

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1225

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 11/04/2014

CASE NUMBER: 2014-0430

INSTITUTION: EFCA - EUROPEAN FISHERIES CONTROL 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 Fisheries Control Agency, Avda. Garcia Barbon, 4, E-36201 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

3/ NAME OF THE PROCESSING

Implementation procedures related to EFCA's Anti-harassment policy:

- (1) Selection of confidential counsellors
- (2) Processing of the informal procedure

4/ PURPOSE OR PURPOSES OF THE PROCESSING

To implement EFCA's policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment and to appoint confidential counsellors as main actors in the informal procedure as foreseen in the policy.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

For the selection of confidential counsellors:

EFCA staff (Temporary and Contract agents).

For the informal procedure:

Each and every person working at EFCA, regardless of grade or contract of employment (this includes the trainees and all those working under a contract under national law).

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

(including, if applicable, special categories of data (Article 10) and/or origin of data)

For the selection of confidential counsellors:

Name, gender, grade, job title, nationality, e-mail address, unit, work phone number.

For the informal procedure:

- Data identifying and to contact the alleged victim, the alleged harasser and possible witnesses: family name, name, date of birth, gender, nationality, private address, e-mail address, unit, phone numbers;
- Description of the problem/conflict/situation;
- Notes taken by the confidential counsellor;
- The kind of intervention/action foreseen/taken;
- History of potential transfers;
- Declarations from witnesses, any kind of paper documentation available to support the facts.

Due to the nature of this procedure, the processing of data concerning health or sex life cannot be excluded although it is subject to the application of one of the exceptions set out in Article 10(2) of Regulation 45/2001.

The data processed is used to deal with cases of harassment (among them sexual and moral harassment). Data is collected to facilitate the resolution of difficult cases that may arise in the framework of the working relations.

(A) “Hard data”

- Data qualified as "hard" or "objective", i.e. administrative and identification data, usually collected directly from the data subjects. The collection of "hard" data aims at the identification of the person, the management of historical records and most importantly at the identification of recurrent and multiple cases. Among them figure the:

Form Opening of an informal complaint: Form filled by the Confidential counsellor manifesting the opening of an informal procedure (Annex I)

Form Closure of an informal complaint: Form filled by the Confidential counsellor manifesting the closure of an informal procedure (Annex II)

(B) “Soft data”

- 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 counsellors.

The collection of soft data does not follow systematic rules as to the type of data processed; it is not possible to determine a priori the type of data collected. This does not mean that the collection may be random. The data collected by the counsellors must be adequate, relevant and not excessive in relation to the efforts against harassment. This analysis must be conducted on a case by case basis by the counsellor.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information to be given to data subjects on the processing of data and communication is considered as especially important in the context of the Anti-harassment procedures.

In order to ensure that data subjects are informed on the processing of their data, EFCA provides the necessary framework in which the confidential counsellor assumes a central role in the processing.

For the selection of confidential counsellors and for the informal procedure:

Information on the personal data protection regarding processing under the remit of Unit A – Resources as dealing with Anti-harassment is included in **specific Privacy Statements** available on EFCA’s intranet (see Annexes III and IV). A **link** to the statement relating to the selection of confidential counsellors is also placed in the notice of the call for interests for the selection of confidential counsellors.

As concerns information to data subjects as regards processing under the remit of the confidential counsellor/s under the General implementing rules, the “**Manual for anti-harassment procedures**” is specifying references regarding data processing within the informal procedure. These references set the lines and conventions on the confidentiality and control of the processing to be respected by the confidential counsellors.

The “Manual for anti-harassment procedures” **is published on the EFCA intranet**, together with the list of confidential counsellors and their contact details.

The Manual foresees that during the initial meeting with the confidential counsellor, the privacy statement is given to the alleged victim, and, afterwards, to the alleged harasser if the alleged victim agrees to it.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

For the selection of confidential counsellors:

The candidate shall have the right of access to his personal data and the right to rectify data relating to the contact details contained in his application that is inaccurate or incomplete at any time during the selection procedure. However, the candidate can rectify data relating to admissibility criteria only until the closing date of the submission of applications.

The candidate may request his file to be complete. Should the candidate have any queries concerning the processing of his personal data, and to exercise the rights of access, rectification, blocking and erasure of data, he shall contact the Controller of the data, Head of Unit Resources. The candidate shall have right of recourse at any time to the European Data Protection Supervisor (www.edps.europa.eu).

Selected confidential counsellors may request that personal data of the list of confidential counsellors is suppressed, including their names in case of stepping back from the role of confidential counsellor.

For the informal procedure:

All persons whose personal data are processed in the course of an informal procedure are entitled to

access and rectify that data. To exercise these rights, they should contact the data processor (confidential counsellor or HR Section).

The right to rectification can at all times be exercised with regard to identification data, but can be harder to implement with regard to subjective data (allegations and declarations based on a subjective perception). The data subjects can control whether the data reflect the facts and perceptions they wanted to transmit and, in that sense, whether these are accurate and as complete as possible and in any case always ask that their respective opinion is added to the file, as well as any other document to complete the file.

Right to be informed and derogations

The alleged harasser(s) are only directly informed of ongoing processing and storage of data if and when the alleged victim has given his prior consent. This exception is based on the need to guarantee the protection of the alleged victim (Article 20(1)(c) of Regulation 45/2001).

If on expiry of the time limit for the confidential counsellor's involvement, the alleged victim still does not consent to the alleged harasser being informed of the existence of an informal procedure against him, any data relating to that person will be erased from the **opening of an informal complaint form** and no element allowing the case to be traced back and the person to be identified will be kept by the HR Section of EFCA in its archives.

Right of access and verification, and possible restrictions justified by the procedure

Data subjects may apply to the HR Section by email (EFCA HR mailbox) for accessing the information/documents stored relating to them.

Article 20(1)(c) of Regulation 45/2001 states that the data controller may restrict access to the information/documents so as to ensure that the procedure runs smoothly. Access will be granted under the following circumstances:

- All data subjects will be able to access the documents they have themselves transmitted;
- All data subjects, either alleged victims or alleged harasser(s), may have access to the form **opening of an informal complaint** for the case relating to them. As far as alleged harassers are concerned, this access will only be granted if they have been informed by the confidential counsellor of the existence of an informal procedure, after the alleged victim has given his express consent;
- Alleged victims also have access to the form closure of an informal complaint concerning their case;
- Access to any other document will only be granted if this document does not contain personal data relating to other persons 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. All data subjects may ask for their personal data to be updated or rectified where there are factual mistakes in the opening or closure forms concerning their case.

The data controller commits himself to deal with requests for access within the boundaries of his duty of care as well as to carry out the necessary verifications of the data and, if need be, rectify them.

Data subjects can at any time have recourse to the European Data Protection Supervisor, in particular to ask him to verify the data and inform them whether the data they could not access were dealt with correctly and, if not, whether the necessary corrections were made.

Following Article 20(1)(a) and (c) of the Regulation 45/2001, the right to information and the right to access or rectify of personal information may be restricted where such restriction is necessary for

the prevention, investigation, detection and prosecution of criminal offences or for the protection of the rights and freedoms of others. In that case the data subject shall at least be informed of the principal reasons for applying such restrictions and of his right to have recourse to the European Data Protection Supervisor.

It may be the case for instance that the alleged harasser experiences a limitation to his right of access in order to protect the alleged victim.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

For the selection of confidential counsellors:

A Selection for confidential counsellors is organized by the HR Section. The selection and eligibility criteria are established to best evaluate the candidates' aptitude and competences, regarding the specific tasks as confidential counsellors to conduct informal procedures in cases of harassment. Those criteria are presented explicitly in the call for interests.

Further to the receipt of applications, the eligibility of the candidates is checked by the HR Section. A selection panel assesses the eligible candidates through personal interviews.

The Executive Director finally accepts or rejects proposed appointments; a reserve list may be elaborated.

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 counsellor (gender, nationality, spoken languages, etc.).

For the informal procedure:

No automated processing is foreseen for the information procedure.

Individuals who consider themselves as a victim of psychological or sexual harassment may request for assistance by contacting directly a confidential counsellor of their choice, or their HoU, or the HR Section who will recommend them to approach confidential counsellors in accordance and point to the Anti-harassment procedures.

The role of the counsellor is first to listen to the alleged victim. Secondly, if necessary and with the consent of the alleged victim, a conciliation is started by addressing the alleged harasser, so as to reach an informal agreement between the parties. In case of failure of conciliation, the alleged victim may engage in a formal procedure.

Processing of (A) "Hard data" in the informal procedure

HR Section provides administrative support to the core activity and network of the confidential counsellors. HR Section may process "hard" data so as to perform its administrative tasks. The selection of hard data collected through the forms and communicated to the HR Section should allow the identification of recurrent and multiple cases and should not be excessive in relation to that purpose.

The forms for opening and the closure of an informal complaint are considered as "Hard data". They are set up by the confidential counsellor and are kept by the HR Section.

When the name of an alleged harasser comes up in **three separate cases**, the confidential counsellor or the HR Section shall bring this fact directly to the attention of the Executive Director. This shall

only happen with the consent of the victim(s) and for the sole purpose of detecting recurrent cases.

Processing of (B) “Soft data” in the informal procedure

The collection of soft data is to the confidential counsellor and does not follow systematic rules as to the type of data processed; it is not possible to determine a priori the type of data collected. This does not mean that the collection may be random. The data collected by the counsellors must be adequate, relevant and not excessive in relation to the efforts against harassment. This analysis must be conducted on a case by case basis by the counsellor. The data is kept with the confidential counsellor.

HR Section does not perform any consultation and processing of "soft" data for reasons of confidentiality (in particular with regard to the personal notes of the counsellors).

10/ STORAGE MEDIA OF DATA

For the selection of confidential counsellors:

Data related to the data processing in the context of selecting and appointing confidential counsellors are kept in the HR Section under the recruitment files.

For the informal procedure:

HR Section stores data related in the context of the informal procedure only as far as it concerns the identification/nomination of the confidential counsellor, or at a follow-up of the procedure (e.g. formal procedure) or at specific request (“Hard data”) separately and in locked cupboards.

The processing and storing of further documents produced in the context of the informal procedure fall under the remit of the confidential counsellor (“Soft data”).

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Article 12a of the Staff Regulations concerning behaviour which may infringe human dignity and Articles 11 and 81 of the Conditions of Employment of Other Servants

In addition, Articles 1 and 31 (1) of the EU Charter of Fundamental Rights complement the legal basis. The Charter states that every worker has the right to working conditions which respect his or her dignity.

Draft AB Decision on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment (Annex V).

Article 5(a) of Regulation 45/2001: Clearly in public interest and covered by mandate of EFCA as laid down in EC Regulation 768/2005;

The operation is performed in the public interest, as the procedures aim to combat psychological and sexual harassment therefore contribute to management of resources and functioning of EFCA.

Article 5(d) of Regulation 45/2001: complementary legal basis of the processing of harassment related data, according to which the processing must be based on the "unambiguous consent" of the data subject (see Article 2(h) of Regulation 45/2001).

Article 5(e) of Regulation 45/2001: In rare circumstances the processing operations can be

considered lawful if they are necessary to protect the vital interests of the data subject.

In cases of harassment, the intention of EFCA is not the collection of special categories of data. However, during the **selection of confidential counsellors**, the possibility that applicants provide for sensitive data in their application forms and/or any other attached documents (especially CV or motivation letter) cannot be excluded, this possibly without any data having been requested. In case of spontaneous communication of sensitive data, it should be considered that candidates have given their express consent to the collection of these data and to their further processing (Article 10(2)(a) of Regulation 45/2001).

Likewise, as regard the **informal procedure**, processing of data concerning health or sex life of the data subjects for instance cannot be excluded during the collection of information by the confidential counsellor.

Article 12(a) of the Staff Regulations) imposes an obligation on EFCA to prevent harassment and to guarantee a work environment free of any form of psychological or sexual harassment among their staff. Therefore, the processing of special categories of data can be regarded as necessary for complying with this obligation, inasmuch as those data are relevant for the case (Article 10(2)(b) of Regulation 45/2001).

When the alleged victim or harasser, or other witnesses and third parties, requesting assistance or providing information, possibly provide sensitive data without having been requested to, it should be considered that they have given their express consent to the processing of these data (Article 10(2)(a) of Regulation 45/2001).

Article 10(2)(a) and (b) being exceptions to a more general prohibition, they must be interpreted strictly. Thus, the processing of sensitive data is permissible only in so far as it is relevant for the specific purposes described above. Also, the data processing has to be necessary.

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

For the selection of confidential counsellors:

Members of the Selection Panel
HR Section Staff
Head of Unit A – Resources
Executive Director
EFCA DPO
Internal Audit Capacity of EFCA
Auditing services of the European Commission (IAS)
OLAF
ECA
EDPS
European Ombudsman

For the informal procedure:

(A) “Hard data” in the informal procedure

Confidential counsellors
HR Section staff
Head of Unit A – Resources
Executive Director
EFCA DPO

Internal Audit Capacity of EFCA
Auditing services of the European Commission (IAS)
OLAF
ECA
EDPS
European Ombudsman

(B) “Soft data” in the informal procedure

Confidential counsellors

Only the confidential counsellor shall have access to the confidential personal data collected (e.g. allegations and declarations made).

HR Section does not perform any consultation and processing of "soft" data for reasons of confidentiality (in particular with regard to the personal notes of the counsellors).

External data transfers:

The HR Section and the confidential counsellors may need to share some information with third parties/actors who have to play a role in the specific procedure (Medical Service, security services, social advisors/psychologists, judicial national authorities). This transmission shall be restricted to the information necessary for the competent entity to carry out its task. In these exceptional circumstances, external transfers may take place guided by the principle of confidentiality in the informal procedure.

For all transfers:

The transfer of personal data, either within or between Union institutions or bodies or to recipients, other than Union institutions and bodies, subject to Directive 95/46/EC, is safeguarded by Article 7 and 8 of Regulation 45/2001 and decided on a case by case basis. The controller verifies the competence of the recipient and evaluates the necessity for the transfer of the data. If doubts arise as to the necessity, the controller seeks further information from the recipient. In addition, the third parties are called to respect the principle that data must be processed in strict confidentiality and exclusively for the purpose for which it was submitted, i.e. within the strict framework either of the selection procedure, or of the informal procedure.

Statements of the alleged victim have to be considered as such and not as verified facts. When transferring the data, this difference is made clear to the recipient.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

For the selection of confidential counsellors:

Documentation for the selection of Confidential Counsellors will be held for **1 year** after fulfilling their obligation as a Confidential Counsellor. For unsuccessful applicants, documentation will be held for six months after the selection process.

For the informal procedure:

(A) “Hard data” in the informal procedure

The HR Section stores the forms opening and closure of an informal complaint and any further “hard” document, as received by the Confidential counsellor in a separate file for a period of **5 years** starting at the date of closure of the Informal procedure. The documents are stored for a **further five years** when a judicial or administrative procedure requiring that this documentation be consulted is still ongoing when the first term expires (e.g. request for compensation, and action before the Civil Service Tribunal or national judicial authorities).

In the case that the alleged harasser has finally **not been informed** of the existence of an informal procedure, no data relating to that person may be kept in the archives of the HR Section when the case is closed.

The related forms opening and closure of an informal complaint and any further “hard” document related are deleted by the HR Section after receipt of the **form closure of an informal complaint** if the latter form states that the alleged harasser has not been informed about the informal procedure against him.

(B) “Soft data” in the informal procedure

The confidential counsellor shall not keep any personal data beyond the time limit necessary for him to accomplish his task, normally two months or more because of an absence or leave. In no instance should the confidential counsellor keep personal data more than **three months** after the closure of a case. When this term expires, the confidential counsellor shall destroy the documents or return them back to the alleged victim.

Only the forms opening and closure of an informal complaint (“Hard data”) are to be forwarded by the confidential counsellor to the HR Section.

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 following legitimate request.

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)*

Processing operations involving personal data in informal anti-harassment procedures are subject to prior-checking in conformity with Article 27(2) (b) and possibly (a) of Regulation 45/2001, since they involve:

- for the **selection of confidential counsellors**, an evaluation of the candidates' ability to perform the function, and possibly processing operations related to health;
- for the **informal procedure**, an evaluation of the data subjects' conduct and possibly processing operations related to their health.

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

PLACE AND DATE: Vigo, 8 April 2014

DATA PROTECTION OFFICER: Rieke Arndt

INSTITUTION OR BODY: EFCA - European Fisheries Control Agency