

*(To be filled out in the EDPS' office)*

**REGISTER NUMBER: 991**

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### **NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 13/03/2013**

**CASE NUMBER: 2013-0456**

**INSTITUTION: EFCA**

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

### **INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

European Fisheries Control Agency, Avda. Garcia Barbon, 4, E-36208 Vigo

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

Unit - A, Resources, HR Section  
Contact person: Wilhelm Scherzer, HR Officer

Processors:

EFCA will start using in the 2<sup>nd</sup> quarter of 2013 (after a testing period with staff of unit A as from March 2013) the application Figgo, a cloud service provided by the company Lucca (Paris, France) for the processing of leave. Figgo provides functionalities for leave processing which allow paperless management of leave. The functionalities correspond to current Human Resources Management standards. They can be adjusted without need to recur to source code programming, which enables considerable economical savings in regard to other solutions.

While Lucca provides the basic application programme, it is exclusively EFCA staff who process data and customize functions. The processing takes place via accessing of the application through the internet with secured personal user accounts. There are 3 types of accounts: User account, user account of leave authorizer, user accounts of administrators. The latter are owned by the HR Section and allow control of the other accounts. Additionally, the administrators can modify data, workflows, labels, accounts and other functionalities. Lucca is bound to a data protection and security agreement signed with EFCA on 10 December 2012 (Annex I). Its staff is only in contact with data (Names and leave accounts) for the purpose of technical implementation (January to

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

March 2013), and later in its function as helpdesk for technical problems, which cannot be solved at the administrator level.

Data is transmitted over the internet and hosted on Lucca's web hosting platform provided by OVH, a French web hosting company. All of Lucca's OVH servers are located in France.

Neither Lucca nor OVH are recipients of personal data and do not process, view or modify data whatsoever.

Before taking the decision to use the cloud service, EFCA carried out a risk assessment (Annex II).

3/ NAME OF THE PROCESSING

Management of Leave, Sickness related Absences and other Absences

4/ PURPOSE OR PURPOSES OF THE PROCESSING

Management of leave (annual, sick and special leave) and grant leave rights; in particular to make sure supporting documents are provided.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

EFCA statutory staff members (TA, CA) and SNEs.

6/ DESCRIPTION OF the data or categories of data (including, if applicable, special categories of data (Article 10) and/or origin of data).

a. The following categories of data are being processed:

Name and family names, birth day, grade, communication data concerning leave and absences, duration of leave, reasons for special leave, medical certificates (not including health data).

b. Supporting documents

Supporting documents are requested for special leave requests. Such documents may include proof of actual participation (e.g. document certifying presence at the EPSO test, location, duration, etc.) or any other certificates sufficient to the purpose to justify the granting of special leave.

c. Special categories of data

- Health related data (e.g. serious illness of spouse)
- sexual orientation of the data subject and his/her partner (e.g. when the data subject applies for leave in the case of marriage).

## 7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The information regarding the identity of the controller, the purpose of the processing, the data categories, the possible data recipients, the existence of rights of access, rectification and recourse to the EDPS, the legal basis of the processing and the applicable data retention periods is provided in the global HR privacy statement for staff published on the intranet (Annex III).

A note to staff with updated information on sick leave, is distributed to staff and published on the intranet (Annex IV).

## 8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Data subjects can access all their personal data, including the supporting documents and may request for a rectification (in particular of data relating to identification)/blocking/erasure/objection (where applicable).

If the data subject requests the controller orally, by email or by paper to exert his/her rights, the controller will facilitate the applicant the exercise of the rights.

## 9/ AUTOMATED / MANUAL PROCESSING OPERATION

### **(1) Current processing**

Currently, the processing of data is done manually and recorded in excel files.

The approval procedure follows the standards given by the leave rules: The request is launched by the leave requester and to be approved by the leave authorizer. The HR section registers the leave entitlements and their consumption.

Currently, leave requests and supporting documents for absences and leaves are usually processed manually through physical files and paper form.

A medical certificate is delivered by the data subject to the agent responsible for managing leave of the HR section for the recognition of sick leave covering the justified period. The original documents are stored in the special sick leave folder. The information on sick leave (duration, specific dates, names) are processed in an excel sheet which is saved in a special electronic folder to which only the HR Officer and the Assistants working in the Human Resources Section have access.

### **(2) Processing with support of the Figgo application (as from 2<sup>nd</sup> quarter 2013)**

An automated system (Figgo application) is planned for introduction as from 2<sup>nd</sup> quarter of 2013. This system will be used for introduction and approval procedure of leave requests and is controlled by the HR Section. It will, in part, replace the paper-based processing.

The use of the Figgo application is an interim solution in the absence of an EFCA personnel application.

With the introduction of the new processing system (Figgo application), annual leave requests will be introduced by the staff directly into the system and automatically forwarded to the leave authorizer. There will be no circulation of paper files for annual leave requests anymore. The HR Section will be able to monitor the processing of annual leave in the application. Supporting documents will continue to be processed manually and separately from the Figgo application system.

Generally, the HR Section processes all information necessary for the purpose of managing the different types of leave in compliance with the rules.

An HR Procedural description for leave management has been set up and is attached to this notification (Annex V). The approval procedure follows the standards given by the leave rules: The request is launched by the leave requester and to be approved by the leave authorizer. Registration of leave entitlements and their consumption is automatically processed by the Figgo application.

Concerning sick leave and medical certificates, the current processing (see above) is maintained. Sick leave or special leave are not used as classification terms within the Figgo application. The HR Section registers absences due to sick, special and other leaves (maternity, parental) as “Other justified absence” or “Other absence” or “Leave to be justified” within the Figgo application. Staff is informed that medical certificates should not disclose medical information or indications on the nature of sickness. Where necessary, the HR section may additionally erase such information on the documents. Even indications on the specialisation of the doctor or other elements which could indirectly disclose information on the sickness may be erased. The staff member may also opt to directly approach the Medical Service in Brussels. EFCA has a Service Level Agreement with DG HR in place for the coverage of expenses and must solely be informed of visits in advance for the booking and the regularization of cost. EFCA recognizes justification on sick leave issued by the medical service.

For special leave, a separate processing is foreseen. Special leave requests are to be directed to HR Section (and not through Figgo) which processes it further for authorization and subsequent information of the staff member and registration in Figgo as other justified absence. In the Figgo system, special leave remains registered as “Leave to be justified” as long as the authorization and eventually required supporting documents are pending, and as “Other justified absence”, as soon as authorization is given and supporting documents are delivered. The supporting documents are safely stored and normally destroyed after 3 years (see point 10 and 13 below). Staff may however request annual leave (in Figgo) and retroactively request to regularize the leave as special leave, once supporting documents are available. Once authorized, the HR Section will retroactively convert the annual leave into special leave (“other justified absence” in Figgo).

However, retroactive regularization of entitlements is no longer possible when the leave accounts have been closed and reported after the year end to the accountant.

### **(3) Planned processing adjustments**

EFCA is exploring the possibility to use additional functionalities which could be enabled under the Figgo Application within the applicable data protection rules. It is considered to specify “special leave” and “sick leave” as such within Figgo (currently labelled as “Other justified absence”, “Other absence”, or “Leave to be justified”), if this would be perceived as being more user friendly by staff. Again, any possible changes to the processing operation would need to be carefully considered to ensure compliance with relevant data protection legislation.

Following its implementation in 2<sup>nd</sup> quarter 2013, the use of the Figgo application will be monitored for functioning and for developing improvements.

It is further planned to renew the data protection and security agreement with the application provider Lucca after a year's time (see its Art. 2.3, Annex I). At this opportunity, new elements will be added as necessary and others may be simplified as much as possible. To this aim, EFCA shall take into consideration the experiences which will be made during the execution of the pilot period and the recommendations issued by the EDPS in the meantime.

#### 10/ STORAGE MEDIA OF DATA

Hard copies of documents and/or data are transmitted to HR from the data subject in a closed envelope.

Supporting documents are stored in files which reside in locked cupboards. When handed in person to HR, supporting documents are filed in a protected cupboard in the HR office which is locked when no HR staff is present. All electronic data is stored in excel files accessible to HR staff only (folders on the HR data location on the data drives with access restricted to HR Section, the HoU Resources and the Executive Director).

For sick leave, a separate processing is foreseen. The medical certificates are kept in a separate folder and stored in a secured cupboard in the HR Section's premises.

For the procession with the Figgo application, data is hosted at secured servers (see agreement EFCA with Lucca on data protection and security, Annex I; see also point 2). Data identifying sick or special leave is not processed through the Figgo-system nor supporting documents related to sick or special leave.

#### 11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The legal base for the processing of personal data operations can be found in the Staff Regulations (SR):

Leave in general is covered under Chapter 2 of Title IV: Working conditions of officials of the Staff Regulations (Articles 57-60), applied by analogy to other servants of the European Communities, which are defined in Titles III & IV of the Staff Regulations:

- Annual leave (Article 57 SR), Special leave (Annex V SR), Maternity leave (Article 58 SR), Sick leave/family leave (Article 59 SR), Leave on personal grounds and unpaid leave (Articles 15, 37 and 40 SR) form the legal basis of these processing operations.

- Furthermore, Articles 11, 16 to 18, 58, 81 and 91 of the *Rules applicable to other servants of the European Communities* provide rights to leave for those individuals who are not covered by the Staff Regulations, but are nonetheless employed as temporary and contract agents.

- AB Decision No 11-W-4 of 23 June 2011 on the adoption of general implementing provisions to the Staff Regulations (leave); Annex VI

The processing of personal data in relation to leave is necessary for the performance of the institutions and bodies' obligations towards staff as provided by the above-mentioned rules. Therefore the processing of personal data carried out in this context is lawful in accordance with Article 5(a) of Regulation 45/2001.

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

The Executive Director, Head of Unit A – Resources and the HR Section staff have access to information on leave (leave statistic of each staff member) and all supporting documents. The Heads of Unit have access to leave information concerning their Unit members, except sick leave certificates.

European Commission

- Medical Service (for administrative documents containing data relating to health); By virtue of their functions, the doctors and other staff of this service are subject to the obligation of professional secrecy.
- Office for Administration and Payment of Individual Entitlements (PMO) of the European Commission (EU institution) for data necessary to process related entitlements and payments, as e.g. deriving from part-time or parental leave, based on the Service Level Agreement between the EFCA and PMO.

Through the Data protection and security signed with EFCA (Annex I), the company Lucca is bound to ensure that confidentiality undertakings are signed, where necessary and that only authorised users, have access to the data uploaded by EFCA users to the Figgo application (Art. 1.7 and 1.8 of the agreement). The data transferred are: staff members' names and related data on accounts for annual leave entitlement, carryover of remaining annual leave entitlements from the previous year, additional entitlements, consumption of annual leave entitlements and registration of other justified or still to be justified leave/absences.

As a French company, Lucca is subject to national law adopted for the implementation of Directive (EC) 95/46. Since Lucca's web hosting platform is provided by OVH, a French web hosting company and all of Lucca's OVH servers are located in France, the company OVH is also subject to national law adopted for the implementation of Directive (EC) 95/46.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Data will be retained as follows (as concerns both on-line data and hard-copies or supporting documentation):

a. Leave data

- Annual leave: Retention period three years (except in case of appeal, where data will be kept as long as required). The keeping of data relating to days of annual leave is justified in particular for the carry-over of days not taken to the following year.
- Data on part-time work, parental and family leave: generally kept the entire career or even beyond that period (since they relate to a subsisting entitlement and may be appealed against).

b. Supporting documents

Supporting documents: Retention period three years (except in case of appeal, where data will be kept as long as required).

c. Leave processing data (special, sick leave)

- Data related to special and sick leave: Retention period three years (except in case of appeal, where data will be kept as long as required).

- Leave on personal grounds: Retention for the entire career of the data subject in order to keep track when the total time granted reaches the maximum permitted.

Art. 1.3 of the data protection and security agreement signed between EFCA and Lucca (Annex I), obliges Lucca to do the following:

At any moment during the use of the Figgo application, upon EFCA's request, Lucca and its subcontractors shall securely erase personal data. Lucca shall ensure that each instance of personal data is erased irretrievably.

In the event the EFCA ceases to use the Figgo application, Lucca, depending on EFCA's instructions shall either return to the EFCA or destroy the personal data and any other data introduced by the EFCA into the application.

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

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

15 days beginning from the reception of the request to block/erase.

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.*

n/a

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):*

The processing of data on leave may imply the processing of data relating to health (e.g. medical leave, maternity leave, and some other types of special leave). Processing operations involve the administrative follow-up of unjustified absences owing to illness and which leads to a reduction in leave entitlements and/or withholding of pay, which constitute 'processing operations for the purpose of excluding individuals from a right, benefit or contract'.

AS FORESEEN IN:

↑ Article 27.2.(a)

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

1 Article 27.2.(d)

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

17/ COMMENTS

PLACE AND DATE: Vigo, 11 March 2013

DATA PROTECTION OFFICER: Rieke Arndt

INSTITUTION OR BODY: European Fisheries Control Agency