

Data Protection Statement/Privacy Statement on the processing of personal data in the context of Management of the Whistleblowing 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 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 2018/1725.

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

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:**

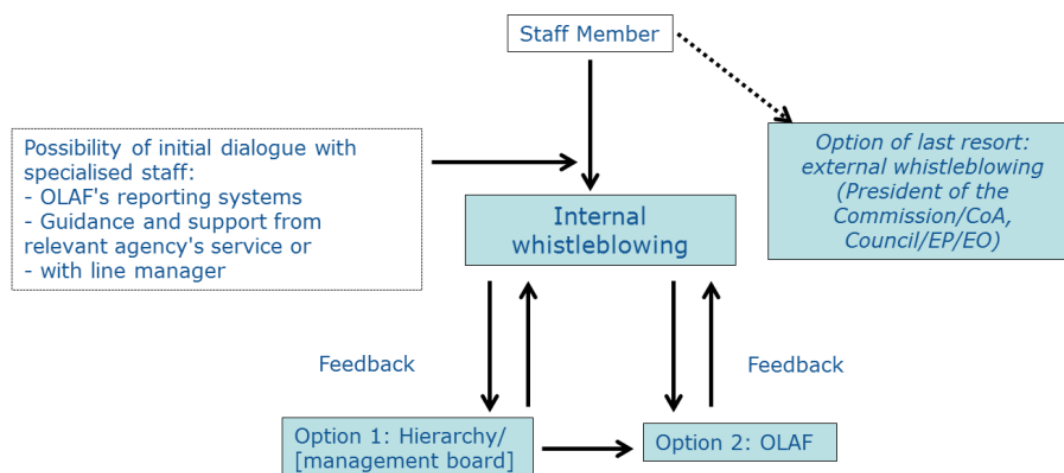
If internal reporting (first and second options) doesn't lead to action within a reasonable time (60 days), the whistleblower can resort to external options, such as reporting to higher authorities like the President of the Commission, the Council, the Parliament, the Court of Auditors or to the Ombudsman. 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 encourage 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](#))

2. Categories/types of personal data processed

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

- Personal details: Name and surname. Further personal details as relevant for the purpose of the processing
- Employment Details: e-mail address, personnel number, job title, contract details, Department, Unit, etc. Further employment details as relevant for the purpose of the processing.
- Financial Details
- Family, lifestyle and social circumstances
- Goods and Services provided

Other:

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.

Sensitive personal data:

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.

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:

- European Anti-Fraud Office (OLAF) – all whistleblower files must be transmitted to OLAF who is responsible to 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.
- 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

- 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

4. Access to and disclosure of personal data

The personal data is disclosed to the following recipients:

Structural transfers: taking account of the principle of confidentiality to be strictly adhered to by all parties involved, the following persons may receive personal data in a structured way:

- Data Subject themselves: EMSA staff and Former Staff, Non-EMSA staff, persons heard as witness.
- Managers of data subjects: First line of report
- Designated EMSA staff members:
 - 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

Other:

- 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.

The information concerning Management of the Whistleblowing procedure at EMSA will only be shared with people necessary for the implementation of such measures *on a need to know* basis. 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 where necessary for the purpose(s) outlined above. 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 Management of the Whistleblowing procedure at EMSA 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 recipients.

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 2018/1725, which are the general rule and any application of the limitations foreseen in Article 25 (must be considered on the basis of a case-by-case analysis). 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, Head of Unit 4.1 Human Resources and Internal Support.

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 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.

7. Legal basis for Data processing

Processing is based on Article 5(a) of the Regulation 2018/1725.

The personal data are collected and processed in accordance with:

- 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

8. Storing Personal data

EMSA does not keep personal data longer than necessary for the purpose(s) for which that personal data is collected. The data will be only retained as following:

Personal data related to Whistleblowing procedures with OLAF are retained as following:

- 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.
- Investigations without recommendations (These files end with the investigation report, as there are no follow-up actions): 10 years and then elimination.
- 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.
- 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) .

9. Data protection points of contact

Should data subjects have any queries/questions concerning the processing of your personal data, they should address them to the data controller, Head of Unit 4.1 Human Resources and Internal Support under the following mailbox: cristina.romay-lopez@emsa.europa.eu .

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.

