

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

**REGISTER NUMBER: 1264**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 05/09/2014**

**CASE NUMBER: 2014-0846**

**INSTITUTION: EUROFOUND**

**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

EUROFOUND, WYATTVILLE ROAD, LOUGHLINSTOWN, DUBLIN 18, IRELAND

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

Human Resources Unit whose Head of Unit is Mr Raymond Comerford.

3/ NAME OF THE PROCESSING

Personal data processed by a performance assessment report (distinct from a classic annual appraisal) and prepared by the current manager of the assessed staff member.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The performance assessment determines whether a staff member, thus here a data subject, is suitable for appointment to a contract.

As described in Office Notice 2014-10 (*Annex 1*), a policy introduces the possibility of offering a more optimal contract (i.e.: TA 2(f)) than the contract held by the staff member at the time of his/her employment at Eurofound. The policy is described as follows (extract from Annex 1):

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

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

If a Temporary Agent, Article 2(f) vacancy arises, first consideration will go to staff already serving either as Temporary Agent, Article 2(b) or as Contract Agent (CA), provided that they were recruited from a selection procedure which was established to recruit Temporary Agents, Article 2(f) (formerly Article 2 (a)).

Contract Agents who were recruited from a CAST list or from a Selection Procedure that was advertised as being for Contract Agent only would be excluded from consideration. Temporary Agents, Article 2(b) who were recruited from a selection procedure established to recruit Temporary Agent, Article 2(b), would also be excluded from consideration.

The processing can be summarised as follows:

- i- When a vacancy arises for a temporary Agent 2(f) post, before the position is advertised, it will be established if staff were recruited as either Temporary Agent 2(a) or Contract Agent from a reserve list that would be used for filling the vacant post;
- ii- If such staff were recruited, their managers will be requested to complete a “Temporary Agent Assessment Report” (*see Annex 2*)
- iii- the manager will report on the staff member’s performance in the areas of work objectives, competencies (effectiveness) and conduct. The range of assessment options are “Outstanding”, “Above Average” and “Other”.
- iv- Based on the performance assessment results, a staff member receiving an Above Average or Outstanding rating would be considered for an appointment to Temporary Agent, Article 2(f) of the CEOS.
- v- A Staff Member who is unsuccessful and does not receive the minimum rating of Above Average may have further Assessments Reports carried out on him/her in due course, provided that their current employment contract is still extant.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects: Eurofound staff members are the data subjects of the processing, although Officials are excluded from this policy. The policy is limited to Temporary Agents and Contract Agents, within the constraints outlined in the policy (*see the Office notice extract provided in point 4 of this notification*).

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

Category of data (as listed in the Assessment form – Annex 2):

- Part A: “*Job specification, performance objectives and competencies*” of the data subject.
  - Point 1: Name, First name, Staff number, Grade/Function group, date of start of contract, job title
  - Point 2: main tasks and areas of responsibility of job holder (free text)
  - Point 3 and 4: Areas of performance to be assessed, including work objectives (5 objectives as outlined in appraisal form or other documentation, e.g. probationary report), and competencies (maximum of 3 identified on the job specification)
- Part B: “*Assessment*” of the data subject.

- Point 5: “Effectiveness in current post” provides a combination of ticking boxes limited to three ranking. Free text comment is available to justify the reasons and must be provided in the case of the two first choices. Point 5 refers to point 3.
- Point 6: “Competencies”, focusing on the three competencies selected in point 4 of the form. Free text comment.
- Point 7: “Conduct”, describing the level of compliance of the staff member with Eurofound values. Free text comment. These values are indicated in the form and they cannot be altered by the Manager conducting the assessment.
- Point 8: the form includes a “summary” of the above point 5, 6 and 7 within a table. The manager is then able to select the relevant rating through a final row “overall assessment”. No free text comment.
- Point 9: Any additional comments (free text comment).

- Part C: “*Recommendation and decision*”

- Point 10: The manager may indicate the identity of other staff members that have been consulted.
- Point 11: Signature of the Head of Unit (who may be different from the manager conducting the assessment).
- Point 12: Opinion of Head of HR with the possibility of highlighting recommendations to the Appointing Authority.
- Point 13: Director’s decision as Appointing Authority (free text comment).

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

- A copy of the completed Assessment is provided to the Staff Member concerned and to the Head of Unit. The Staff Member has the right to appeal the assessment under Article 90(1) of the Staff Regulation.
- A Privacy Statement is available to staff and managers (*Annex 3*) whose TRIM reference (GR-14-15801) is mentioned after Part C, on page 3 of the template Assessment form. The Privacy statement is also accessible on the DPO Register and Inventory of Eurofound intranet.

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

- Data subjects can access rectify block or erase data submitted under Part A.1, meaning data submitted by the staff member and related to him (*i.e: Name, First name, Staff number, Grade/Function group, date of start of contract, job title*). Upon request to the Data Controller, a data subject shall have the right of access to his/her personal data, the right to rectify any data that is inaccurate or incomplete and the right to request to delete them.
- It is noted that the other parts mentioned in point 6 of this notification, since they refer to the assessment and decision process, must be objected by the staff member by using the relevant Article 90.1 appeal procedure of the Staff Regulations.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The manual processing operation is detailed as follows:  
i-The form is filled in electronically by the Manager who prints and signs it. The template is available on TRIM. Manager fills in Part A and B, signs and dates under Part C (10-11).

- ii-The form is received by Head of HR who can express his opinion (Part C-12)
- iii-The form is transmitted to the appointing authority who signs and dates it (Part C-13).
- iv-The completed form is copied to the staff member concerned and to the Head of unit.
- v-The original form is inserted in the Personal File of the staff member (*see retention periods in point 13 of this notification for more details*)

10/ STORAGE MEDIA OF DATA

- Paper documents are stored in the Personnel files, locked in a cupboard of HR office.
- Electronic documents (i.e.: scanned assessment form and its possible subsequent contract) are stored on Eurofound's document management system (TRIM), in a secured container.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- Decision of Eurofound Director dated 18 June 2014 (Office notice 2014-10) and published on Eurofound Intranet
- Article 5a of Regulation 45/2001 on the protection of personal data
- Article 2(f), Article 6, Article 8, Article 9, Article 10, Article 12, Article 14, Article 15 of the Conditions of Employment of Other Servants.

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

- Data subject manager;
- Data subject head of Unit, if Head of Unit different from manager;
- Head of HR Unit;
- Eurofound Director as appointing authority;
- Possible staff members consulted by the data subject manager.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

- For successful candidates:
  - Data are retained for a period equal to 5 years after the end of the employment contract starting at the date of the decision of the appointing authority. The assessment form (Part A + B) is kept on the staff member's personal file. It is destroyed after this retention period.
  - Only the Decision (Part C of the form) and the newly established contract which is signed by both the successful candidate and appointing authority are kept in the Personal file of the data subject for a longer period, that is to say 10 years starting at the end of the contract.
  - Any other working documents are destroyed after the date of the decision of the appointing authority.
- For unsuccessful candidates:
  - Data are retained for a period of 2 years starting at the date of the decision of the appointing authority. The assessment report (Part A + B + C) is kept in a secure file within the HR Unit. It is destroyed after this retention period.
  - Any other working documents are destroyed after the date of the decision of the appointing authority.

As indicated at the bottom of the Assessment form, it is noted that the original assessment form is kept by HR, a copy being given to the assessed staff member for his own record and the staff member Manager.

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)*

Rectification, erasure or access takes place within 15 working days.

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

-European Ombudsman, Civil service Tribunal,  
-European Commission Internal Audit service,  
-Court of auditors.

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

The performance assessment provided in Office notice 2014-10 is distinct from a classic appraisal exercise or recruitment and thus operates on a stand-alone basis. Consequently, the data processing needs to be prior checked by the EDPS under Articles 27.2(b) and 27.2(d) as detailed below.

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)*

The performance assessment, if negative (*id est*: not reaching a rating equals to 'Above Average' or 'Outstanding'), would exclude the data subject to benefit from the provisions of the Office notice.

Other (general concept in Article 27.1)

17/ COMMENTS

It is noted that the Performance assessment form attached as Annex 2 is based on the “Probation report form” attached as Annex 4 for your information (GR-11-29345) and sent to the EDPS in 2011 as part of Prior Check 2011-0628.

PLACE AND DATE: DUBLIN, 20/08/2014

DATA PROTECTION OFFICER: MARKUS GRIMMEISEN

INSTITUTION OR BODY: EUROFOUND