

(ONLY IN CASE OF PRIOR CHECKING BY EDPS: To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 22/03/2013

CASE NUMBER: 2013-0326

INSTITUTION: European Joint Undertaking for ITER and the Development of Fusion for Energy

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

The European Joint Undertaking for ITER and the Development of Fusion for Energy
C./ Josep Pla, n° 2,
Torres Diagonal Litoral,
Edificio B3,
08019 Barcelona, Spain

Controller: Hans Jahreiss, F4E Head of Administration

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

The Administration Department,
Human Resources Unit

Contact person:
Pilar Garcés Guallart, Human Resources
(Pilar.Garces@f4e.europa.eu)

2B / PROCESSORS

Internal: Within Fusion for Energy, the data recipients signalled in point 13 may process any personal data as provided by the victim or to which they are confronted in the course of their task within the “informal procedure”. Someone who feels they are a victim of harassment may contact a confidential counsellor or the external psychologist through the informal procedure. Depending on the case, emergency measures may be considered. The informal procedure allows monitoring and

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

may lead to an amicable resolution. However, it does not involve formal establishing of the facts or the application of penalties: this is done in the formal procedure.

External: The Policy foresees in point 6.2.2 the intervention of an External Psychologist, that will provide the same assistance as a Confidential Counsellor but from outside the institution (i.e. he/she is not a staff member). Therefore the External Psychologist, if his/her services are requested, will process personal data on behalf of the controller. He/she will be appointed by the following company (external service provider and F4E contractor):

U.T.E. PREVING –SME- Gabinete Servicios Médicos de Empresa y Prevención (composed by “Preveng Consultores S.L.”, “Gabinete de Medicina Preventiva y Salud Laboral, S.L.U.”, “Gabinete servicios médicos de empresa y prevención, S.L.”).

3/ NAME OF THE PROCESSING

The processing operations cover the Confidential Counsellors data processing as well as all data collection and management of data subjects within the informal procedure:

a) Data processing operations in the context of selecting and appointing Confidential Counsellors

Further to the receipt of applications, the eligibility of the candidates is checked by the dedicated staff belonging to the Selection Committee (from the HR Unit, the Staff Committee and another department). A selection panel/jury assesses then the eligible candidates during personal interviews. The successful candidates following the interview shall attend compulsory trainings. The appointing authority (the Director) finally accepts or rejects proposed appointments. The final list of Confidential Counsellors is circulated to all staff and specifies information which may be of interests for the alleged victim’s selection of a Confidential Counsellor (gender, nationality, spoken languages etc.). An External Psychologist is available for staff from outside F4E; he/she will perform the same task as a Confidential Counsellor. The Coordinator for the prevention of harassment (a member of the Human Resources Unit) leads the network and provides its members with the necessary tools and advice for their work.

During the selection, Confidential Counsellors/External Psychologist they will certainly provide their administrative data; it is possible that applicants provide sensitive data in their application or with the attached documents, for which lawfulness of the processing is ensured according to Article 10 of the Regulation)

b) Personal data processing within the informal procedure defined in the Fusion for Energy Policy protecting the Dignity of the Person and preventing Psychological Harassment and Sexual Harassment.

Any person who considers himself/herself a victim of psychological or sexual harassment may request assistance by contacting a Confidential Counsellor/the External Psychologist of their choice, or from the Coordinator for the Prevention of Harassment, who will redirect the alleged victim to the Confidential Counsellors/the External Psychologist. The role of the Counsellor/External Psychologist is first dedicated to listen to the alleged victim. Secondly, if necessary and with the consent of the alleged victim, a mediation is launched so as to attempt to reach an informal agreement between the parties. In case of failure of mediation, the alleged victim may engage in a formal procedure.

The data are contained in the personal notes of the Confidential Counsellors (including all documents relevant for the case) and in possible opening and closure forms (including data such as reference numbers, date of first contact and further meetings, closing date, type of issue, contacts with other departments, reasons given for complaint or actions undertaken, etc.)

Personal data and eventually health data are collected within the informal procedure established in the Policy for cases of alleged harassment in Fusion for Energy for the purposes of resolving the situation and only on the basis of the will of those involved providing those data. The alleged victim's express consent shall be requested, unless he/she has provided the consent.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

a) As regards the **selection of Confidential Counsellors/the External Psychologist**, the immediate purpose of collecting data from the candidates is to best evaluate their aptitude and competences regarding the specific task as Confidential Counsellors/External Psychologist to conduct informal procedures in cases of harassment. The data collected must reflect the specific nature of their function. For that purpose for the Confidential Counsellors, a Call for Expression of interests was launched, where selection criteria had been established.

b) In what concerns the purpose of the **informal procedure**, it needs to be distinguished among "hard" and "soft" data:

- Data qualified as "hard" or "objective" i.e. administrative and identification data, collected normally directly from the data subjects (possibly by means of the opening and closing form, as well as from any other documents provided by the data subject). The collection of "hard" data aims at the identification of the person, the management of historical records and most importantly the identification of recurrent and multiple cases.
- Data qualified as "soft" or "subjective", i.e. allegation and declaration based upon the subjective perceptions of data subjects, usually collected by means of the personal notes of the Confidential Counsellors/External Psychologist. These notes aim at helping the Confidential Counsellors/External Psychologist to create a general overview of the situation and design a satisfactory solution to all the parties.

The selection of hard data collected through the forms and communicated to the Coordinator for the prevention of harassment has been designed to not be excessive in relation to the purpose indicated under this point 6. However, Confidential Counsellors/the External Psychologist will guarantee the respect of the principle of data quality during their collection within the informal procedure; the Confidential Counsellor/External Psychologist shall conduct his/her analysis on a case by case basis.

Data are collected and processed only for the purposes described in the Policy indicated above and within the informal procedure and managed according to the principles of adequacy, relevance and proportionality of Article 4 of the Regulation.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

a) In what concerns the **selection of Confidential Counsellors, and the External Psychologist**, their administrative data (name, surname, personal number, professional e-mail and address) shall be collected and processed for the necessary administrative steps leading to their appointment. For that reason, they shall be considered data subjects.

b) Within the **informal procedure**, data subjects are each and every person working at Fusion for Energy, regardless of grade and contract of employment (this includes the trainees and all those working under a contract under national law) that may, if they feel they are the victim of psychological harassment and sexual harassment by a member of staff of Fusion for Energy, initiate an informal procedure.

Equally, those persons accused of harassment within an informal procedure will have their personal data processed as described above and in the Policy and its Manual of Procedures and therefore will become data subjects.

Together with the Coordinator for the prevention of harassment, the Human Resources Head of Unit or Deputy Head of Unit, in case of reassignment of the alleged victim/harasser and any members of management for the same purposes may have access to the data.

As well the following people shall be considered as data subjects:

- Coordinator for the prevention of harassment.
- Any HR Unit member Involved at any stage of the informal procedure (in case the alleged victim/alleged harasser contacts directly with a member of the Human Resources Unit)
- Witnesses and any other people involved (Coordinator for the prevention of harassment, Human Resources contact persons, security officers, police officers if the case may be etc.) that may have their data processed within the informal procedure shall be considered as well

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

Identification data: name, surname, age, gender, personal number, grade and function and position assigned, and ID number, home address, permanent address, personal telephone number, personal e-mail, professional e-mail and next of kin (i.e. the contact person –husband/wife, partner, sisters/brothers, family in general, friends or other selected person with whom the data subject has narrow links, as indicated by the staff member in the requested documents on taking up duties).

Special categories of data (not health data): personal notes taken by the Confidential Counsellor or the External Psychologist that may contain data of Article 10 of the Regulation, administrative and other data included in forms to request the services of the External Psychologist or for any reassignment procedure evaluated by the Human Resources Unit.

Health data: any psychosocial or medical report that may contain information related to the health of the data subject; medical certificates, tests, evidence or reports provided by the data subject.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Any person for whom a personal data processing is performed under the informal procedure will receive the following information:

- An extract of the Staff Regulations with the relevant Articles.
- A copy of the Fusion for Energy Policy on regarding the protection of the Dignity of the person and preventing Psychological Harassment and Sexual Harassment;
- A copy of the Manual of Procedures for the implementation of the policy and its corresponding Annexes, among which, Annex IX “Personal Data Protection Statement”;
- A specific Privacy Notice, summarising the information included in the “Data Protection Statement” and that of this notification that will be also accessible for any interested person on the Fusion for Energy Intranet.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Right of access: according to Article 13 of Regulation, data subjects have the right of access to the personal data that are processed by the Institution, specifically:

- if data related to him or her are being processed
- information on the purposes of the processing operation
- categories of data concerned
- recipients or categories of recipients to whom the data are disclosed
- communication in an intelligible form of the data undergoing processing and their source
- logics involved in any automated decision process concerning him/her

Data subjects shall always have their right of access granted to control if the data reflect the facts and perceptions that they wanted to transmit and if their statements are as complete and accurate as possible.

Even if Confidential Counsellors/External Psychologist provide themselves all data that is processed for them, it shall be borne in mind that they shall always have their right of access granted for any data collected by the Selection Panel/Coordinator for the prevention of harassment..

Access shall always be granted for the following:

- documents they have themselves transmitted;
- opening form and closing form for the case relating to them (alleged victims and alleged harassers). Access to any other document will only be granted if this document does not contain personal data relating to other individuals 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.

Right of rectification: according to Article 14 of Regulation, data subjects have the right of modification of any inaccurate or incomplete personal data.

Data subject shall always have their right of rectification granted to control if the data reflect the facts and perceptions that they wanted to transmit and if their statements are as complete and accurate as possible.

Right of blocking: according to Article 15 of the Regulation, data subjects can request the blocking of their personal data when:

- they contest the accuracy of the data
- the Controller no longer needs them but they need to be maintained for purposes of proof
- the processing is unlawful and the data subject requests blocking instead of erasure

Personal data blocked shall only be processed for the purposes of proof (with the consent of the data subject) or for the protection of the rights of a third party.

Right of erasure: according to Article 16 of the Regulation, data subjects can request the cancellation of their personal data if they consider that they are subject to an unlawful processing.

Right to object: according to Article 18 of Regulation 45/2001, data subjects can object the processing of their personal data unless the processing is needed for the purposes of Article 5 b) and d) of the Regulation:

- on legitimate grounds relating to his/her particular situation
- before their personal data are disclosed to third parties

Article 20(1)(c) of Regulation states that the data Controller may restrict access to the information/documents to safeguard:

- the prevention, investigation, detection and prosecution of criminal offences
- any important financial or economic interest of the Member States
- the protection of the data subject or the rights of freedoms of others
- the national security, public security or defence of the Member States
- the monitoring, inspection or regulatory task connected with the exercise of official authority.

Common steps for the exercise of any of the above mentioned rights:

Any request from a data subject concerning the rights above described should be addressed to the Controller through the following contact e-mail addresses:

Resources-Controller@f4e.europa.eu

DataProtectionOfficer@f4e.europa.eu

The Controller shall provide an answer to the data subject concerning his/her request on the exercise of his/her rights, as defined above, within 10 working days. Any contestation by the data subject to the Controller's reply shall be submitted within 10 working days of the response received and the Controller shall have another 10 working days to provide a replica revising his previous decision or confirming it.

The data subject may put in place the procedure established in article 90 of the Staff Regulations to contest any action of the data controller related to his/her rights.

All data subjects have also right of recourse at any time to the European Data Protection Supervisor: EDPS@edps.europa.eu. The EDPS receives complaints from EU staff members as well as from other people who feel that their personal data have been mishandled by a European institution or body. If a complaint is admissible, the EDPS usually carries out an inquiry. The findings are communicated to the complainant, and necessary measures are adopted.

In case of dispute, the competent forum to lodge an appeal is that of the Civil Service Tribunal, Rue du Fort Niedergrünwald, L-2925 Luxembourg, as per article 91 of the Staff Regulations.

Automated: Personal data within the informal procedure will be processed electronically if the Confidential Counsellor/External Psychologist or any third party that may get involved in an informal procedure use any electronic tool (computer or other IT elements such as a smartphone, tablet etc.) to perform any operation on them, or in they are dealt with in the context of any e-mail communication among these parties.

If the Medical Service was involved, any necessary processing of personal data shall be managed through the local drive of the doctor's computer, accessible through login and password. The Medical Advisor uses also the Prevenet software, which is a software tool created specifically for the external service provider company that the doctor uses for medical purposes only. The computer (laptop) is not connected to the contractor's server but just to the F4E server and it is not possible to see any data sent by the doctor to other recipients other than the addressee, as per the F4E IT Unit verifications on the subject. The laptop is used only in the Medical Advisor office in the premises of Fusion for Energy.

External doctors or hospitals shall be requested ex-ante, if possible, post on their compliance with the data protection applicable legislation. In case of urgent measures the emergency situation may not allow any ex-ante control, for which an ex-post verification on data protection legislation compliance will be required afterwards. However, in the first contact with the external health services provider, the person in charge shall request the information on personal data protection and examine it to his/her satisfaction and that of the person that he/she has in charge.

Manual: The information (personal data) concerning the data subject will be written down in any documents or personal notes taken by the Confidential Counsellor or the External Psychologist or in any documents, reports or files brought by the alleged victim or the alleged harasser on the matter would be acceptable.

If the Medical Service was involved, data will be registered in any documents or notes taken by the doctor and all evidence, reports or medical documents provided by the victim or alleged harasser and any external doctor if that was the case will be kept within their medical file,

External doctors or hospitals shall be requested ex-post on their compliance with the data protection applicable legislation, as in case of urgent measures the emergency situation would not allow any ex-ante control. However, in the first contact with the external health services provider, the person in charge shall request the information on personal data protection and examine it to his/her satisfaction and that of the person that he/she has in charge.

10/ STORAGE OF DATA

Paper Files: Any informal procedure dossier and any related documents or evidence in paper format as provided by the parties in conflict will be stored in paper support in the safe that the Confidential Counsellors/External Psychologist shall be provided with by the Coordinator for the prevention of harassment (who is a member of the Human Resources Unit). Personal Notes of the Confidential Counsellors/External Psychologist shall also be stored in the safe.

The Coordinator for the prevention of harassment and his alternate will store the documents (opening form and closing form of an informal procedure) in a specific safe set for this purpose for which only they will know the location. The file shall be assigned a unique identifier form (in an anonymous way) that will be used all along the procedure to refer to the case in question.

The keys of the safe will be only accessible for the Coordinator for the prevention of harassment and his/her alternate. The F4E Security Services will have a copy of the keys of the safe but they shall not use them unless there is a documented justified request.

In case the Fusion for Energy Medical Services were involved, on request of the victim or the alleged harasser or in case urgent measures had to be taken (as described in the Policy), personal/health data recorded in any document shall be stored in a filing cabinet closed under key, to which only the Medical Advisor shall have access.

The entrance door of the Medical Service is also secured and entrance is only granted on swiping an electronic key provided solely to the Medical Advisor. The key registers all entrances and this information can be downloaded from the Security Services at any moment upon justified request. Random checks performed often by the Security Services ensure that no unauthorised entrance is allowed to these premises and guarantee the security measures put in place to that effect.

External doctors or hospitals shall be requested ex-post on their compliance with the data protection applicable legislation as for the storage of data, as in case of urgent measures the emergency situation would not allow any ex-ante control. However, in the first contact with the external health services provider, the person in charge shall request the information on personal data protection and examine it to his/her satisfaction and that of the person that he/she has in charge.

All documents regarding harassment cases shall not be kept in the personal file of the concerned persons, but in a separate dedicated file for which the Coordinator for the prevention of harassment is responsible (security measures included), as described above.

Electronic files: Within the informal procedure there may be an exchange of mails between the concerned parties including the alleged victim, the alleged harasser, the Confidential Counsellor/External Psychologist and third parties (witnesses, hierarchical superiors, the Human Resources Unit, the F4E management etc.) These mails shall be kept in a separate mail folder per case, on a computer only accessible through login and password. The same security measures will apply to any documents that the Confidential Counsellor/External Psychologist's may have created or managed in the local drive of their computer.

With what concerns the Medical Service of Fusion for Energy, electronic files shall only be kept in the laptop for the use of the Medical Advisor. No further electronic handling should be performed.

External doctors or hospitals shall be requested ex-post on their compliance with the data protection applicable legislation as for the storage of data, as in case of urgent measures the emergency situation would not allow any ex-ante control. However, in the first contact with the external health services provider, the person in charge shall request the information on personal data protection and examine it to his/her satisfaction and that of the person that he/she has in charge.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

(i) Legal basis

- Charter of the Fundamental Rights of the European Union (2000/C 364/01) Articles 1 and 31.1.

- Council Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1) laying down the Staff Regulations of Officials (hereinafter “Staff Regulations”) and the Conditions of Employment of Other Servants (hereinafter “CEOS”) of the European Economic Community and the European Atomic Energy Community as subsequently amended, specifically articles 1d, 5, 10, 12a, 24, 86 and 90 of the Staff Regulations and Article 11 of the CEOS.
- Regulation No. 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community Institutions and bodies and on the free movement of such data (hereinafter “the Regulation”).

- Note of the Director of Fusion for Energy F4E_D_25JE5Q of 01/02/2013 on well-being at work and on the application of the Implementing Rules on the policy protecting the dignity of the person and preventing psychological harassment and sexual harassment (hereinafter “the Policy”).

- Manual of Procedures for the Implementation of Fusion for Energy Policy protecting the Dignity of the Person and preventing Psychological Harassment and Sexual Harassment (hereinafter “the Manual of Procedures”)

(ii) Lawfulness Personal data may be processed only if:

X Processing is necessary for the performance of F4E tasks on the basis of the F4E founding instrument or other legal instrument adopted on the basis thereof or in the legitimate exercise of official authority vested in F4E or in a third party to whom the data are disclosed (Regulation (EC) 45/2001, Article 5(a)), or;

X Processing is necessary for compliance with a legal obligation to which the controller is subject (Regulation (EC) 45/2001, Article 5(b)), or;

X Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract (Regulation 45/2001, Article 5(c)), or;

The data subject has unambiguously given his or her consent (Regulation 45/2001, Article 5(d)), or;

Processing is necessary in order to protect the vital interests of the data subject (Regulation 45/2001, Article 5(e) or;

X Processing operation attaining the creation and maintenance of a good working atmosphere.

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

(i) Administrative data:

- Confidential Counsellors
- External Psychologist
- Coordinator for the prevention of harassment and his/her alternate

- Human Resources Head of Unit (in case of a proposed reassignment)
- Data Protection Officer (in case if he/she is involved by the alleged victim/the alleged harasser)
- Head of Administration Department (in case of a proposed reassignment or if the alleged victim wanted to involve him/her in any way)
- Secretary to the Head of Administration Department

- Appointing Authority, i.e. Director (in case of a proposed reassignment or if the alleged victim wants to involve him in any way)
- Secretary to the Director (in case of a proposed reassignment or if the alleged victim wants to involve the Director in any way)
- Fusion for Energy responsible Legal Advisors of the Directors Office (in case of a complaint submitted to the Director or if a case is submitted to Court or for ruling or appeal)
- Internal Auditor and Court of Auditors (for auditing purposes only)
- European Ombudsman (if a case is submitted to him and upon justified request)
- OLAF (upon justified request)
- Civil Service Tribunal (if a case is submitted to this court and upon justified request)
- Court of Justice of the European Union (if a case is submitted to this court and upon justified request)
- Autonomic and State Police of the Host Member State (if needed and requested for a criminal investigation linked to harassment)

(ii) Health data:

- Medical Advisor - (appointed by the external service provider UTE Grupo Preving – Gabinete SME y Prevención S.L.), in case the alleged victim or the alleged harasser contacted the F4E Medical Service within the frame of the informal procedure.
- Medical Control Officer (appointed by the external service provider UTE Grupo Preving – Gabinete SME y Prevención S.L.), in case the alleged victim or the alleged harasser are absent due to sickness or accident at the same time that the informal procedure is running)
- External Doctors (to which the victim may refer or that may be contacted in case of emergency, as described in the Policy)
- Hospital of reference (if an urgent measure, as described in the Policy and depending on the health of the victim had to be taken)

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

a) In what concerns **Confidential Counsellors/the External Psychologist**, personal data of those selected applicants shall be kept for six years (the duration of their appointment, that can be renewed for two more years and two more years for eventual complaints/litigation from alleged victims); non-selected applicants personal data shall be retained for two years after the appointing decision is published, to cover any possible complaint or litigation procedure.

b) Documents regarding the **informal procedure** shall be kept for the duration of the contract of the data subject; these circumstance will avoid that the alleged victim is eventually assigned again, within the course of possible future reorganizations, to the working group where the harassment situation arose. In the case of Officials the documents shall be kept for the duration of their career, for coherence with all measures put in place for the “zero tolerance” policy towards harassment at Fusion for Energy, as indicated in the Policy and in the Manual of Procedures. The same explanation than for staff members under contract is also valid for officials.

These retention periods are also justified for eventual complaints procedures or court cases purposes considering that there are no delays for such submission as stated in the Staff Regulations and for statistical purposes.

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

The Controller shall execute any request for blocking or erasure as soon as possible and in any case within 10 working days of the data subject request. The Controller will notify this circumstance to the data subject by the same means of communications that the data subject chose to address him.

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.

The need to collect each single data for statistical purposes shall be justified and approved in advance by the Director.

Data collected for statistical purposes will be obtained and kept in an anonymous form only.

This information is useful in order to implement the “zero tolerance” policy, to study patterns in which harassment arises and to design prevention measures.

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

It is not likely to transfer personal data as foreseen in article 9 of the Regulation within the frame of an informal procedure in a harassment case for a Fusion for Energy staff member, but on the contrary as very

exceptional. The data subject would be informed in advance in the Privacy Notice that will be provided to him/her of the possibility to proceed with a transfer if necessary according to the data recipient doctor established by him/her in a third country. Consent of the data subject would always be obtained in advance in the eventual need to proceed in this way.

Taking into account the EDPS “Guidelines concerning the processing of personal data during the selection of Confidential Counsellors and the informal procedures for cases of harassment in European institutions and bodies”, point 5.2 “External Transfers”, that personal data may only be transferred to recipients who are not the subject to national law adopted pursuant to Directive 95/46/EC, if the third country or organisation provides an adequate level of protection (Article 9.1). It is possible to derogate from this principle if the data subject has given his/her unambiguous consent or if the transfer is necessary in order to protect the vital interests of the data subject. However, it is advised that decisions shall be taken on a case by case basis and Fusion for Energy fully endorses this policy; therefore any external transfer shall be duly justified.

Considering that third countries are not subject to Directive 95/46/EC, F4E would request from the third country authorities (in fact the data recipient should provide this evidence) at least reciprocity on the management on data protection and the legislation covering it before enforcing a transfer procedure of article 9.1 of the Regulation.

The data subject has also a reinforced protection: through the diplomatic system of the State Member from which the concerned person is a national. By means of the Embassy of the country for which the F4E staff member is a national (and using the “valise diplomatique”), the closed envelope containing documents with personal data would be delivered from the Embassy to the appointed data recipient of the 3rd country in his/her address there.

16/ THE PROCESSING OPERATION IS LIKELY TO PRESENT A SPECIFIC RISK TO THE RIGHTS AND FREEDOMS OF THE DATA SUBJECTS, WHICH JUSTIFIES PRIOR CHECKING BY THE EDPS

The notification is submitted to the EDPS for prior checking according to Article 27.1 and 2 a) and b) considering especially the implications of the informal procedure, as foreseen in:

X Article 27.2.(a)

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

The informal procedure is likely to imply the processing of data related to health of the alleged victim and/or alleged harasser, and on security measures.

X Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject, including, his or her ability, efficiency and conduct;

The selection of Confidential Counsellors/External Psychologist may include the evaluation of personal aspects relating to the data subject, including ability, efficiency and conduct.

The same thing may happen within the informal procedure, concerning the alleged victim or the alleged harasser.

† Article 27.2.(c)

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

1 Article 27.2.(d)

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

1X Other

(general concept of Article 27.1, i.e. if the processing operation is likely to present a specific risk to the rights and freedoms of the data subject)

Within the informal procedure, situations implying a specific risk to the rights and freedoms of the data subject may arise, as any alleged harassment process may imply a non-respect of such rights and freedoms.

The rights indicated are established in Article 3, 6, 7, 8, 15 and 23 of the Charter of Fundamental Rights of the European Union (2000/C364/01) and in the consolidated Treaty on European Union, Article 3 and of the Treaty on the Functioning of the European Union, consolidated version, Articles 2, 5, 9, 37, 45 and 46.

17/ COMMENTS

PLACE AND DATE: Barcelona,

DATA PROTECTION OFFICER: Angela Bardenhewer-Rating

INSTITUTION OR BODY: Fusion for Energy

ANNEXES:

ANNEX I – SPECIFIC PRIVACY NOTICE

ANNEX II –

NOTE F4E_D_25JE5Q of 01/02/2013 of the Director of Fusion for Energy on well-being at work and on the application of the Implementing Rules on the policy protecting the dignity of the person and preventing psychological harassment and sexual harassment (“the Policy”).

Draft MANUAL OF PROCEDURES for the Implementation of Fusion for Energy Policy protecting the Dignity of the Person and preventing Psychological Harassment and Sexual Harassment (“the Manual of Procedures”)
(under consultation in march 2013)