

## TEMPLATE FOR RECORDING OF PROCESSING ACTIVITY

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

NAME OF PROCESSING ACTIVITY<sup>1</sup>: Processing of personal data in the context of an administrative inquiries or disciplinary procedures at EMSA

1) Controller(s) <sup>2</sup> of data processing operation (Article 31.1(a))
<p>Controller: European Maritime Safety Agency (EMSA)</p> <p>Organisational unit responsible<sup>3</sup> 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: <a href="mailto:dpo@emsa.europa.eu">dpo@emsa.europa.eu</a></p>
2) Who is actually conducting the processing? (Article 31.1(a)) <sup>4</sup>
<p>The data is processed by EMSA itself. <span style="float: right;">x</span></p> <p>The organisational units conducting the processing activity are:</p> <p>Personal data are processed by members of the Head of Unit for Human Resources, the Head of Department of Corporate Services and any member of the Human Resources Unit as appropriate, the Inquiry Team appointed by the Executive Director for the administrative inquiry including pre- disciplinary procedure.</p> <p>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).</p> <p>In the case of a disciplinary procedure, personal data are processed by members of the Disciplinary Board Common Disciplinary Board (including Secretariat) and the Administrative Board, who exercise disciplinary authority over the Executive Director and the Heads of Department, as well as any members of the Administrative Board appointed for this purpose and 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.</p>

<sup>1</sup> **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.

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

<sup>3</sup> This is the unit that decides that the processing takes place and why.

<sup>4</sup> Is EMSA itself conducting the processing? Or has a provider been contracted?

The data is processed by a third party (contractor) or the processing operation is conducted together with an external third party X

Only in the event that EMSA contracts a third party to carry out the administrative inquiry or act as Chairperson for the disciplinary procedure.

- Contact point (e.g. Privacy/Data Protection Officer): n/a

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(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.

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) x

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.

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 and Annex IX to the Staff Regulations and Articles 49, 50 and 119 of the CEOS.

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 Annex VII to the Staff Regulations.

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.

- (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 ☒

Officials, temporary agents and contract staff including former EMSA staff in these categories ☐

Non-EMSA staff (contractors staff, external experts, trainees) ☒

SNEs, NEPTs.

Former officials, temporary agents and contract staff.

Visitors to EMSA building ☐

Relatives of the data subject ☐

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, address etc) ☒

- Name, address, date of birth, nationality(ies), place of recruitment and place origin, gender, marital status;

<ul style="list-style-type: none"> <li>Further personal data as relevant for the purpose of the administrative inquiry or disciplinary procedure</li> </ul>	
Employment details	x
<ul style="list-style-type: none"> <li>Personnel number, position, category, grade, contract type, seniority in grade;</li> <li>Further employment details as relevant for the purpose of the administrative inquiry or disciplinary procedure</li> </ul>	
Family, lifestyle and social circumstances	<input type="checkbox"/>
Goods or services provided	<input type="checkbox"/>
Other (please give details):	x
<p>Data likely to be found in the course of an administrative inquiry or disciplinary procedure, may be of a special nature, the processing special nature, the processing of which is prohibited according to Article 10(1) of the Data Protection Regulation, 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.</p>	
(b) <b>Sensitive personal data</b> (Article 10)	
Racial or ethnic origin	<input type="checkbox"/> n/a
Political opinions	<input type="checkbox"/> n/a
Religious or philosophical beliefs	<input type="checkbox"/> n/a
Trade union membership	<input type="checkbox"/> n/a
Genetic, biometric or data concerning health	<input type="checkbox"/> n/a
Information regarding an individual's sex life or sexual orientation	<input type="checkbox"/> n/a
7) Recipient(s) of the data (Article 31.1 (d))	

*Recipients are all parties who have access to the personal data*

Data subjects themselves

x

Data subjects shall have full access to information pertaining to them provided that information does not hinder the inquiry.

In this regard, it should be noted 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.

Managers of data subjects

☐

Designated EMSA staff members

x

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,

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,

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

The information will be shared with the staff mentioned *on a need to know* basis only.

Designated Contractors' staff members

x

Only in the event that EMSA contracts a third party to carry out the administrative inquiry or act as Chairperson for the disciplinary procedure.

Other (please specify):

x

Certain members of the Disciplinary Board may also come from outside the Agency.

The representative of the person concerned before the Disciplinary Board, should that be the case.

Witness statements provided in the course of an administrative inquiry or disciplinary procedure 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.

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 and the European Data Protection Supervisor.

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.

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.

**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 ☐

Memorandum of Understanding between public authorities ☐

9) Technical and organisational security measures (Article 31.1(g))

*Please specify where the data are stored during and after the processing*

How is the data stored?

EMSA network shared drive

☐

Outlook Folder(s)

☒

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

Hardcopy file

☐

Cloud (give details, e.g. public cloud)

☐

Servers of external provider

☐

Other (please specify):

x

A dedicated folder 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.

10) Retention time (Article 4(e))

*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](#).*

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

- 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.

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