

(To be filled out in the EDPS' office)

### NOTIFICATION FOR PRIOR CHECKING

**DATE OF SUBMISSION: 14/08/2013**

**CASE NUMBER: 2013-0957**

**INSTITUTION: EEAS**

**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

Controller: the Mediator, Ms. Cristina Allegra, SCHU 2/53

Delegated controller: the law officer of the Mediation Service, Ms Geneviève Chaumont, SCHU 2/54

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

Mediation Service, attached for administrative purposes to the Chief Operating Officer

3/ NAME OF THE PROCESSING

Name

**Notification on Confidential Counsellors of the Mediation Service of the EEAS:  
Selection and nomination of the confidential counsellors (1) &  
Activity of the network of confidential counsellors (2)**

Description

**1) Selection and nomination of the confidential counsellors**

Selection of candidates ready to assume the role of confidential counsellor.

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

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

- To launch a call of interest among staff via EEAS Intranet;
- To centralize the received candidatures and to operate a first sorting on the basis of eligibility and incompatibility in order to obtain a list of eligible candidates to convoke to be heard by the panel of selection;
- To hear the candidates and to draw up a list of the selected candidates;
- To subject the list of the selected candidates, having followed successfully all the specific modules of formation, to the AA for nomination;
- To communicate the names of the candidates nominated by the AA to the HR and the hierarchy;
- To publish the final list via the Intranet of the EEAS.

## 2) Activity of the network of confidential counsellors

The confidential counsellors provide support and protection to the alleged victims and direct them, if appropriate, towards the relevant department; they

- Ensure that cases are handled efficiently and try to solve the problem on the basis of detailed information;
- Deal with the information received in strict confidentiality so as to ensure the protection of the alleged victims;
- Analyse the request, monitor and prevent psychosocial risks;
- Attempt conciliation whenever appropriate
- Identify recurrent or multiple harassers;
- Give the appropriate information to other stakeholders (DG HR.D2, HR.IDOC) whenever the alleged victim wishes to start a formal procedure and with his/her consent;
- Answer questions put to the lead department by the EEAS's Legal Service or national or EU judicial authorities.

## 4/ PURPOSE OR PURPOSES OF THE PROCESSING

- 1) Selection and nomination of confidential counsellors;
- 2) Processing of cases of alleged harassment by the network of confidential counsellors under the informal procedure.

## 5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

1) In the context of the selection and nomination of confidential counsellors, the potential data subjects are candidates to the function of confidential counsellor.

2) In the context of the informal procedure, potential data subjects are any person working at the EEAS both at headquarters and in delegations.

The categories of data subjects are:

- Persons who contact the confidential counsellors (persons "*in difficulty*");
- Persons who have been complained about, e.g. alleged harassers;
- Witnesses or other persons somehow involved.

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

### 1) Selection and nomination of confidential counsellors

Files concerning the selection and nomination of confidential counsellors:

- Application form
- Motivation letter
- Curriculum vitae
- Declaration on the honour
- Deliberations of the panel

During the selection of confidential counsellors, candidates may communicate spontaneously sensitive data. In such a case it is considered, according to EDPS's guidelines<sup>3</sup>, that candidates have given their express consent to the collection of these data and to their further processing.

## 2) Activity of the network of confidential counsellors

Administrative files on cases contain information on the informal procedure:

- name, first name, age, gender, nationality;
- statute, grade;
- contact addresses;
- the date on which the person contacted the service;
- case history and messages, emails and all other paper or electronic documents on the case in question sent or received by the confidential counsellors.

Depending on the circumstances of the case, special categories of data pursuant to Article 10 of the Regulation i.e. data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership or data concerning health or sex life, may be processed.

The processing of these sensitive data pursuant to Article 10(2)(a) of the Regulation is subject to the express consent of the "person in difficulty" concerned.

The network of confidential counsellors does not compile files on persons other than those involved in a case. That does not, however, preclude the possible appearance, in certain situations, of other persons' data in the file of the case concerned.

## 7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The candidates to the function of confidential counsellor and the "*persons in difficulty*" are informed, that a privacy statement is available on the Intranet. The processing of data can be partially covered by Article 20[(1)] (a) and (c) of the Regulation.

The Privacy Statement could also be provided in paper form to the data subjects (be them the "person in difficulty" or other individuals involved) in order to ensure that they are fully aware of their rights.

The confidential counsellors inform other data subjects whose names come up in the course of work on a particular case (e.g. colleagues involved in a workplace conflict, the data subject's superiors) only with the prior consent of the "*person in difficulty*". According to point 3.8 of the opinion on the notification for prior checking received from the Data protection officer of the European Commission on the "Mediation Service of the European Commission" of 18 May 2009 (Case 2009-010), where the Mediation Service processes data relating to persons other than the "*person in difficulty*", "*in deciding whether or not those persons should be informed, the Service must take account, on a case-by-case basis, of Article 20[(1)] (a) and (c) of the Regulation on exceptions and restrictions to the application of Articles 11 and 12 of the Regulation*".

If and when deemed appropriate, data subjects other than the "person in difficulty" will also be referred to the Privacy Statement available on the intranet.

<sup>3</sup> Guidelines of February 2011 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, paragraph 2, page 5.

Making initial contact with the presumed offender and informing him or her of the data processing can only be realised with the express consent of the presumed victim. Priority is given, at all stage of the procedure, to the search for conciliation. As soon as the person in question is contacted, the Privacy Statement shall be delivered to him/her. Nevertheless, depending on the psychological state of the victim, as for reaching conciliation could take a certain amount of time, the information should be reported. This is an exception which derives from Article 20 – 1 points c) and e).

The Privacy Statement is available on the Mediation Service's page on the EEAS Intranet site at the following address (via intranet of the EEAS "EEAS zone/administration/Mediation Service/Legal basis") :

<http://webgate.eeas.testa.eu/eeas/eeaszone/?q=node/26857> (from EEAS building)

<https://webgate.eeas.testa.eu/eeas/eeaszone/?q=node/26857> (from KO building)

## 8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS (Rights of access, to rectify, to block, to erase, to object)

### 1) Selection and nomination of the confidential counsellors

The right of rectification of candidates to a selection of confidential counsellors shall be restricted to a period ending ten working days after the end of the deadline for the sending of documents regarding a given selection.

### 2) Activity of the network of confidential counsellors

The data subjects may exercise their right to access their personal data and the right to correct any inaccurate or incomplete personal data, as well as to request the removal of their personal data upon request to the Mediation Service (mailbox: EEAS MEDIATOR at [EEAS-MEDIATOR@eeas.europa.eu](mailto:EEAS-MEDIATOR@eeas.europa.eu)) without prejudice to the legal responsibility of the Mediation Service.

## 9/ AUTOMATED / MANUAL PROCESSING OPERATION

Data are collected manually.

## 10/ STORAGE MEDIA OF DATA

Documents are stored in electronic form in a specific database for the administration of files operated exclusively by the Mediation Service.

Paper files are in addition to the electronic files and do not always contain the same documents. The complete file is the sum total of the data held in the paper file and in the electronic file.

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

### Legal basis

Articles 1 and 31(1) of the EU Charter of Fundamental Rights.

Article 1d, Article 12a, Article 24, Article 86, Article 90 (1) and (2) of Staff Regulation.

Article 11 of the Conditions of Employment of Other Servants.

Mandate of the EEAS Mediation Service of 25 October 2012.

Commission Decision of 26 April 2006, on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, made applicable to the EEAS by the Decision of the Chief Operating Officer of 29 November 2011 to extend the application of certain Commission rules developing the provisions of the Staff Regulations and of the Conditions of Employment of Other Servants to the EEAS.

### **Lawfulness of processing**

According to Article 5(a) of Regulation (EC) No 45/2001, processing must be «*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*».

The selection of confidential counsellors and the conducting of informal procedures by the confidential counsellors are put in place to fight psychological and sexual harassment. That task is carried out in the public interest of the EEAS. The processing operations put in place contribute to their management of resources and functioning of the institution.

Article 5 (b), (d) and (e) are also applicable.

Article 27.2 a) and b) are applicable.

Good administrative practices in the framework of the Treaty of Lisbon and the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU) available on [http://www.eeas.europa.eu/background/docs/eeas\\_decision\\_en.pdf](http://www.eeas.europa.eu/background/docs/eeas_decision_en.pdf)

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

#### **1) Selection and nomination of the confidential counsellors**

The panel's deliberations are secret. However, the candidates may have access at their final evaluation obtained at the end of the selection process. The main recipient of the data is the EEAS's Mediation Service.

#### **2) Activity of the network of confidential counsellors**

Data and information transmitted to the confidential counsellors and to the lead department (Mediation Service) are dealt with in strict confidentiality. These data could 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, for example when necessary to ensure the protection of a staff concerned.

In the context of the informal procedure, the lead department and the confidential counsellors may have to share some information with other departments (Medical Service, Security Directorate, heads of MDR units). This transmission will be restricted to the information necessary for the competent entity to carry out its task.

When a formal procedure is launched, the Mediation Service could give some information to the Complaints Department in DG HR and/or the Investigation and Disciplinary Office (IDOC) on a case by case basis. The same occurs when national or EU judicial authorities are involved.

Personal notes of the confidential counsellors are not to be shared or transmitted.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

1) In the context of the selection and nomination of confidential counsellors, files concerning non selected counsellors are kept for one year after the end of the panel's deliberations. Data concerning the selected confidential counsellors are kept for the duration of their mandate.

2) The cases files are kept by the Mediation Service 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).

The confidential counsellor does not keep any personal data beyond the time limit necessary for him/her to accomplish his/her task (i.e. two months in general, except if an extension is granted because of an absence or leave). When this term expires, the documents sent by the alleged victim are returned to him/her or forwarded to the Mediation Service with his/her prior consent.

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)*

The EEAS will respond within 15 working days, in accordance with the administrative code of good conduct, to any request and if it is considered justified, the relevant correction or deletion will be performed within one calendar month. The Mediation Service will support any request to which its activities are associated. The electronic mailbox of the EEAS Mediator is [EEAS-MEDIATOR@eeas.europa.eu](mailto:EEAS-MEDIATOR@eeas.europa.eu).

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 may be kept in anonymous form for longer periods than mentioned in point 13 under Article 4(1) (e) of Regulation (EC) n° 45/2001 for statistical purposes.

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

Not applicable to the confidential counsellors network.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING *(Please describe):*

AS FORESEEN IN:

1 Article 27.2.(a)

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

The processing of personal data by the confidential counsellors network may require the processing of data concerning health and suspected offences, offences, criminal convictions and security measures.

↑ Article 27.2.(b)

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

The processing of personal data by the confidential counsellors network may require processing operations intended to evaluate personal aspects relating to the data subjects.

↑ Article 27.2.(c)

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

Not applicable for mediation.

↑ 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)

N/A

17/ COMMENTS

N/A

PLACE AND DATE: BRUSSELS, 08. 08. 2013

DATA PROTECTION OFFICER: Ms. CARINE CLAEYS, EEAS DPO \_\_\_\_\_

INSTITUTION OR BODY: EUROPEAN EXTERNAL ACTION SERVICE (EEAS)