

REGISTER NUMBER: 660

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 03/02/2011

Case number: 2011-0116

Institution: ERCEA

Legal basis: article 27-5 of the regulation CE 45/2001(1)

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN(2)

(2) Please attach all necessary backup documents

1/ Name and adress of the controller
ERCEA, Unit D.2, Head of Unit, Mrs Carina Lenarduzzi - COV2 20/045

2/ Organisational parts of the institution or body entrusted with the processing of personal data
ERCEA - Unit D2: Human Resources, Infrastructure, and Document Management

3/ Name of the processing
(1) Notification for Ex-post Prior Checking of the Selection of Confidential Counsellors - Selection Exercise 2010*
(2) Notification for Prior Checking of the Anti-harassment Policy and the Setting up of an Inter Executive Agencies Network of Confidential Counsellors.

*Please, note that the Selection Exercise 2010 slightly differs from the provisions foreseen in the Manual of Procedure recently agreed - e.g. retention periods shorter than the new ones; applications were only on hard copies. Refer to the enclosed ERCEA Call for expression of interest 2010.
Future calls will be consistent with the provisions of the current Manual of Procedures.

4/ Purpose or purposes of the processing

For the selection of Confidential Counsellors: to select and identify candidates best qualified to assume the role and to manage administratively the applications and the selection procedure .

For the anti-harassment policy: to prevent and to remedy cases of alleged harassment within the Agency during the so-called informal procedure. The informal procedure aims at helping and protecting the presumed victim at an early stage (nevertheless, presumed victims may also initiate the formal procedure under Art 24 of the Staff Regulations). The personal data is collected and processed with the following aims: to support and protect the victim; to be able to refer cases the relevant services; to provide an efficient and proper administration of cases to be solved as soon as possible; to guarantee confidentiality and create conciliation; to prevent cases; to follow up and evaluate the policy; to review request for help and any need for psychological support; to identify recurrent cases and provide references for disciplinary actions with the consent of the victim; to provide data for the formal procedure and to reply to the Ombudsman or legal authorities at the national or European level in the case that the complaint leads to a formal procedure.

5/ Description of the category or categories of data subjects

For the selection of Confidential Counsellors: the data subject is the staff member, seconded officials, temporary or contractual agent, who applies for the position as Confidential Counsellor.

For the anti-harassment policy: seconded officials, temporary agents, contractual agents, interim staff or stagiaires. Every person working in the Agency is potentially concerned as they can be alleged harassor, potential victim, witness or other person implicated.

6/ Description of the data or categories of data(*including, if applicable, special categories of data (article 10) and/or origin of data*)

For the selection of Confidential Counsellors: Information provided by candidates, like name, professional address, phone number, email, grade status and curriculum; in addition, data related to the suitability of a candidate for a Confidential Counsellor, which may include the assessment by the selection panel. In addition, they provide a declaration on honour (solemn declaration) about their disciplinary situation during their career within the EU institutions and bodies.

For the informal anti-harassment policy: first, the administrative data of the potential victim such as e.g. name, professional address, phone number, email, Agency's unit and category. Secondly, administrative data of the alleged harasser such as e.g. name, professional address, email, phone number, Agency's unit and category. These data are contained in the opening form and in the closing form.

Thirdly, apart from these forms, there is no systematic rule with regard to different types of data which may be collected through the personal notes of the Confidential Counsellors. In general, the processing operations might refer to data connected to the working and personal situation of the data subject.

In particular, sensitive data might be processed. Further data may be collected through anonymised statistical reports, however, this information does not allow to identify a person.

7/ Information to be given to data subjects

For the selection of Confidential Counsellors: A privacy statement is available on the intranet of the Agency (see annex II of the Manual of Procedure).

For the anti-harassment policy:

- Persons who contact Confidential Counsellors shall receive a copy of the "specific privacy statement on the protection of personal data within the framework of an informal procedure following alleged psychological and sexual harassment." (see Annex I of the Manual of Procedure).
 - Once the alleged victim confirms that he wishes to have his case dealt with under the informal procedure he receives a "Declaration of confidentiality for the informal procedure for cases of psychological and sexual harassment", signed by the Confidential Counsellor (see annex III to the Manual of Procedure).
 - If a witness or other third party intervenes during this informal procedure, he also receives the privacy statement (see Annex I to the Manual of Procedure).
 - If the Confidential Counsellor approaches the alleged harasser with the consent of the victim, the harasser also receives a privacy statement (see Annex II).
- The alleged harasser has the right to be informed of the policy of psychological and sexual harassment and the manual of procedures and the option to receive help and advice from the anti-harassment coordinator.
- He also has the right to know that his or her data are processed.

8/ Procedures to grant rights of data subjects(*rights of access, to rectify, to block, to erase, to object*)

For the selection of Confidential Counsellors: Candidates can ask to access their data by contacting in writing the Controller. Before the closing date of the selection procedure each applicant can access his/her personal data and rectify them by contacting the Controller. After the closing date of the call data demonstrating compliance with the eligibility or selection criteria may not be updated or corrected; the right to rectify personal data may therefore be limited to factual data/errors. The deliberations of the selection panel are covered by the principle of confidentiality [(access rights may exceptionally be limited under Article 20 (1) (c)].

Nevertheless, the candidates have the right to access to their final global evaluation at the end of the selection process by submitting a written request to the attention of the Chairperson of the panel, or by writing to the Controller.

For the anti-harassment policy: Data subjects may apply to the data controller to access the information and documents relating to them and to have them rectified in case of incomplete or inaccurate data.

However, pursuant to Article 20(1) (c) of Regulation 45/2001, the data controller may restrict the right of access and rectification to the person's own personal data in case where such restriction constitutes a measure necessary to safeguard the protection of the data subject or of the rights and freedoms of others.

Based on a case-by-case approach the access will be granted under the following circumstances:

- All data subjects will be able to access the documents they have themselves transmitted;
- All data subjects, either alleged victims or alleged harasser(s), may have access to the opening sheet for the case relating to them. As far as alleged harassers are concerned, this access will only be granted if they have been informed by the Confidential Counsellor of the existence of an informal procedure, after the alleged victim has given his/her consent (with the exception already mentioned, i.e. need to protect the alleged victim);
- Alleged victims also have access to the closing sheet concerning their case;
- Access to any other document will only be granted if this document does not contain personal data relating to other persons or confidential statements, or if there is no risk that its transmission may impact negatively on one of the parties involved in the case, on the smooth running of the procedures or on future relations between the parties.
- If a restriction on the right of access and rectification is imposed, Data subjects may have indirect access to their personal data via the Data Protection Officer of the Agency or the European Data Protection Supervisor (for contact details see below).
- Access to all other documents is subordinate to the fact that they do not contain personal data about other persons or confidential declarations or their provisions would not be a prejudice against any implicated party or be against the good administration of cases or future relations of the parties.

All data subjects may ask for their personal data to be updated or rectified where there are factual mistakes in the sheets concerning their case (e.g. name; age of the data subject; function group etc).

9/ Automated / Manual processing operation

Both. The processing operations can be summarised as follows:

(A) For the selection of Confidential Counsellors

a) Pre-Selection

- The appointment of Confidential Counsellors is based on an open call for expression of interest published on the Intranet of the respective Agency.
- Future calls will include a privacy statement.
- Further to the receipt of application forms and motivation letters, the dedicated staff from the Human Resources will check whether applications comply with the eligibility conditions and incompatibility criteria referred to in point 3.1 of the Manual of Procedures.
- Applicants whose applications are rejected at this stage will be notified by email.
- A consolidated list of eligible candidates and their application files will then be sent to the members of the selection panel.
- The selection panel is appointed by the Director and composed of representatives of the Human Resources department, the Staff Committee and may include an external expert in this field. Panel's members are reminded of the confidentiality policy by signing a declaration of confidentiality and absence of conflict of interest.

b) Interviews

- The selection panel will hold an individual interview with each eligible candidate.
- The deliberations of the panel are confidential.
- The selection panel will then draw up the shortlist of candidates to be submitted to the Director who, as appointing authority, shall nominate the Confidential Counsellors. A reserve list may also be elaborated.
- On the basis of the decision of the appointing authority, the HR service informs by e-mail or mail the candidates of the outcome of the procedure. The persons selected are informed, in the same e-mail or mail, that their mandate will not be confirmed until after the successful completion of the compulsory training which they must undertake.

c) Training

- The persons selected take part in a series of specific and compulsory training modules.
- Those who successfully complete all training modules have their appointments confirmed by the Director, with a letter containing a specific mandate.
- The assessment is made by the trainer and, more specifically, concerns the skills relating to the role of Confidential Counsellor, notably in terms of listening ability and empathy, communication skills, the ability to maintain objectivity with regard to personal beliefs and value judgements, and the capacity for critical introspection.
- The HR Service notifies the persons who fail to complete this training successfully that their mandates have not been confirmed.
- Upon request, the HR Service may provide to the persons information on the results of their training.
- The Director endeavours to appoint the Confidential Counsellor(s).
- The final list of appointed Confidential Counsellors is published on the Agency's Intranet.
- The HR Service sends a letter to the line manager(s) of the Confidential Counsellor(s) to inform them of the appointment(s) and the practical implications thereof.

d) Term of appointment

Confidential Counsellors are appointed with a mandate of two years, renewable within the duration of the employment contract of the staff member concerned.

(B) Steps of the informal procedure

a) First contacts

The victim normally contacts a Confidential Counsellor directly (list of Confidential Counsellors from all the Agencies can be found on each Agency's intranet). This Confidential Counsellor addressed can be a staff member of the Agency where the victim works, or can be employed by another Executive Agency. However, the victim can also contact the Anti-Harassment Coordinator of his Agency, who directs the victim towards a Confidential Counsellor

b) Opening of a file

Before opening an informal procedure, the Confidential Counsellor completes and signs a declaration of confidentiality that is handed over to the alleged victim.

With the consent of the victim, he/she may take personal notes, which are not intended to be disclosed.

Any documents submitted by the victim are kept in a file.

If at the end of the meeting the victim confirms that s/he wishes to open an informal procedure, the Confidential Counsellor must explain the procedure and the rights of the victim, and provide the victim with the policy on psychological and sexual harassment as well as a copy of the manual and the "Declaration of confidentiality for informal procedures for cases of psychological and sexual harassment" signed by the Confidential Counsellor.

The Confidential Counsellor informs the victim about the need to fill in the opening form, which includes the names of the concerned persons (Confidential Counsellor, complainant, and alleged harasser), the start date of the informal procedure and the administrative entity (Unit, sector) of the persons concerned. The opening form is transferred to the Anti-Harassment Coordinator in a sealed envelope, marked as 'private and confidential'. The receiver assigns a unique reference number to the case.

Thereafter the case is only referred to by this reference number to maintain confidentiality.

Confidential Counsellors are responsible for completing an anonymous statistical form for each case handled, even if only in a brief and informal manner.

The form is sent to the Anti-Harassment Coordinator of the Agency where the victim works once a case has been closed.

The collection of such data enables to evaluate the collective workload (of Confidential Counsellors within the Agency and of the network in general), to monitor trends in harassment and, where necessary, to adapt the preventive actions taken.

c) Conciliation

When attempts to reach an amicable solution with the consent of the victim are made, the Confidential Counsellor informs the alleged harasser that

an informal procedure concerning him/her is ongoing. He also explains the steps of the procedure and his/her rights, envisaging the possibility

to find an amicable solution. The other party receives the declaration of confidentiality relating to the handling of personal data.

S/he has no direct access to any file produced by the Confidential Counsellor, but may ask indirect access to his personal data via the Data Protection Officer of the Agency or the European Data Protection Supervisor (information will be provided on the personal data contained in the documents concerned, but the document itself shall not be disclosed).

If a witness or other third parties intervene, they shall be given access to the Privacy statement.

d) Closure of a case

The Confidential Counsellor shall pass a closing form and the file related to the case to the Anti-Harassment Coordinator of the victim's Agency.

The closing form may contain the following information:

Reference no, Steps taken, Result, Solution, Move to formal procedure, Medical or other services consulted.

The file shall not contain the personal notes or extracts/copies from the personal notes of the Confidential Counsellor.

10/ Storage media of data

Files related to the procedures are processed and stored both on paper and electronically.

11/ Legal basis and lawfulness of the processing operation

- Staff Regulations on Officials of the European Communities and the Conditions of Employment of other Servants of the European Communities:

Articles 1d, 12, 12a, 24, and Articles 11 and 81 of the CEOS. Article 12a of the Staff Regulations provides that

"officials shall refrain from any form of psychological harassment";

- The ERCEA Steering Committee decision StC 071210/3a on the policy protecting the dignity of the person and preventing psychological harassment and sexual harassment;

- Inter Executive Agencies Manual of Procedures;

- Memorandum of Understanding for the setting up of a network of Confidential Counsellors.

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- Article 5(a) of Regulation 45/2001 read together with its recital 27: processing is necessary for the performance of a task carried out in the public interest on

the basis of the treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise

of official authority vested in the Community institution or body or in a third party to whom the data are disclosed. In this regard, processing of data is

necessary to manage the personnel of the institutions.

- Article 5(d) of the Regulation 45/2001: the data subject has unambiguously given his consent because this policy is built on explicit and unambiguous consent.

- If, in exceptional cases, data are to be treated without the explicit consent of the person in his interest, the legal basis will be article 5(e): the processing is necessary to protect the vital interest of the data subject.

12/ The recipients or categories of recipient to whom the data might be disclosed

Selection of Confidential Counsellors:

The data contained in the selection files are disclosed to:

- Members of the selection panel;

- The Director;

- HR Service and the support staff;

- The list of appointed Confidential Counsellors will be published on the Intranet of the Executive Agencies;

- Departments of the Agency or services of EU Institutions and bodies (Legal Service, IDOC, disciplinary board);

- European Ombudsman, the Civil Service Tribunal, the General Court of the European Union, the European Court of Justice and/or the European Data Protection Supervisor.

This transmission will be restricted to the information necessary for the competent entity to carry out its task.

The anti-harassment policy:

Data will only be transmitted to the competent bodies when a formal procedure is launched and with the prior consent of the person who gave them to the recipients.

Transmission without prior consent can only occur in exceptional cases covered by Article 20(1)(c) of Regulation 45/2001, i.e. when necessary to ensure the protection of the alleged victims.

- Confidential Counsellors;

- Anti-Harassment Coordinator;

- Director;

- Departments of the Agency or services of EU Institutions and bodies (Medical Service, Legal Service, Security Directorate, DG HR, IDOC, disciplinary board, social workers);

- European Ombudsman, the Civil Service Tribunal, the General Court of the European Union, the European Court of Justice and/or the European Data Protection Supervisor.

This transmission will be restricted to the information necessary for the competent entity to carry out its task.

13/ retention policy of (categories of) personal data

Selection of Confidential Counsellors: documents that might have been provided by the selected candidates will be retained for two years after the end of the mandate of the Confidential Counsellor.

Documents of non-selected candidates will be destroyed 2 years following the conclusion of the selection procedure.

The same applies for candidates who did not follow or pass successfully the training and therefore were not appointed as Confidential Counsellors.

For the anti-harassment procedure: The Anti-Harassment Coordinator shall keep the files (both opening and closing files with the case) for a period of no more than five years after the outcome of the informal procedure.

This period is necessary to evaluate the policy, reply to legal questions and identify possible recurrent cases.

If at the date of the expiration of the initial five years, there are ongoing legal or administrative proceedings which may necessitate the consultation of the files, records shall be kept until the rights for appeal expire.

The Confidential Counsellor does not keep any personal data beyond the time limit necessary for him or her to accomplish his /her task.

The Confidential Counsellor shall not keep data more than three months after having finished his tasks and closure of the case.

When the term expires, the documents sent by the victim are returned to him or her or forwarded

to the anti-harassment coordinator with his explicit consent. If the alleged harasser has not been informed of the

existence of an informal procedure, no data relating to him shall be kept in the archives of the anti-harassment coordinator.

Statistical data is held without limit after having being made anonymous in accordance with Article 4(1) (e) of Regulation 45/2001.

13 a/ time limits for blocking and erasure of the different categories of data

(on justified legitimate request from the data subject)

(Please, specify the time limits for every category, if applicable)

NA

14/ Historical, statistical or scientific purposes

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,

Data can be kept for statistical purposes but in a form that does not permit identification.

15/ Proposed transfers of data to third countries or international organisations

NA

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):

The processing operations that occur in the context of selecting Confidential Counsellors aim at evaluating the capacity of each candidate to ensure this specific position.

In addition, the notes of the counsellors contain information about the conduct of the data subjects (Article 27 (2) (b) of Regulation 45/2001).

Moreover, in the case of psychological harassment, data may be related to the health of the data subject and the processing may therefore fall under Article 27(2)(a) of the Regulation.

AS FORESEEN IN:

X Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

X Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

☐ Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

☐ Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

☐ Other (general concept in Article 27.1)

17/ Comments

LIST OF ANNEXES:

(a) ERCEA Steering Committee Decision on ERCEA policy StC 071210/3a on protecting the dignity of the person and preventing psychological and sexual harassment.

(b) Inter Executive Agencies Manual of Procedure.

(c) Memorandum of Understanding (to be) signed among the Executive Agencies adhering to the Inter Executive Agencies network of Confidential Counsellors (CC).

(d) ERCEA Call for expression of Interest 2010 for the selection of CC (which slightly differs from the provisions foreseen in the Manual of Procedure recently agreed - e.g. retention periods shorter than the new ones; applications were only on hard copies.

Future calls will be consistent with the provisions of the current Manual of Procedures.)

PLACE AND DATE: Brussels, 3 February 2011

DATA PROTECTION OFFICER: Donatella Piatto

INSTITUTION OR BODY: ERCEA