

REGISTER NUMBER: 694

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 17/06/2011

Case number: 2011-0588

Institution: EFSA

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

Selection of confidential counsellors: Nicoline Le Gouriérec, Head of Human Resources Unit

Informal anti-harassment procedure: Co-controllership: Nicoline Le Gouriérec, Head of Human Resources Unit and appointed confidential counsellors

2/ Organisational parts of the institution or body entrusted with the processing of personal data

Human Resources Unit, Welfare staff + appointed EFSA confidential counsellors: Maria Chiara Petrolini, Mark Egsmose and Vanessa Descy

3/ Name of the processing

Selection on confidential counsellors & Informal procedure following alleged psychological or sexual harassment

4/ Purpose or purposes of the processing

Selection of confidential counsellors: To organize the selection of confidential counsellors for a 2-year voluntary appointment, which is renewable twice.

Informal anti-harassment procedure: Personal data processing carried out by EFSA in the context of the informal procedure to prevent psychological or sexual harassment. The purpose of the data processing, the implementation modalities and the role of parties involved in the informal procedure are described in policy documents available to all staff on the EFSA Intranet Portal.

5/ Description of the category or categories of data subjects

Selection of confidential counsellors: Applicants following a call for volunteers duly advertised on the EFSA Intranet portal.

Informal anti-harassment procedure: In the context of the informal anti-harassment procedure, the following groups of data subjects are identified:

- (1) Each and every person working at EFSA, regardless of grade or contract of employment (this includes the trainees and all those working under a contract under national law) in the situation of he/she being identified or defined as an alleged victim of harassment by a member of staff of EFSA ;
- (2) Any person aware of a situation of harassment in so far as he/she is involved in the procedure ;
- (3) The alleged harasser is also considered as a data subject in so far as he/she is involved in the informal procedure.

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

Selection of confidential counsellors:

- (1) The information provided by the applicant in his/her application and letter of motivation in view of the eligibility and selection criteria detailed in the Call for Volunteers. The application may include sensitive data in the sense of article 10(1) of the Regulation, which, as they form part of the application, may be considered to be covered by the data subject's express consent in the sense of article 10(2,a) of the Regulation.
- (2) Data resulting from the selection process outlined in the Manual of EFSA Informal Procedures (Annex 1) and in the Call for Volunteers itself (see example in Annex 6), comprising the evaluation against pre-defined eligibility criteria, selection criteria and incompatibility criteria ;
- (3) Information on the results of the compulsory training of candidate confidential counsellors before confirmation of their appointment.

Informal anti-harassment procedure:

Personal data processed in the context of the informal anti-harassment procedure may comprise:

- (1) Objective ("hard") data collected by means of the opening and closing forms of the procedure (see in Annex 5), complemented by any documents relevant and necessary to properly administer the case ;
- (2) Subjective ("soft") data, collected particularly by means of personal notes of the confidential counsellor, based on statements and reflecting facts and perceptions of the alleged victim, of any person aware of a situation of harassment and of the alleged harasser (provided the victim provided the counsellor with a prior consent to contacting the latter). As far as relevant and necessary for the specific purpose of the case, data processed may comprise data qualified as sensitive in Article 10 of Regulation (EC) N° 45/2001 (i.e. data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs and data concerning health or sex life). Sensitive data are not contained in the closing form.

The collection of "soft" data does not follow systematic rules as to the type of data processed and it is not possible to determine a priori the type of data collected. In accordance with Article 4 of Regulation (EC) N° 45/2001, data collected should anyway be adequate, relevant and not excessive in relation to the case handled. This analysis must be conducted on a case-by-case basis by the confidential counsellor involved.

The above concepts are highlighted in the General Privacy Statement (see Annex 3). It is proposed to become Annex V to on the EFSA Manual on informal procedures, made available dignity at work/anti-harassment page on the EFSA intranet portal. It is also proposed as annex to the confidentiality statement confidential counsellors sign (see Annex 4).

7/ Information to be given to data subjects

Selection of confidential counsellors:

Any future selection procedure for EFSA confidential counsellors will take account of the information to be given to data subjects as referred to in art. 11 and art. 12 of Regulation (EC) 45/2001. To this end, any future Call for Volunteers will include a Note on processing of personal data in the context of the selection of confidential counsellors according to the draft provided in Annex 7.

Informal anti-harassment procedure:

The information to be given to data subjects as referred to in art. 11 and art. 12 of Regulation (EC) 45/2001 are taken into account in the context of the informal anti-harassment procedure.

The General privacy statement (Annex 3) proposed to become Annex V of the Manual for EFSA informal procedures, made available on the relevant page of the EFSA Intranet portal describes the rights and restrictions to those rights based on article 20 of the Regulation of all parties that may be a data subject in an informal anti-harassment procedure.

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

Selection of confidential counsellors:

To exercise their rights, data subjects/applicants should contact the HR staff member in charge, indicated in the Call for Volunteers.

Informal anti-harassment procedure:

- To exercise their rights, data subjects should contact either the confidential counsellor or the Human Resources Unit. Requests will be dealt with within 15 working days ;
- As concerns the right of rectification, inaccurate Objective ("hard") data (see point 6) shall be rectified without delay upon the data subject's request

9/ Automated / Manual processing operation

Selection of confidential counsellors:

The data processing is mainly paper-based.

Informal anti-harassment procedure:

The data processing operation is mainly paper-based. The confidentiality statement signed by confidential counsellors reminds on the need to implement measures to ensure confidentiality of documents, mainly by means of a locked filing cabinet for which the counsellors keep the key and are the only persons with authorised access.

10/ Storage media of data

Selection of confidential counsellors:

Data storage by means of paper filing with Welfare staff at the HR Unit and members of the selection panel

Informal anti-harassment procedure:

Data storage by means of paper filing:

- In locked cupboards of the confidential counsellors, subjective ("soft") data until max. 3 months after a case is closed
- In a central file of opening/closing forms under the supervision of Welfare staff of the Human Resources Unit

11/ Legal basis and lawfulness of the processing operation

Processing operation is covered by the mandate of EFSA:

- o The Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS), in particular Article 12(a) (SR) and Article 11 (CEOS) ;
- o The Decision of the Executive Director of 25 April 2009 on the policy of EFSA on protecting the dignity of the person and preventing psychological harassment and sexual harassment ;
- o The Manual for EFSA informal procedures within the framework of the EFSA policy annexed to the Decision of the Executive Director in the previous point.

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

Selection of confidential counsellors:

- The HR Unit, Welfare staff
- The members of the selection panel
- The Director of Administration and the Executive Director
- The Internal audit service, the European Court of Auditors, OLAF, the Court of Justice of the European Union, the European Ombudsman, the European Data Protection Supervisor

Informal anti-harassment procedure:

As suggested in the relevant Guideline of EDPS, a distinction is made between structural transfers, ad hoc transfers and external transfers:

Structural transfers: The following persons receive personal data in a structured way:

- The Head of Unit and the staff member in charge of Welfare issues at the Human Resources Unit, who are providing administrative support in the informal procedure, solely with regard to the objective ("hard") data ;
- Confidential counsellors, in charge of the core activity in the informal procedure and therefore keeping their personal notes (subjective/"soft" data) and any information provided by the alleged victim in strict confidentiality ;
- Exceptionally, the recipient role of the Human Resources Unit may be extended to subjective ("soft") data, namely in case the alleged victim wishes the case to be handled by a staff member of the Unit rather than by a confidential counsellor.

Ad hoc transfers: Case-by-case transfers of objective ("hard") data (opening & closing forms) are possible to:

- The Appointing Authority (Executive Director), the Director of Administration, the Head of Human Resources Unit, for the sole purpose of identifying multiple or recurrent harassment cases ;
- The investigation panel or Disciplinary Board in the context of formal follow-up on the case by means of an administrative inquiry or disciplinary procedure, the European Data Protection Supervisor, the European Ombudsman, as well as the Court of Justice of the European Union or competent national judicial authorities in the context of legal action, which may justify a transfer also to the EFSA Legal unit in charge of follow-up on legal action involving EFSA.

External transfers:

The EFSA Medical Adviser is identified as an external recipient and any data transfer to him should meet the conditions laid down in Article 8 of Regulation (EC) N° 45/2001. According to EFSA practise rules, the alleged victim should contact the Medical Adviser him/herself directly.

In case of urgency and/or when vital interests of the alleged victim are endangered, the confidential counsellor may contact directly external recipients such as the EFSA Medical Adviser.

13/ retention policy of (categories of) personal data

Selection of confidential counsellors:

Information on unsuccessful applicants is kept for 2 months after closure of all stages in the selection procedure.
Information on selected confidential counsellors is kept until 2 months after termination of their mandate.

Informal anti-harassment procedure:

- Confidential counsellors shall not keep personal data on a case for a period longer than three months following its closure. Personal data should be either destroyed or returned to the data subject who provided them ;
- The Human Resources Unit holds the historical memory of informal anti-harassment procedures by means of a central file of opening and closing forms on each case for maximum five years from the opening of the informal procedure. Five years is the period considered necessary for the Human Resources Unit to evaluate the harassment prevention Policy, to reply to any legal questions and to identify multiple or recurrent cases. Files may be retained for a further five years period in case an administrative or legal action is pending (e.g. with the European Ombudsman or the Court of the European Union)

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)

Within 15 working days from the date a duly substantiated request is made.

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,

An anonymous statistical record on informal anti-harassment proceedings is kept with the Human Resources Unit without time limit.

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

N/A

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

AS FORESEEN IN:

Article 27.2.(a)

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

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

Annexes / supporting documents to the notification:

1. Decision of the Executive Director of 25 April 2009 on the policy of EFSA on protecting the dignity of the person and preventing psychological harassment and sexual harassment
- Manual for EFSA informal procedures within the framework of the EFSA policy: (a) version in force, available on the EFSA Intranet Portal, (b) draft update with tracked changes
2. EFSA Intranet Portal page concerning harassment prevention (print-outs)
3. General Privacy Statement regarding the informal procedure within the context of the EFSA decision on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment (to become Annex V to the Manual on EFSA informal procedures)
4. Declaration form of Confidentiality for confidential counsellors
5. Opening & closing form on informal procedure
6. Example of EFSA Call for Volunteers for confidential counsellors
7. Note on the processing of personal data in the context of the selection of confidential counsellors (to be added in future EFSA Call for Volunteers for confidential counsellors)
8. Anonymous statistical record
9. DPO notification by the data controller

PLACE AND DATE: Parma, 17/06/2011

DATA PROTECTION OFFICER: Claus Reunis

INSTITUTION OR BODY: European Food Safety Authority (EFSA)