

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

**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 15-05-2017**

**CASE NUMBER: 2017-0494**

**INSTITUTION: EDPS**

**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

EDPS

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

HRBA unit

3/ NAME OF THE PROCESSING

Anti-harassment procedure (in 2 steps) adopted by an EDPS decision of 10 December 2014

**1 Informal procedure**

The informal procedure allows monitoring of a pending case and may lead to an amicable resolution. However, it does not involve formal recording of the facts or the application of penalties: this is done in the formal procedure (see point 2 below).

Any person who feels they are the victim of psychological harassment or sexual harassment may contact one of the two confidential counsellors of the EDPS who will put the person in contact with

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

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

the network of confidential counsellors of the Commission, to avoid any potential conflict of interest in view of the small size of our institution.

The first objective of the confidential counsellor is to recognise and alleviate the alleged victim's distress suffering by receiving them and listening to them without preconceptions and without passing judgment. The confidential counsellor will inform the victim of the procedure laid down and of their rights. The counsellor will accompany and guide the victim, examining with them the various options and structures that will help find a satisfactory solution to the problem (directing them towards and placing them in contact with the Medical Service, etc). Any action taken by the confidential counsellor in the informal procedure may only be carried out with the prior agreement of the victim and must remain within the framework of their agreed mandate.

The confidential counsellor may meet the other party and play a conciliatory role in an attempt to reach an amicable solution. In all cases, confidential counsellors shall strive to listen carefully to the two parties, remain objective, clarify the facts and ensure good communication. Confidential counsellors have a period of one month within which to deal with the problem. This may be extended to two months if necessary. If no solution can be found in this period, counsellors may propose that the victim lodge a formal complaint (see point 2).

In the formal procedure, confidential counsellors are limited to providing support for the victim. Under this procedure, and depending on the requirements of the inquiry, confidential counsellors may also be called as witnesses, to testify to facts relevant to the inquiry which they have been informed during the informal procedure.

*Emergency measures* (moving one of the parties), which must take account of the needs of each particular situation, can be taken immediately. The aim of such a measure is to separate the two parties and may be proposed to the competent appointing authority by confidential counsellors or requested directly by one of the parties concerned.

These are precautionary measures designed to put an end to a given situation. They are also intended to give the victim a chance to recover. These measures may of course also be taken within the framework of the formal procedure, at the request of the alleged victim or on the initiative of the appointing authority concerned.

Requests for assistance from different people involving the same alleged harasser are to be considered disturbing. These will therefore be brought to the knowledge of the appointing authority. The Appointing Authority will decide on the most appropriate action to be taken and will inform IDOC of any recurrent cases it identifies. IDOC will inform the Appointing Authority which will, where appropriate, launch the procedures provided for in Annex IX to the Staff Regulations.

## **2 Formal procedure**

Any person in the institution who feels they are the victim of psychological harassment or sexual harassment is entitled under the Staff Regulations to initiate a formal procedure: either immediately, without first going through the informal procedure, or in the course of or at the end of the informal procedure.

A formal procedure can be initiated on the basis of a request for assistance under Article 24 of the Staff Regulations (concerning the Institution's obligation to assist its staff). When the administration has taken the appropriate steps, by carrying out an inquiry (under IDOC SLA) to establish the facts at the origin of the request in collaboration with the author of that request, this signifies that this request has been followed up and has not been implicitly rejected (absence of reply after 4 months).

If the request is rejected, either explicitly or implicitly, the person concerned can, where appropriate, lodge a complaint under Article 90 (2) of the Staff Regulations and - if it is rejected - submit an appeal to the Civil Service Tribunal.

Requests for assistance must be submitted to the Appointing Authority who will consult the Supervisors. The Appointing Authority can then instruct the IDOC to carry out an administrative inquiry to determine the facts of the case and apportion any responsibility.

Any person who feels they are the victim of sexual harassment must provide all details which might support their allegations.

In the case of psychological harassment, a degree of evidence is required. The person bringing a complaint of psychological harassment or sexual harassment may be accompanied at the hearings by a person of their choice, provided that person cannot be called as a witness in the course of the inquiry. At the end of its administrative inquiry IDOC will present its report, proposing either that the case be closed without further action or that disciplinary proceedings be opened. If it proposes the latter, the appointing authority may decide, once it has heard the person or persons concerned, to open disciplinary proceedings and apply the ensuing penalties if there is confirmation of the wrongful act. If the misconduct involves repeated action or behaviour, this will be taken into account in determining the seriousness of the misconduct and deciding on the appropriate disciplinary measure as well as a possible hierarchical relationship.

If the procedure results in recognition of psychological harassment or sexual harassment, victims shall receive compensation for the damage suffered under the terms set out in the Staff Regulations (second paragraph of Article 24) where appropriate.

If the procedure ends in no action, all those who have been interviewed will be informed. Nobody should be harmed or penalised by the fact that he/she has lodged a complaint; unless it is proven that it has been manifestly in an abusive manner or in bad faith. In this case, the appointing authority may take disciplinary measures, either on its own initiative or at the request of the wrongfully accused person.

#### 4/ PURPOSE OR PURPOSES OF THE PROCESSING

The decision of 10 December 2014 sets out the EDPS policy and formal and informal procedures to prevent and to deal effectively and efficiently with any actual or potential cases of psychological or sexual harassment at the workplace.

The confidential counsellors of the EDPS are appointed by agreement between the Director and the Staff Committee.

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

All EDPS staff members

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

The confidential counsellors will open files containing different types of data:

Hard data (or objective): i.e. administrative and identification data, usually collected directly from the data subjects (possibly by means of opening and closing forms). 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.

Soft data (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 selection of hard data collected through the forms and communicated to the HR should therefore allow the identification of recurrent and multiple cases and should not be excessive in relation to that purpose.

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 fight against harassment. This analysis must be conducted on a case by case basis by the counsellors.

Files will contain statements and communications of persons subject to harassment, defendants or witnesses. These documents may contain data relating to third parties. The data may relate to health, sex life or to suspected offences.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Regulation 45/2001 (herein after the "Regulation") applies to the processing of personal data carried out in the framework of the EDPS anti-harassment procedure.

In compliance with articles 11 and 12 of the regulation, the EDPS provides the staff with the following information:

The controller of data is the EDPS.

The purpose of the processing is to prevent and to deal effectively and efficiently with any actual or potential cases of psychological or sexual harassment at the workplace. The confidential counsellors of the EDPS are appointed by agreement between the Director and the Staff Committee.

The legal basis for processing data is Articles 12a & 24 of Staff Regulations – EDPS decision of 10 December 2014.

Processing is lawful because of:

- Article 5(e) of the "Regulation" ("the processing is necessary in order to protect the vital interests of the data subject").

- Article 5(a) of the "Regulation ("processing is necessary (...) in the legitimate exercise of official authority vested in the Community institution or body")
  - Article 5(d) of the "Regulation ("the data subject has unambiguously given his or her consent")
- For the processing of special categories of data (inasmuch as those data are relevant for the case), Article 10.2.b of Regulation 45/2001 will apply as it may be justified if necessary for *"the purposes of complying with the specific rights and obligations of the controller in the field of employment law"*.

The categories of personal data dealt with are the following:

Hard data (or objective): i.e. administrative and identification data, usually collected directly from the data subjects (possibly by means of opening and closing forms). 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.

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Files will contain statements and communications of persons subject to harassment, defendants or witnesses. These documents may contain data relating to third parties. The data may relate to health, sex life or to suspected offences.

Data retention: the confidential counsellor may keep the hard data for a maximum of 5 years. But personal and soft data won't be kept further than the necessary time for the procedure to reach an end, and for a maximum of 3 months after the closure of the case.

Rights of access, to rectify, to block and to erase:

A distinction is being made between objective ("hard") and subjective ("soft") data in granting the right of rectification. If inaccurate hard data should be rectified following Article 14, the notion of inaccurate soft data refers to the fact that specific statements have been made by the data subject. In the case of soft data, the data subject may also ask to add his/her opinion to the file to ensure the completeness of the file in accordance with Article 14.

Article 20(1) (c) of the Regulation provides for certain restrictions to this right, in particular where necessary to safeguard *"the rights and freedoms of an identified third party override the access of the data subject to the information"*. In this case, data subjects may have their right of access restricted.

Article 20.3 must also be taken into account: *"If a restriction provided for by paragraph 1 is imposed, the data subject shall be informed, in accordance with Community law, of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the European Data Protection Supervisor"*.

Article 20.4 must also be taken into account: *"If a restriction provided for by paragraph 1 is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made"*.

Information may be obtained directly by the data subject ("direct access") or, in other circumstances, by a public authority ("indirect access", usually exercised by an authority in charge of data protection, in the present cases by the EDPS).

Finally, Article 20.5 provides that: *"Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect"*. It may be necessary to defer provision of information in order to protect the victim.

As a general rule to restrictions, any restriction of access will be examined on a case by case basis and in the light of the principle of proportionality, and if necessary after the consultation of the DPO.

#### Recipients:

The data and information provided to confidential counsellors are treated in the strictest confidence. This data is provided to the competent authorities in the framework of informal procedures on harassment and with the consent of the person who forwarded them. Transmission can be made without consent only in cases of exception provided for in Regulation with Article 20 §1 c), that is to say, when this is necessary to ensure the protection of those concerned.

The confidential counsellor may be required to process a case under the informal procedure, to communicate certain information to others (medical service, security service, social workers and human resource managers). The information transmitted will be limited to what the other person needs to know to perform the duties.

HRBA unit, as providing for an administrative support to the core activity and network of the confidential counsellors, may be considered as a recipient but only for hard data.

Other possible recipients of ad hoc transfers: EDPS DPO, Director, IAS, Court of Justice. In cases where a formal procedure is initiated, the administration sends to IDOC the possible folder that contains only relevant for the purpose of the complaint or the investigation.

In exceptional circumstances, external transfers may take place, for example, when data are transferred to third actors who have to play a role in the harassment procedure (social advisors/psychologists) or to judicial national authorities. Confidentiality plays a crucial role in the informal procedure. The necessity for transferring data will be carefully analysed beforehand, in compliance with Article 8 (in cases of recipients subject to national law adopted pursuant to Directive 95/46/EC).

In case of transfers to recipient not subject to the same Directive, the transfer will comply with Article 9 of the Directive 95/46/EC.

Where appropriate, queries or complaints can be sent to the person responsible for processing or to the EDPS Data Protection Officer ([EDPS-DPO@edps.europa.eu](mailto:EDPS-DPO@edps.europa.eu)).

## 8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

A distinction is being made between objective ("hard") and subjective ("soft") data in granting the right of rectification. If inaccurate hard data should be rectified following Article 14, the notion of inaccurate soft data refers to the fact that specific statements have been made by the data subject. In the case of soft data, the data subject may also ask to add his/her opinion to the file to ensure the completeness of the file in accordance with Article 14.

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Finally, Article 20.5 provides that: *"Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect"*. It may be necessary to defer provision of information in order to protect the victim.

As a general rule to restrictions, any restriction of access will be examined on a case by case basis and in the light of the principle of proportionality, and if necessary after the consultation of the DPO.

## 9/ AUTOMATED / MANUAL PROCESSING OPERATION

Manual processing operation with the use of standard IT tools.

## 10/ STORAGE MEDIA OF DATA

Files kept by the confidential counsellors in lock cupboards or on computers with passwords.

11/      LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis: Articles 12a & 24 of Staff Regulations – EDPS decision of 10 December 2014

Lawfulness of the processing: Articles 5a, 5d and 5e of Regulation 45/2001

For the processing of special categories of data (inasmuch as those data are relevant for the case), Article 10.2.b of Regulation 45/2001 will apply as it may be justified if necessary for "*the purposes of complying with the specific rights and obligations of the controller in the field of employment law*".

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

The data and information provided to confidential counsellors are treated in the strictest confidence. This data is provided to the competent authorities in the framework of informal procedures on harassment and with the consent of the person who forwarded them. Transmission can be made without consent only in cases of exception provided for in Regulation with Article 20 §1 c), that is to say, when this is necessary to ensure the protection of those concerned.

The confidential counsellor may be required to process a case under the informal procedure, to communicate certain information to others (medical service, security service, social workers and human resource managers). The information transmitted will be limited to what the other person needs to know to perform the duties.

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In exceptional circumstances, external transfers may take place, for example, when data are transferred to third actors who have to play a role in the harassment procedure (social advisors/psychologists) or to judicial national authorities. Confidentiality plays a crucial role in the informal procedure. The necessity for transferring data will be carefully analysed beforehand, in compliance with Article 8 (in cases of recipients subject to national law adopted pursuant to Directive 95/46/EC).

In case of transfers to recipient not subject to the same Directive, the transfer will comply with Article 9 of the Directive 95/46/EC.

13/      RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The confidential counsellor may keep the hard data for a maximum of 5 years. But personal and soft data won't be kept further than the necessary time for the procedure to reach an end, and for a maximum of 3 months after the closure of the case.



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)*

See point 8 above.

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

In exceptional circumstances, external transfers may take place, for example, when data are transferred to third actors who have to play a role in the harassment procedure (social advisors/psychologists) or to judicial national authorities. Confidentiality plays a crucial role in the informal procedure. The necessity for transferring data will be carefully analysed beforehand, in compliance with Article 8 (in cases of recipients subject to national law adopted pursuant to Directive 95/46/EC). In case of transfers to recipient not subject to the same Directive, the transfer will comply with Article 9 of the Directive 95/46/EC.

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

AS FORESEEN IN:

↑ Article 27.2.(a)

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

Assessment of possible disciplinary measures.

↑ Article 27.2.(b)

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

Evaluation of the conduct of data subject in case of harassment, possible assessment of data subject's health.

17/ COMMENTS
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PLACE AND DATE: BRUSSELS, 15 MAY 2017

DATA PROTECTION OFFICER: MASSIMO ATTORESI

INSTITUTION OR BODY: EDPS