

EMSA PRACTICAL GUIDE TO STAFF ETHICS AND CONDUCT

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1 INTRODUCTION

As a public body, EMSA is accountable to the other Institutions, notably the European Parliament, as well as to the Member States through the Administrative Board, and ultimately, to the citizens, for ensuring that it meets the highest standards in terms of independence, integrity, impartiality and objectivity

The Staff Regulations and the Conditions of Employment of Other Servants establish the general framework of rights and obligations affecting EU Officials and other servants. This is supplemented by EMSA's Code of Good Administrative Behaviour,¹ which determines the type of service the public can expect from EMSA staff

This guide looks at how these standards should be applied on three levels –relations with the public, behaviour at work (with hierarchy and colleagues), and individual obligations. This reflects the importance and nature of the EMSA's public service mission to serve the public interest.

The guide covers a variety of issues, ranging from behavioural tips, which staff members are advised to follow, to compliance with legal obligations under the Staff Regulations, violation of which could lead to disciplinary measures

When it comes to the fulfilment of individual obligations, it is worth keeping in mind that the details of each case vary and staff have, therefore, to exercise good judgement and common sense in weighing up their individual aspects.

Disclaimer

This Practical Guide to Staff Ethics and Conduct aims to make the standards and obligations concerned and the relevant procedures transparent and easy to understand, for information purposes only and has no legal value. Only the legal texts are binding and must be referred to in any legal or administrative proceedings. While every effort has been made to give accurate guidance, the only authentic interpretation of the rules is to be found in the judgments of the Court of Justice of the European Union and the European Union Civil Service Tribunal.

¹ Decision N°2004/008 of the Executive Director on Code of Good Administrative Behaviour for Staff of the European Maritime Safety Agency (EMSA) in their relations with the public

2 PRINCIPLES OF STAFF ETHICS AND CONDUCT

2.1 ETHICAL PRINCIPLES

Only by aspiring to the highest standards of integrity can EMSA's independence and credibility be ensured. This means adhering consistently to a moral or ethical code and making sound decisions. For EMSA to fulfil its mission of meeting the common good and the public interest, the conduct and decision-making of staff members has to be guided by the following principles:

- **Independence** – the conduct and decision making of staff members should be determined by the need to serve the common good and the public interest, and never by any other interests whether private or otherwise or as a result, for example, of political pressure.
- **Impartiality** – in any decisions staff members are called upon to make, their approach should be unbiased.
- **Objectivity** – when drawing conclusions, these should be balanced and based on a thorough analysis of the facts and the legal background.
- **Loyalty** – the loyalty of staff members is essential to EMSA maintaining its independence and achieving its mission. It is also necessary for the functioning of each service.

Putting these principles into practice requires:

- **Circumspection** – stopping and reflecting on the possible consequences and implications of potential actions, showing a degree of moderation and conducting oneself at all times with a due sense of proportion and propriety.
- **A sense of responsibility** – staff members should carry out the tasks entrusted to them as dutifully as possible and look for solutions when difficulties are encountered. Staff members also need to know and respect the legal obligations and administrative rules and procedures in force.

Two documents are fundamental for guiding the conduct of EMSA staff:

- **The Staff Regulations and Conditions of Employment of Other Servants of the Communities** (and decisions implementing those Regulations), which lays down the basic principles governing relations between the Institutions and its staff. Of particular importance with regard to staff ethics and conduct is Title II of the Staff Regulations and Titles II IV of the Conditions of Employment of Other Servants of the Communities which deal with rights and obligations of staff members and to which this guide refers frequently
- **The Code of Good Administrative Behaviour**, which provides clear guidance on how EMSA staff should serve the public. This Code does not have the same legal status as the Staff Regulations and Conditions of Employment of Other Servants of the Communities, but it constitutes a set of internal rules by which EMSA has bound itself, and which staff are bound to follow.

Given the different legal status of these two documents, violations will have differing possible consequences.

2.2 GOLDEN RULES OF STAFF CONDUCT

In order to adhere to the essential elements involved in staff ethical conduct, staff members should:

- Serve the public interest, by acting with integrity and being objective and impartial in their work;
- Be loyal to EMSA;
- Provide citizens and others with the quality of service that staff members would expect to receive themselves;
- Remember that they are the human face of EMSA and that others will judge EMSA on the basis of what they see and experience;
- Carry out the tasks assigned with responsibility and to the best of their ability;
- Treat their colleagues with respect;
- Make sure their conduct is beyond reproach, by not knowingly being a party to an activity that could bring EMSA into disrepute or could cause their impartiality to be questioned;
- Ensure that they are aware of the relevant legal obligations, rules and procedures;
- If they are unsure whether something they do or are asked to do is ethical, consult the relevant information including this guide and if in doubt, ask their line manager or the Human Resources Unit.

More information

The Staff Regulations and the Conditions of Employment of Other Servants can be found at the following link:

http://myintracomm.ec.testa.eu/hr_admin/en/staff-regulations/Pages/index.aspx

The Code of Good Administrative Behaviour is available on the Staff Ethics and Conduct section of the HR Intranet:

<http://emsanet/index.php/staff-ethics-a-conduct.html>

3 RELATIONS WITH THE PUBLIC

Relations with the public form an essential part of EMSA's mission to serve the public interest. One of the principal reasons for the establishment of Agencies was to bring Europe closer to the citizen and hence Agencies have a particularly important role to play in this regard. In their contacts with the public, staff members should be guided by the principles of openness and transparency, as well as courtesy, helpfulness and efficiency.

All staff members can have an impact on how EMSA, and, by extension, the EU, is seen through their professional activities, as well as in life outside work. How staff members act will influence the image people form of EMSA and its staff. In this respect, staff members should think of themselves as an 'ambassador' for EMSA and the EU Institutions.

3.1 SERVING THE CITIZEN

Serving the public means putting citizens first. Relations with the public should be based on the following standards:

- **Lawfulness** – staff should act in accordance with the law and apply the rules and procedures laid down in EU legislation and implementing rules.
- **Non-discrimination and equal treatment** – staff should respect the principle of non-discrimination and, in particular, guarantee equal treatment for members of the public irrespective of nationality, gender, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation.
- **Proportionality** – staff should ensure that the measures taken are proportional to the aim pursued.
- **Consistency** – staff should be consistent in their administrative behaviour and follow EMSA's normal practice. Any exceptions to this principle should be duly justified.
- **Objectivity and impartiality** – staff should always act objectively and impartially, in the Union interest and for the public good. They should act independently within the framework of the policy fixed by EMSA and their conduct should never be guided by personal or national interest or political pressure.

3.1.1. The citizen's right to information

Citizens are entitled to expect a speedy response when they address queries to EMSA. Furthermore, Article 15(3) of the Treaty on the functioning of the European Union grants citizens a right of access to documents of all the Union Institutions, bodies, offices and agencies.²

3.1.2. Dealing with enquiries (correspondence, telephone calls and e mails)

EMSA undertakes to answer enquiries from citizens in the most appropriate and rapid manner possible.

As a general rule for **written correspondence**, a substantive answer should be provided within 15 working days. If this is not possible, a holding response should be given within this period. When

² The Administrative Board has also adopted a Decision on 25/06/2004 'Concerning the Arrangements to be applied by the Agency for Public Access to Documents,' as amended, in order to establish rules for implementing Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

replying in writing, the language of the citizen should be used, provided it is one of the EU official languages. Proper contact details should also be included.

When answering **telephone calls**, staff members should clearly identify themselves and/or the Unit/Department and treat the caller at all times in a courteous and efficient manner. Telephone calls should be returned as promptly as possible. When dealing with enquiries within their field of responsibility, staff members should establish the caller's identity and check whether information has already been made public or is accessible to the public before giving it out. If this is not the case, the staff member should explain why the information cannot be disclosed. For subjects outside the field of competence of the staff member, the caller should be directed to the appropriate service. When appropriate, confirmation in writing of telephone enquiries should be requested.

Where correspondence can reasonably be considered as "repetitive, abusive and/or pointless", EMSA reserves the right to discontinue any such exchanges of correspondence. Each service is responsible for taking such a decision, but in the interests of ensuring a coordinated, coherent approach throughout EMSA, a copy of any letter informing a member of the public of the decision to discontinue correspondence should be sent to the Communications Officers.

It is also important to guarantee continuity of service by ensuring, wherever possible, that phones are answered, failing which systematic use should be made of voice mail.

E-mails should normally be treated promptly following the guidelines on telephone calls. However, where the e-mail message is, by its nature, the equivalent of a letter, it should be handled according to the guidelines on written correspondence and should be subject to the same deadlines. To guarantee continuity of service, the 'out of office' function should be used when a staff member is not available and the name and telephone number of a contact person should be given.

More information

Please note that every staff member is obliged to attend **the Ethics and Integrity course**. EMSA's training service should be contacted if a staff member has not followed this course.

Regarding obligations with regard to non-disclosure of information, see the relevant section below.

For inquiries outside of EMSA's competence, it may be appropriate to redirect a citizen to the Commission's Europe Direct service:

http://europa.eu/eurodirect/index_en.htm

3.1.3. Requests for documents

What should a staff member do if a request is received from a citizen for a specific document?

If the document has been published, the person making the request should be directed to the relevant webpage on the EMSA Internet site where the document is available.

If a document has not yet been made public, it may still be possible to make it available, however this must be checked first and the relevant procedures followed. The EMSA Document Access Coordinator should be contacted for this purpose³

Specific rules for access to documents are laid down in Regulation (EC) 1049/2001 and the Administrative Board Decision 'Concerning the Arrangements to be applied by the Agency for Public Access to Documents'.

More information

The Administrative Board Decision of 25 June 2004 'Concerning the arrangements to be applied by the Agency for Public Access to Documents' and the Administrative Board Decision of 19 March 2013 Amending the Decision of the Administrative Board concerning the arrangements to be applied by the Agency for Public Access to Documents of 25 June 2004' are available here:

<http://www.emsa.europa.eu/site-content/156-uncategorised/1514-access-to-documents.html>

For further information on access to documents, relevant case law and striking the right balance between public access to documents and the protection of personal data, see IntraComm:

<https://myintracomm.ec.testa.eu/sq/dpo/dpp/Pages/accessdoc.aspx>

3.2 RIGHTS OF INTERESTED PARTIES

When dealing with administrative decisions, staff members should bear in mind, in accordance with the rules governing the relevant administrative procedure, the following duties:

- **Listen to all parties with a direct interest.** Where Union law provides that interested parties should be heard, staff, in accordance with the conditions set out by that law, should ensure that an opportunity is given to them to make their views known.
- **Justify decisions.** As a general rule, full justification for decisions should be given. Where this may not be possible on an individual basis, provision is made for standard replies to be given. These should include the principal reasons justifying the decision taken. However, an interested party who expressly requests a detailed justification should be provided with one, while respecting the rules on non disclosure of information (see relevant section below) The reasons to be given may vary according to the applicable specific rules
- **State arrangements for appeals.** Where Union law provides for it, when notifying an interested party of a measure, staff should clearly state the possibility of lodging an appeal and describe how to submit it (the name and office address of the person or department with whom the appeal must be lodged and the deadline for doing so)

3.3 PROTECTION OF PERSONAL DATA

Protection of personal data is a fundamental right (Charter of Fundamental Rights, Article 8; Treaty on the Functioning of the EU, Article 16). In this respect, EMSA and its staff must respect the rules on the protection of personal privacy and personal data. The principles, the individual's legally enforceable rights and the obligations of the institution concerned with regard to the processing of personal data are laid down in Regulation (EC) No. 45/2001.

Processing operations cover a wide range of activities from collecting to transfer and storage of data. Except for well-defined special circumstances, it is prohibited to process data on racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, health or sex life. The

³ Policy Advisor in the Bureau of the Executive Director.

data subject has the right to be informed of the processing operations (before the first occurrence) and has the right to access, rectify, and, where appropriate, block or erase data, to object to the processing and to receive compensation for any damage

In certain cases, notification to the EMSA Data Protection Officer (DPO) may be required. A notification is a prior notice by the Data Controller to the DPO of any processing operation (manual or electronic) in which personal data is involved. Therefore the Controller (or the Delegated Controller) is responsible for informing the DPO about a new operation and submitting the notification in the previously agreed form.

More information

See the Personal Data Protection page on the EMSA intranet:
<http://emsanet/index.php/personal-data-protection.html>

3.4 NON-DISCLOSURE OF INFORMATION/CONFIDENTIALITY

Whilst EMSA is committed to the principles of openness and transparency, as outlined in the Code of Good Administrative Behaviour, there are certain sectors of activity where non disclosure of information and the confidentiality requirement may be applicable

3.4.1 Non-disclosure of information

Without prejudice to the legislation on the protection of personal data, as a member of staff, or a former member of staff,⁴ there is an obligation not to disclose, without authorisation, information to which the staff member has been exposed in the course of work, unless that information has already been made public or is accessible to the public (Article 17 of the Staff Regulations).

A staff member may have to deal with sensitive information in the course of work and such information must be treated with the utmost discretion.

Such sensitive, but non-classified information, e.g. proceedings of a selection board, must be protected. Professional secrecy is a fundamental obligation for all staff working in the units responsible for administering the affairs of EMSA staff, particularly HR and ICT

3.4.2 Confidentiality of business information

Staff members are specifically required to respect the confidentiality that intrinsically applies to business information provided by applicants at certain stages of a project, particularly information relating to the content of tenders submitted for evaluation and selection (for example, details of a project applicant's financial situation or accounts).

Staff members must constantly ensure that such information does not fall into unauthorised hands, if necessary by storing the information in secure locations. The unauthorised disclosure of such information can be harmful and EMSA could be held liable for loss sustained if the act is attributable to a staff member and EMSA could, in turn, bring proceedings against the staff member concerned if they are personally seriously at fault. Staff members have no personal rights over such information

⁴ Includes SNEs, NEPTs and trainees.

and its use for purposes other than those required for the performance of their tasks would constitute a misuse of information.

3.4.3 Classified documents

Four levels of classification exist under the scheme established by the Commission and Council. In EMSA, the only classified documents that are treated are those falling under the category "RESTREINT UE."⁵ The security provisions are aimed at protecting classified information produced or handled by EMSA from being compromised or disclosed without authorisation. These provisions are in line with the rules on public access to documents. Staff members who have to deal with documents falling under the security provisions are expected to know the rules. In general, this means that they should consider what needs to be done in the immediate environment to protect the information that they are dealing with.

Staff who compromise EU classified information by letting it fall into the hands of unauthorised persons could face disciplinary procedures and/or criminal prosecution.

More information

See the website of DG HR's Security Directorate:
https://ec.europa.eu/info/departments/human-resources-and-security_en

⁵ Equivalent to 'restricted.'

4 BEHAVIOUR AT WORK

Ethical behaviour is a way of life and applies to how staff members interact within the Agency, be it with their boss, colleagues or other members of staff. At work, staff members may be faced with many different types of situations, which constantly require them to exercise good judgement and common sense, in line with the ethical principles and standards demanded of EMSA staff.

Furthermore, staff must comply with Article 1d of the Staff Regulations which prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

4.1 RELATIONS WITH THE HIERARCHY

As stipulated in the Staff Regulations (Article 21), whatever their rank, staff members have the obligation to "assist and tender advice" to their superiors and are responsible for the performance of the duties assigned to them, put simply, they must do their job properly.

The responsibility of a subordinate does not release the staff member from his or her own responsibility.

As a general rule, a member of staff must follow instructions, unless they are manifestly illegal or constitute a breach of the relevant safety standards. This should not be confused with simple disagreements or differences of opinion.

In line with the Staff Regulations (Article 21a), if a superior instructs a staff member to do something which they consider to be irregular or likely to give rise to serious difficulties, the staff member should ask for the instruction to be confirmed in writing. In the first instance, the staff member should ask for confirmation from their immediate superior and then, if necessary, from the next person in the hierarchy. If the latter confirms the orders in writing, the staff member should carry them out, unless they are manifestly illegal or breach safety standards.

In a case where the immediate superior considers that their orders must be executed as a matter of urgency, the staff member should do so, unless they are manifestly illegal or breach safety standards. However, at the request of the staff member, the immediate superior is obliged to give such orders in writing. (See also section on 'Serious wrongdoing' in chapter 6.)

4.2 RELATIONS AMONG STAFF

Colleagues should be treated with respect and impartiality, regardless of their position. In a multi-cultural workplace, mutual respect and tolerance of differences are essential ingredients of any good working relationship. This also involves:

- **Teamwork** – working together to achieve common goals;
- **Polite and clear communication** – engaging colleagues by showing respect and encouraging efficiency through clarity of instructions;
- **Conflict resolution** – finding workable solutions through better mutual understanding.

4.3 USE OF EMSA MEANS OF COMMUNICATIONS

Computer equipment, e-mail and internet access, telephones and mobile phones have been installed for official use. However, staff members may make occasional, limited use of these means of communication for private purposes, provided that they do not use them:

- for illegal or improper purposes
- in any way that might disrupt the functioning of the service itself, or
- in any manner contrary to the interests of EMSA

For staff supplied with **mobile phones**, on a permanent basis, or for mission purposes, occasional personal use is permitted at the expense of the staff member. Department A checks the mobile telephone invoice on a monthly basis. Staff concerned have to indicate their private calls on the monthly statements, the cost of which will be subsequently deducted from their salary.

For **electronic mail**, incidental personal use of the e-mail system is permitted as long as such utilisation is not contrary to the interests of the Agency and remains within reasonable limits. However, regardless of the content (e.g. entertainment, charity, political campaigns or commercial ends, etc.), staff should refrain from sending messages that are to a wide or even indiscriminate number of addressees and from asking others to send out such messages widely. This is fundamental to avoid spamming, to safeguard server capacity and maintain the proper functioning of the service.

With respect to the **internet**, usage is in principle restricted to official use. However, incidental personal use is permitted as long as such utilisation is not contrary to the interests of the Agency and remains within reasonable limits.

Given that EMSA's servers can be used both directly from the office and via remote access from other places, staff members should not forget that e-mails sent through EMSA's system will indicate their EMSA e-mail address and thereby establish a link to EMSA.

As a general rule for private use, it is recommended that staff members use another e-mail account.

Be aware that EMSA is entitled to monitor the use of information and communication technologies (ICT) services and that it does so.

More information

In relation to the ICT policies in force in EMSA and the use of EMSA ICT services and systems, see: <http://emsanet/index.php/ict/policy.html>

5 INDIVIDUAL OBLIGATIONS

To maintain EMSA's independence and credibility, staff members are subject to certain reasonable requirements which affect the exercise of their duties and can have implications for their private life. For this reason, staff members are required to request authorisations or provide notifications in various situations (such as conflicts of interest, gifts, external activities, spouse's employment, or publications or speeches on EU-related matters). This must be done on the staff member's initiative.

This section examines these situations and the procedures to follow.

5.1 CONDUCT REFLECTING UPON THE POSITION OF THE STAFF MEMBER

In general terms, staff members should refrain from any action or behaviour which might reflect adversely on their position, as stated in the Staff Regulations (Article 12). This means that their conduct even outside the office must be exemplary. Professional and private behaviour inside or outside EMSA should not bring the European civil service into disrepute.

It is also worth noting that if the acts or behaviour of a staff member risk bringing EMSA into disrepute, the staff member could be subject to disciplinary proceedings. This could be the case, for example, if the staff member were to be convicted of a crime or a misdemeanour. Article 12 also applies to behaviour within the Institution.

Obviously, when assessing any act or expression of opinion, account will be taken of its impact, especially if it appears to be harmful to EMSA's reputation.

5.2 AVOIDANCE OF CONFLICTS OF INTEREST

The overriding idea behind avoiding any appearance of a conflict of interest is to avoid possible accusations of bias and partiality in any decision-making process a staff member may be involved in, so as to maintain EMSA's independence and credibility.

There are several situations where a conflict of interest could arise:

- Where gifts, favours, payments, honours and decorations (medals) are offered to a staff member,
- Where a spouse or partner undertakes professional activities,
- Where, in the course of their duties, a staff member is called upon to decide on a matter in which they have a personal interest which could impair their impartiality,
- Where a staff member wishes to carry out external activities (work, paid or unpaid),
- Where a staff member intends to stand for public office,
- Where a staff member is elected or appointed.

More information

For the forms to be completed and the procedures to follow, see the EMSA Guidelines on Conflicts of Interest on the HR intranet:

http://emsanet/index.php/staff_ethics_a-conduct.html

5.3 GIVING EVIDENCE IN LEGAL PROCEEDINGS AND IMMUNITY

Depending on the area of activity and the particular responsibilities, staff members should be aware of how to deal with requests to give evidence in legal proceedings and how EMSA applies the immunity, which covers professional activities as a member of EMSA staff.

5.3.1 Giving evidence in legal proceedings

If a staff member is called on to give evidence in legal proceedings to do with work, the staff member must request prior authorisation from the Appointing Authority, in line with the Staff Regulations (Article 19). This obligation continues to apply even after leaving EMSA. Note that even if the interests of the Union would normally justify refusal of the authorisation, EMSA will nevertheless grant it, if refusal could result in prosecution.

These provisions do not, however, apply to a staff member or former staff member called on to give evidence before the Court of Justice of the European Union (including the Court of First Instance or the Civil Service Tribunal) or before a Disciplinary Board of one of the EU institutions, bodies or Agencies for a case related to a staff member or former staff member.

However, such requests may also be made by a national judicial or police authority without the staff member being informed. In such circumstances, if EMSA is asked to maintain the secrecy of the procedure, the staff member would be informed of the lifting of immunity only when summoned to a hearing by the national authorities.

Requests for authorisation and their supporting documents (in particular the judicial body's request) should be sent to Unit A.1, Human Resources by the staff member.

The Appointing Authority takes a decision after checking the applicable rules and the decision is sent to the person who requested authorisation.

5.3.2 Immunity from legal proceedings

Article 11(a) of the Protocol on the Privileges and Immunities (PPI) of the European Union stipulates that staff members shall "be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office "

In addition, Article 6(2)i of the Protocol between the Government of the Portuguese Republic and the European Maritime Safety Agency states that officials and other Agents of the Agency shall "enjoy immunity from jurisdiction as regards acts carried out by them in their official capacity, including their spoken and written statements. This immunity shall continue after cessation of their functions "

Immunity from legal proceedings is to be accorded solely in the interests of the European Union (Article 18 of the PPI). The protection granted against proceedings before national courts (civil or criminal) covers only acts relating to professional life.

For matters relating to private life, the staff member is subject to national civil and criminal law – as has been confirmed by the rulings of the Court of Justice of the European Union. Article 23 of the Staff Regulations stipulates that staff members "shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force."

If a national judicial authority wishes a staff member's immunity from legal proceedings to be lifted, it must submit a request to EMSA. EMSA is required to lift immunity in all cases where it considers that doing so is not contrary to the European Union's interests. Requests for immunity from legal proceedings to be lifted are often combined with a request to lift the confidentiality requirement (see above section on "Giving evidence in legal proceedings) "

In addition, Article 23(2) of the Staff Regulations requires staff members to inform the Appointing Authority immediately if immunity is in dispute.

Requests made to EMSA by national judicial authorities are dealt with by EMSA's Human Resources Unit. A decision to lift immunity is adopted by the Appointing Authority.

More information

For the procedure to follow, see the EMSA Guidelines on Conflicts of Interest on the 'Staff Ethics and Conduct' page on the HR Intranet:

<http://emsanet/index.php/staff-ethics-a-conduct.html>

5.4. RIGHT OF FREEDOM OF EXPRESSION (PUBLICATIONS AND SPEECHES)

Article 17a(1) of the Staff Regulations grants the right to freedom of expression to staff members "with due respect to the principles of loyalty and impartiality"

5.4.1. Publications and speeches on professional and EU matters and related compensation

If staff members want to publish or to have published, either on their own or with other parties, a document, such as an article or a book, on anything dealing with their work or EU matters generally, they must inform their Appointing Authority in advance, as stipulated in the Staff Regulations (Article 17a(2)).

Before publishing a text (or speech), staff members must first inform their Appointing Authority by using the standard form.

They must provide the Appointing Authority with any information, in particular a copy, of the document they intend to publish. This must be accompanied by a summary, in English.

Where the Appointing Authority can demonstrate that the matter is liable to prejudice seriously the legitimate interests of the European Union, it has to inform the staff member of its decision within 30 working days of receipt of the information. If it does not reply within this time limit, it is considered to have had no objections.

However, it should be noted that the lack of a reaction does not prejudice the possible application of such a provision as Article 12 of the Staff Regulations, if the publication turns out to contain material which is, for example, defamatory or insulting, nor the possible application of Article 24 of the Staff Regulations, if other staff members request assistance against what they may see as defamatory statements in the work. The author remains personally responsible for the published material.

These rules and procedures also apply to speeches and any form of public or private communication outside the scope of their duties, where they relate to EU matters and are or may be published. Blogs are subject to the same rules as publications.

More information

For the procedure to follow and the form to be completed regarding the document intended to be published, see the EMSA Guidelines on Conflicts of Interest on the HR intranet:

<http://emsanet/index.php/staff-ethics-a-conduct.html>

5.4.2 Limitations on the freedom of expression

While the Staff Regulations (Article 17a (1)) grant staff members the right to freedom of expression, when it comes to the professional activity of staff members this is subject to the following conditions being met:

- they must show restraint and caution in expressing differing opinions, in particular when the latter are closely linked to the subject and nature of their duties in the two preceding years;
- such opinions or any others regarding Community policies must be expressed with moderation and under their sole responsibility (i.e. with a disclaimer). In this respect, the duty of loyalty requires that the staff member clearly indicates in the article, which he is writing under his/her own name, - and under the freedom of expression as recognized by the Staff Regulations - and engaging himself and not the responsibility of his institution

They are also subject to the rules concerning non-disclosure of information (discussed in the chapter on 'Relations with the public') and the confidentiality requirement

The duty of confidentiality is governed by Article 17 of the Staff Regulations, which provides that staff members must refrain from any unauthorised disclosure or use of information received in the course of or in connection with their duties, unless that information has already been made public or is accessible to the public

Where staff members request to make use of any such information, the Appointing Authority must take account of the following in particular:

- the implications, if any, as far as the interests of the institutions are concerned;
- the implications, if any, as far as the interests of the Member States are concerned;
- the need to respect the privacy of third parties.

5.4.3 Remuneration

If the publication (including its writing/preparation) or speech would entitle a staff member to any financial payment, the staff member must ask the Appointing Authority for prior authorisation to accept it (see also section above on "Requesting prior permission for external activities").

Royalties received for publications, to which the Appointing Authority raised no objections, are not subject to the net annual ceiling of €4,500 that applies to work that staff members are authorised to undertake outside EMSA

If a publication or speech forms part of the work of a staff member during a mission for EMSA (e.g. it may happen that a staff member is offered a fee for a speech made while on outside assignment, which would count as part of their normal work), the staff member must specify the exact amount in his/her mission request or at least in the subsequent expenses claim. If the staff member receives the payment after the expenses for the assignment are reimbursed, the staff member must inform the service responsible for dealing with reimbursement of mission expenses. If the staff member makes a speech in the same location as the place of work, the staff member must declare any amounts received to the Head of Unit A 1, Human Resources. These are then deducted either from the balance of the expenses claim or from the next salary payment.

More information

The form to be completed is available on the 'Staff Ethics and Conduct' page on the HR Intranet entitled 'Requesting authorisation to accept remuneration for a publication or speech:'

<http://emsanet/index.php/staff-ethics-a-conduct.html>

5.4.4. Publications and speeches on other (non-EU matters)

For publications or speeches on non EU matters, freedom of expression applies and staff members do not require any authorisation to publish. However, if the publication (including its writing/preparation) or speech could be considered an external activity, notably, if under contract, and/or would entitle the staff member to financial payment, the Appointing Authority must be asked for prior authorisation to accept it (see also section above on "Requesting prior permission for external activities") In this case too, the same rules apply to blogs.

More information

The form to be completed is available on the 'Staff Ethics and Conduct' page on the HR Intranet entitled 'Seeking prior authorisation for external activities:' <http://emsanet/index.php/staff-ethics-a-conduct.html>

5.5. OBLIGATIONS AFTER LEAVING THE SERVICE

After leaving the service, former staff members are still subject to certain obligations.

In particular, they must "behave with integrity and discretion," as stipulated in the Staff Regulations (Article 16). They must sign a declaration provided by the Appointing Authority stating that they are aware of their continuing obligations to EMSA, in particular under Articles 16, 17(2) and 19 of the Staff Regulations.

As stipulated in Article 16 of the Staff Regulations, EMSA is entitled to impose restrictions on staff and their new employment when they leave EMSA. In order to comply with this article, and in order to evaluate the risk of a conflict with the legitimate interests of EMSA, staff members must inform EMSA's Appointing Authority of all of the elements related to the activity they intend to engage in after leaving EMSA by completing a form

For two years after leaving the service, a former staff member wishing to perform outside activities or assignments must inform the Appointing Authority. This also applies to contract staff who have had access to sensitive information.

If in doubt, please contact Unit A 1, Human Resources to establish what details are needed to assess the case.

The forms referred to above are sent personally to the staff member on leaving service

Former staff members must also "refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public," in line with the Staff Regulations (Article 17).

Recipients of an invalidity allowance or a pension may only take up gainful employment if, they have first been authorised by the Appointing Authority.

Under the Staff Regulations (Article 19), former staff members also continue to be bound by the obligation with regard to giving evidence in legal proceedings (see section above).

More information

For further information on obligations after leaving service, see IntraComm:
https://myintracomm.ec.testa.eu/staff/EN/staff-conduct/individual_obligations/outside_activity/Pages/after-leaving.aspx

6 PREVENTION AND REMEDIES

What if something goes wrong? Notwithstanding the rules in place, it may happen. EMSA has a series of means of resolving these problems, ranging from prevention to disciplinary procedures

This section of the guide seeks to offer staff members some general advice when confronted with ethical problems. It is important to know what to do if confronted with some difficult situations as the result of the behaviour or conduct of other colleagues, such as serious wrongdoing or harassment.

It is also important to know how EMSA investigates reported violations of obligations and, where appropriate, pursues disciplinary proceedings.

6.1 ETHICAL REASONING

In trying to resolve possible ethical dilemmas, which can arise when different values and principles come into conflict with one another, the following reasoning process is suggested:

- Analyse the situation by looking at the facts, circumstances and relevant rules, in order to identify possible options;
- Consider the consequences of the different options, as well as the consequences of not acting;
- Check whether other persons involved (hierarchy, colleagues) agree with the options identified or see alternatives;
- Take action based on the best option identified;
- Evaluate the real impact of the action and any feedback, as such experience can serve as a precedent or a good point of departure when faced with a similar situation in the future

FINANCIAL LIABILITY

Depending on the duties of the staff member, they may also have financial responsibilities. In this respect, it is important to recall that, as laid down in the Staff Regulations (Article 22), a staff member could be required to make good, in whole or in part, any damage suffered by the Union as a result of serious misconduct in connection with the performance of their duties. Financial liability could be invoked if the staff member has breached a legal obligation, has caused financial damage and is guilty of deliberate misconduct or gross negligence. In such cases, all relevant circumstances are taken into account before any decision is taken.

For comprehensive information on budget management and implementation, financial reporting, procurement and other related issues, turn to the Legal and Financial Affairs section on the EMSA intranet: http://emsanet/index.php/legal_a_financial_affairs_2.html

For more information on anti-fraud activities, see OLAF's website on the Europa website: http://ec.europa.eu/anti_fraud/index_en.htm

6.2 SERIOUS WRONGDOING (WHISTLEBLOWING)

All organisations face the risk of things going seriously wrong or of unknowingly harbouring a corrupt individual. Usually, the first people to suspect or realise that there is a problem are those who work in the organisation. In tackling cases of wrongdoing it is crucial to have a reporting system in place that inspires confidence and thereby breaks the wall of silence. The Staff Regulations seek to address the

problem through requiring staff to report any possible serious wrongdoing (Article 22a) and by providing adequate protection for staff reporting such cases (Article 22b).

6.2.1 The 'whistleblowing' procedure

Staff members are obliged to report facts pointing to a possible illegal activity, including fraud or corruption, or to a serious failure to comply with the professional obligations of EMSA staff. This obligation only applies to facts discovered in the course of or in connection with a staff member's professional duties.

If a staff member becomes aware of any serious wrongdoing, depending on who is involved, the staff member should report it in writing and without delay to either their Head of Unit or their Head of Department.

If there is concern that this disclosure may lead to retaliation or that the intended recipient of the report is personally implicated in the serious irregularities, then the staff member may also bypass this direct means of internal report and address his or her report to the Executive Director.

In any case, the recipient of the information is in turn obliged to transmit it 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.

Upon receipt of the information, EMSA must give the whistleblower within 60 days of receipt of the information an indication of the period of time that it considers reasonable and necessary to take appropriate action.

If no action is taken within that time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of the circumstances, the staff member may make use of external whistleblowing as provided for in Article 22b of the Staff Regulations. Under this article, if EMSA has not taken the appropriate action within a reasonable period, the staff member who reported the wrongdoing has the right to bring their concerns to the attention of the President of either the Commission, Council, the European Parliament or the Court of Auditors, or the Ombudsman or OLAF. In this case, the whistleblower protection continues to apply. Given the duties of discretion and loyalty, this should be an option of last resort, justifiable only if the staff member concerned honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and he or she allowed EMSA a reasonable period of time to take appropriate action.

Any staff member who reports a serious irregularity, provided that this is done in good faith and in compliance with the provisions outlined above, shall be protected against any acts of retaliation. This covers the anonymity of the staff member, as well as the potential mobility and the appraisal of the person concerned. Naturally, in order for EMSA to be able to apply protective measures, the person concerned will need to identify themselves to the Agency.

More information

For further information, see the 'Whistleblowing' section on EMSA's intranet:
<http://emsanet/index.php/staff-ethics-a-conduct.html>

6.3 HARASSMENT

As an employer and to protect its staff, EMSA must guarantee respect for the dignity of men and women in the workplace. EMSA shall foster a sound and non-discriminatory working environment in which the dignity and respect of individuals under all circumstances shall be protected.

Article 12a of the Staff Regulations and Article 11 of the Conditions of Employment of Other Servants explicitly condemn psychological and sexual harassment and define a common understanding of the two forms

6.3.1. Psychological harassment

Psychological harassment means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.

6.3.2. Sexual harassment

Sexual harassment means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment is also treated as discrimination based on gender

6.3.3. EMSA Policy

The policy implemented by EMSA is in line with the policy adopted by the European Commission and introduces an informal and formal procedure to protect the dignity of each and every person working at EMSA⁶

The informal procedure is a preventive measure which allows for acknowledgement and support to staff members, conciliation and an amicable settlement. It does not involve formal establishment of the facts or the application of penalties. The informal procedure foresees the involvement of Confidential Counsellors who are trained and formally appointed, on a voluntary basis, for a two-year renewable mandate by the Executive Director.

The role of the Confidential Counsellors is to support staff members towards making a decision in a neutral and objective manner in order to find a solution and to provide information on the different options available

The formal procedure establishes the facts and on the basis thereof, may lead to the potential adoption of a penalty against a person found guilty of psychological harassment or sexual harassment at the end of a disciplinary procedure.

⁶ Only staff covered by the Staff Regulations and Seconded National Experts have access to the formal procedure. Any person not covered by the Staff Regulations working under a contract under national law and wishing to lodge a complaint concerning psychological harassment or sexual harassment against a member of EMSA staff may do so under national legislation.

A formal procedure may be initiated on the basis of a request for assistance under Article 24 of the Staff Regulations, addressed to the Head of the Human Resources Unit. In the case of sexual harassment, it is up to the staff member to provide all useful details which might support the allegations. In the case of psychological harassment, a degree of evidence is required.

More information

Further information, contact points for the Confidential Counsellors and the Decision of the Administrative Board are available on the HR Intranet: <http://emsanet/index.php/staff-ethics-a-conduct/prevention-of-psychological-and-sexual-harassment.html>

6.4. ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES

The disciplinary system, which essentially involves administrative inquiries and disciplinary procedures, applies to any failure by a staff member or former staff member to comply with his or her obligations under the Staff Regulations, whether intentionally or through negligence. As explained in the preceding chapters, this can include conduct in private life.

The primary tasks of EMSA's Internal Investigation Service (IIS) are:

- To carry out administrative inquiries meaning all actions taken by the authorised member(s) to establish facts and, where necessary, determine whether there has been a failure to comply with the obligation incumbent upon EMSA staff members.
- The coordination of preventative measures as regards discipline

The IIS may be asked to carry out other inquiries to ascertain certain facts, in particular under articles 24, 73 and 90 of the Staff Regulations

There is a clear procedural and operational separation between, on the one hand, administrative inquiries and, on the other hand, disciplinary procedures. The first phase is necessary only if the facts have not been established beforehand.

Examples of cases where inquiries/disciplinary procedures have been conducted in the Institutions include: breaches of financial rules (such as public procurement), conflicts of interests (favouritism), corruption, allegations of psychological or sexual harassment, convictions in a criminal case, theft of material, committing fraud and falsifying documents, abuse of IT equipment, and improper behaviour. It should be noted that administrative inquiries can be carried out by either the European Anti Fraud Office (OLAF) or the IIS, depending on the nature of the case. Cases involving fraud and other serious financial irregularities are usually dealt with by OLAF

More information

Decision of the Executive Director on the 'Establishment and Composition of a Disciplinary Board at EMSA': <http://emsanet/index.php/intranet-documents/a-1-1-human-resources-internal-support/staff-ethics-conduct/7960-establishment-and-composition-of-a-disciplinary-board-at-emsa/file.html>

Implementing Rules on Administrative Inquiries: <http://emsanet/index.php/rules-a-legislation.html>

General privacy statement regarding Administrative Inquiries and Disciplinary Proceedings at EMSA: <http://emsanet/index.php/intranet-documents/a-1-1-human-resources-internal-support/staff-ethics-conduct/7962-privacy-statement-adm-enquires-and-disciplinary-proceedings/file.html>