:**

If internal reporting (first and second options) doesn't lead to action within a reasonable time (60 days), the whistleblower can resort to external options, such as reporting to higher authorities like the President of the Commission, the Council, the Parliament, the Court of Auditors or to the Ombudsman. This option should only be used if the whistleblower believes the information is substantially true and has given EMSA or OLAF a reasonable time to act.

Guidance and Support

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 who are unsure of whether or not certain facts should be reported, EMSA offers confidential and impartial guidance and support to (potential) whistleblowers.

ANNEX 2: WHISTLEBLOWING REPORTING CHANNELS



Protection for Whistleblowers: The protection of a person reporting a serious irregularity in good faith shall be guaranteed first of all by the fact that their identity will be treated in confidence. Their identity must be kept confidential unless there's a strict need to disclose it, such as with the whistleblower's consent or in criminal law proceedings. Even then, EMSA is committed to maintaining confidentiality. Anonymity is not encouraged as the Agency is limited to protect the staff member in this case.

OLAF is responsible for investigations into fraud, corruption and financial irregularities committed and recommends what action should be taken by the agency. If the case is about professional misconduct, the case is referred back to the Agency for the disciplinary investigation procedure (see : [Processing of personal data in the context of an administrative inquiries or disciplinary procedures at EMSA Ref. Ares\(2022\)3369617 - 02/05/2022](#))

4) Lawfulness of the processing (Article 5(a)–(d)): Processing necessary for:

Mention the legal basis which justifies the processing

- (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) ☒

Under 15.2(e) of the EMSA Founding Regulation, Regulation (EC) No 1406/2002, as amended, the Executive Director shall exercise (e) he/she shall exercise, in respect of the staff, the powers laid down in Article 6(2). Under 10.2(i) of the EMSA Founding Regulation, Regulation (EC) No 1406/2002, as amended, the Administrative Board shall exercise disciplinary authority over the Executive Director and the Heads of Department referred to in Article 16.

Article 22a and 22b c of the Staff Regulations applicable by analogy to temporary agents and contract agents, pursuant to articles 11 and 81 of the CEOS.

[Decision of the Administrative Board on Guidelines on Whistleblowing \(Ares\(2018\)3642181 - 09/07/2018\)](#)

Decision of the Administrative Board laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings of 23/03/ 2022

- (b) compliance with a legal obligation to which EMSA is subject ☐
- (c) necessary for the performance of a contract with the data subject or for the preparation of such a contract ☐
- (d) Data subject has given consent (ex ante, explicit, informed) ☐

5) Description of the categories of data subjects (Article 31.1(c))

Whose personal data are being processed?

- | | |
|--|-------------------------------------|
| EMSA staff and Former Staff
Officials, Temporary Agents, Contract Staff | <input checked="" type="checkbox"/> |
| Non-EMSA staff (contractors staff, external experts, trainees)
SNEs, NEPTs, Trainees and Interims | <input checked="" type="checkbox"/> |
| Visitors to EMSA building | <input type="checkbox"/> |
| Relatives of the data subject | <input type="checkbox"/> |
| Other (please specify): | |

6) Categories of personal data processed (Article 31.1(c))

Please tick all that apply and give details where appropriate

(a) **General personal data:**

The personal data contains:

Personal details ☒

Name and surname (should the whistleblower chooses to disclose it)

Further personal details as relevant for the purpose of the processing

Education & Training details ☐

Employment details ☒

e-mail address, personnel number, job title, Department, Unit, contract type and duration, etc (should the whistleblower choose to disclose it)

Further employment details as relevant for the purpose of the processing.

Financial details ☒

Family, lifestyle and social circumstances ☒

Goods or services provided ☒

Other (please give details): ☒

- Data which enables the persons involved in whistleblowing process to be identified.

- E-mails or other type of communications exchanged by the affected individuals.

- Information, such as allegations, declarations, statements of an alleged wrong-doer, witnesses and a whistleblower.

- Personal data relating to any person implicated in a whistleblowing report might be processed, including potentially data on suspected offenses, offenses, criminal convictions and security measures, as well as data on professional conduct and behaviour. The collection of this type of data does not follow systematic rules as to the type of data processed as it is not possible to determine a priori the type of data collected.

(b) **Sensitive personal data** (Article 10)

Racial or ethnic origin ☐

Political opinions	<input type="checkbox"/>
Religious or philosophical beliefs	<input type="checkbox"/>
Trade union membership	<input type="checkbox"/>
Genetic, biometric or data concerning health	<input type="checkbox"/>
Information regarding an individual's sex life or sexual orientation	<input type="checkbox"/>
<p>Depending on the subject and issue being whistle-blown, special categories of data may appear in an ad-hoc basis in the context of a whistleblowing report and may be processed during the investigation. EMSA may process special categories of personal data. The collection of this type of data does not follow systematic rules as to the type of data processed as it is not possible to determine a priori the type of data collected.</p>	
7) Recipient(s) of the data (Article 31.1 (d)) <i>Recipients are all parties who have access to the personal data</i>	
Data subjects themselves <ul style="list-style-type: none"> • EMSA staff and Former Staff • Non-EMSA staff • Persons heard as a witness. 	<input checked="" type="checkbox"/>
Managers of data subjects <ul style="list-style-type: none"> • First line of report 	<input checked="" type="checkbox"/>
Designated EMSA staff members <ul style="list-style-type: none"> • Head of Unit 4.1 – Human Resources and Internal Support Unit • HR Senior Human Resources Officer Unit 4.1 - Human Resources and Internal Support Unit as contact point for confidential and impartial guidance and support to (potential) whistleblowers • Head of Department 4 – Corporate Services acting as single point of contact for OLAF • Executive Director 	<input checked="" type="checkbox"/>
Designated Contractors' staff members	<input type="checkbox"/>

Other (please specify):



- OLAF
 - Chair of the Administrative Board
 - the President of the Commission,
 - the Council, the Parliament or the Court of Auditors, or to the Ombudsman
-
- Ad hoc data transfers to recipients listed below may happen on a 'need to know' basis and should meet the cumulative conditions laid down in Article 9 of Regulation (EU) 2018/1725, i.e. the transfer should be necessary for the legitimate performance of tasks covered by the competence of the recipient and the recipients should process the data received only for the purposes for which they were transferred. Article 9 prescribes further conditions to be observed in any ad hoc transfer:
 - National police or judicial authorities
 - The European Data Protection Supervisor, the European Ombudsman, as well as the Court of the European Union or competent national judicial authorities in the context of legal action, which possibly justifies a transfer also to EMSA's Legal and Financial Affairs Unit in charge of follow-up on legal action involving EMSA.

8) Transfers to third countries or recipients outside the EEA (Article 31.1 (e))

If the personal data are transferred outside the European Economic Area, this needs to be specifically mentioned, since it increases the risks of the processing operation.

Data are transferred to third country recipients:

Yes

☐

No

☒

If yes, specify to which country:

If yes, specify under which safeguards:

Adequacy Decision of the European Commission

☐

Standard Contractual Clauses

☐

Binding Corporate Rules	<input type="checkbox"/>
Memorandum of Understanding between public authorities	<input type="checkbox"/>
9) Technical and organisational security measures (Article 31.1(g)) <i>Please specify where the data are stored during and after the processing</i>	
How is the data stored?	
EMSA network shared drive	<input type="checkbox"/>
Outlook Folder(s)	<input checked="" type="checkbox"/>
Hardcopy file kept in a locked safe to which only the HR Senior HR Officer has access	<input checked="" type="checkbox"/>
Cloud (give details, e.g. public cloud)	<input type="checkbox"/>
Servers of external provider	<input type="checkbox"/>
Other (please specify): ARES	<input checked="" type="checkbox"/>
A dedicated folder has been created in ARES with strictly limited access.	
10) Retention time (Article 4(e)) <i>How long will the data be retained and what is the justification for the retention period? Keep in mind that there are pre-determined retention periods for most types of files. Those are explained in the Records Management Policy and Procedure of the Agency. You can check EMSA Records Management Policy and Procedure here.</i>	
<p>Personal data related to Whistleblowing procedures with OLAF are retained as following :</p> <p>Files that have not given rise to an investigation (these files contain the documents in view of which a decision has been taken not to launch an investigation): 5 years and then elimination.</p> <p>Investigations without recommendations (these files end with the investigation report, as there are no follow-up actions): 10 years and then elimination.</p> <p>Investigations with recommendations (the file which contains the investigation report also contains all follow-up actions under the form of imposed sanctions, possible legal proceedings, etc.): 20 years and then elimination.</p>	

Personal data related to Whistleblowing procedures with OLAF that were related to professional misconduct, the case is referred back to the Agency for the disciplinary investigation procedure (see : Processing of personal data in the context of an administrative inquiries or disciplinary procedures at EMSA Ref. Ares(2022)3369617 - 02/05/2022) .

