

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 17/10/2012

CASE NUMBER: 2012-0903

INSTITUTION: EUROPEAN RAILWAY AGENCY

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Railway Agency, 120 rue Marc Lefrancq, 59300 Valenciennes, France

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Mikkel Emborg, Head of Administration Unit, e-mail address: Mikkel.EMBORG@era.europa.eu
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3/ NAME OF THE PROCESSING

Informal procedure for cases of psychological and sexual harassment in the ERA.

4/ PURPOSE OR PURPOSES OF THE PROCESSING The purpose of the processing of data of a personal nature is the implementation of procedures intended to combat and prevent psychological and sexual harassment at the ERA pursuant to the Decision N° 413/10.2011 on the Policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment.

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

In accordance with the provisions of the Decision, which sets out the obligation of the institution as employer to provide a working environment free of any form of psychological or sexual harassment, data may be collected and retained for the following purposes:

- to ensure the support and protection of victims, and to direct them in case of need towards the appropriate services;
- to provide effective case management and to seek to resolve cases on the basis of information which is as comprehensive as possible;
- to ensure the confidentiality of information received, in order to provide protection to victims;
- to undertake conciliation initiatives;
- to put in place preventive initiatives;
- to monitor and evaluate the policy;
- to analyse requests, to manage and to prevent psychosocial risks;
- to transmit appropriate information to the authorised actors in the event of passage to the formal procedure.

Data of a personal nature which are collected may not subsequently be processed for purposes which are incompatible with those cited above.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Persons who consider themselves to have been harassed and who approach the HR Sector or a confidential counsellor under the informal procedure. Any person working at the ERA, regardless of his/her status or contract of employment, is covered by the Decision and is therefore potentially covered by 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*).

The data processed are of two types: (a) administrative and identification data (objective) and (b) data relating to the statements of persons who consider themselves to have been harassed and who approach the HR Sector or a confidential counsellor under the informal procedure (subjective). They appear on file opening forms, file closing forms and in files containing the documents relevant to the proper management of cases. Data also include details of alleged harassers and, potentially, of witnesses.

There is no systematic rule regarding the types of data which may be collected. They may be of very different types; this depends largely on the case in question. Due to the very nature of the phenomenon of harassment, these data must be considered to be of a subjective nature, tainted by emotion and closely bound up with the viewpoint of the person providing the information.

Confidential counsellors and the HR Sector shall ensure in particular that data or documents placed on file are relevant, adequate and proportionate, having regard to the purpose for which they have been collected and for which they may subsequently be processed. Any document received by confidential counsellors or by the HR Sector which does not meet the above characteristics may not be transmitted to the recipients in the event of a formal procedure.

Data which disclose racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning health or sexual life fall within the “specific categories of data” under Article 10(1) of the Regulation. Processing of such data is prohibited except in clearly defined exceptional cases. Confidential counsellors and the HR Sector will not therefore retain data of this nature in files or in file closing forms except where they constitute a key element in the understanding of the file – for example the reason for the harassment – and in resolving the question being addressed.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The declaration on the protection of data of a personal nature (declaration of confidentiality) and the Manual of Procedures containing the rules applicable to data protection will be brought to the attention of staff by publication on the Intranet.

Persons who approach confidential counsellors or the HR Sector will receive a copy of the declaration on the protection of data of a personal nature once, following an initial interview, they confirm their wish to have their cases dealt with under the informal procedure.

General information is all the more necessary given that alleged harassers are only informed directly of the policy on the processing and storage of data by confidential counsellors if and when an alleged victim has given his/her prior consent.

This exception is based on the need to ensure the protection of alleged victims.

Although in principle the informal procedure envisages conciliation, it is possible that a person who considers him/herself to have been harassed will seek support and a solution to his/her problem without necessarily wishing to confront the alleged harasser.

If a confidential counsellor convinces an alleged victim to seek conciliation or to inform the alleged harasser and makes contact with him/her, he/she will immediately inform the alleged harasser of the policy regarding the processing and storage of data, providing him/her with the declaration on data protection.

If, following a maximum period of two months (except in the event of reasonable extension, for example in the case of absence or leave) for intervention by a confidential counsellor, a victim continues to refuse to make the alleged harasser aware of the steps he is taking, all data relating to this person shall be erased from the file opening form of the case and no information enabling him/her to be identified will be retained by the HR Sector in the files. In such cases, after a file has been closed, a confidential counsellor may keep the file for a further three months in order to enable conciliation or notification to take place in the event that the victim changes his/her mind.

The duty of a confidential counsellor to support, protect and assist an alleged victim is not dependant on notification to the alleged harasser.

Attached the "Declaration on data protection".

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

The persons concerned, whether alleged harassers or presumed victims, will be informed by means of the declaration on data protection that they may approach the data controller to exercise their right of access to the data concerning them.

This right is subject to limitations pursuant to Article 20(1)(c) of the Regulation.

Hence, data subjects may not access files relating to them in their entirety.

Within a period of fifteen working days, the data controller will give the person making a request access to the documents concerning him/her in accordance with the following procedures:

- all data subjects may access documents which they have transmitted themselves;

- the data subjects, whether persons who consider themselves to have been subject to harassment or alleged harassers, will have access to the file opening form of a case relating to them. For alleged harassers, this access will depend on whether they have been informed by the confidential counsellor, following agreement of the victim, of the existence of an informal procedure relating to them (an exception intended to constitute a measure of protection for victims);
- Persons who believe they have been subject to harassment are also entitled to have access to the closing form relating to their case;
- Access to any other documents will be permitted to the extent that they do not contain personal data relating to other persons or confidential declarations, and that the forwarding of a document is not likely to prejudice a party involved, the proper operation of the procedures or future relations between the parties.

The persons concerned will be informed in the “declaration on data protection” of their right to make an approach to the ERA Data Protection Officer or the European Data Protection Supervisor to check whether their data has been processed correctly.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

both.

10/ STORAGE MEDIA OF DATA

Paper copies are stored in code protected fire proof safes and the e-storage is done in a code protected designated e-file.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Staff Regulations (Regulation (EC, ECSC, Euratom) No 23/2005): Articles 1d, 12a, 24, 86, 90; CEOS: Article 11.

ERA Decision N° 384/2012 on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment. EU Charter of Fundamental Rights: Articles 1 and 31(1).

Combating harassment, be it psychological or sexual, is a task carried out in the public interest and more specifically for the sound management and functioning of the ERA as well as maintaining a good working environment. Additionally, it is noted that the processing takes place after the data subjects have unambiguously given their consent to that end. The processing operation is thus necessary, as stipulated in Article 5 (a) and (d) of Regulation (EC) 45/2001, and is therefore lawful.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

The designated HR Staff Member or a confidential counsellor are the primary recipients of the data and may be required, in order to gain an understanding of a case and resolve it successfully under the informal procedure, to communicate certain information to the Medical Service.

Access to the information will only be authorised for those persons with a need to know for the exercise of their functions or fulfilment of their role. This sharing of confidential information is inherent in the operation of the informal procedure, and will be undertaken in principle with the consent of the victim, except in the event of an exception relating to protection of the persons concerned. This will generally take place by way of verbal exchanges in the course of meetings or telephone conversations.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The HR Sector may be required to retain any type of document which could be useful, where necessary, to demonstrate its proper management of cases. Confidential counsellors may be required to hold such documents temporarily, as in the case of personal notes, for the procedural time limit of two months, except in the event of reasonable extension in the case of absence or leave (three further months in the absence of conciliation) of the applicant and of the alleged harasser and the date of first contact together with the date of the first face-to-face interview (or telephone discussion if a meeting is not possible). The date of a victim's consent to the processing of his/her case will be considered as the reference date for calculating the data retention period.

In addition to the data recorded on the forms and documents placed in files, confidential counsellors and the HR Sector are permitted to keep in their personal notes a written record of the names of the persons who have consulted them, of the facts related, and of the documents or e-mails received, to enable them to report on their activities and to ensure that cases are properly managed.

Nevertheless, when a case is closed, only the relevant documents will be retained in the file thus constituted. Confidential counsellors shall not store any data of a personal nature beyond the period necessary for a case to be dealt with. Under no circumstances must they keep data of a personal nature for more than three months after the date of closure of a file. Following this time period, all useful and relevant documents will be sent to the HR Sector after the alleged victim has been notified (with the exception concerning situations where an alleged harasser has not been advised of the existence of an informal procedure concerning him/her). This timeframe will continue to run even where a confidential counsellor has been replaced as the manager of a file.

Once a case has been closed, confidential counsellors will transmit to the HR Sector a file closing form identified only by the reference number on the file opening form (see templates in Annexes I and II of the Manual of procedures annexed to this notification) setting out the significant stages in the case, the steps taken and results obtained (for example, form of harassment, type of measures, proposed solution, reassignment in the interests of the service, intervention by the Medical Service, passage to the formal procedure, etc.). This information will be stored in the secure archiving system of the HR Sector, with any file which has been constituted, including the documents, which must be relevant, adequate and proportionate, which confidential counsellors consider necessary in order to justify and understand the steps taken or to protect the persons concerned, with their agreement as regards documents they have provided. All other documents will be destroyed or returned by the confidential counsellor to the persons who have supplied them. The HR Sector stores the opening and closing sheets together with the case file (if any) in a central archive for five years. The HR Sector stores the opening and closing sheets together with the case file (if any) in a central archive for five years. Files and sheets are stored for a further five years when a judicial or administrative procedure requiring that this documentation be consulted is still on-going when the first term expires (e.g. request for compensation, action before the Civil Service Tribunal or national judicial authorities).

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

1 month as from the introduction of the request. *(Please, specify the time limits for every category, if applicable)*

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.

NA

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

NO SUCH TRANSFERS ARE FORESEEN

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,

YES

↑ Article 27.2.(b)

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

YES.

↑ Article 27.2.(c)

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

NO

↑ Article 27.2.(d)

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

NO

↑ Other (general concept in Article 27.1)

17/ COMMENTS

This notification concerns a true prior check, the processing has not yet implemented at the Agency.
Annexes: 1) ERA decision 384, 2) Policy on harassment 3) Manual of procedures

PLACE AND DATE: 17/10/2012 VALENCIENNES- FRANCE

DATA PROTECTION OFFICER: ZOGRFIA PYLORIDOU

INSTITUTION OR BODY: EUROPEAN RAILWAY AGENCY