Opinion on a notification for Prior Checking
received from the Data Protection Officer of the European Institute for Gender Equality
regarding anti-harassment procedures and aspects of confidentiality

Brussels, 18 December 2014
(Case 2013-0732)

1. Proceedings

On 28 June 2013, the European Data Protection Supervisor (EDPS) received a notification for
prior checking under Article 27(2) of Regulation (EC) No. 45/2001 (the Regulation) relating
to the processing of personal data regarding the anti-harassment procedures and aspects of
confidentiality from the Data Protection Officer (DPO) of the European Institute for Gender
Equality (EIGE).

Given that this is an ex-post case, the deadline of two months for the EDPS to issue his
Opinion does not apply. The EDPS adopted Guidelines concerning the informal anti-
harassment procedure\(^1\). Therefore, this prior checking Opinion will only focus on those
aspects that diverge from the Guidelines and/or are not compliant with the Regulation.

2. Legal analysis

Scope of the notification

The notification envisages only data processing operations specific to the informal procedure
dealing with harassment cases. In this regard, EIGE adopted a policy "on protecting the
dignity of the person and preventing psychological harassment and sexual harassment", a
policy which is to be implemented into two different procedures: "informal" and "formal".

Processing operations under the current prior checking analysis, based on the information
provided in the notification, are likely to be carried out within the informal procedure by the
counsellors. Processing operations within the formal procedure fall into the scope of the
administrative inquiry and disciplinary procedures and, therefore, they will not be addressed
in this Opinion\(^2\). The EDPS however notices that processing operations as regard these
inquiries and procedures have not yet been notified for prior checking; the EDPS recommends

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\(^1\) EDPS Guidelines 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, adopted in February
2011 (available at https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-02-

\(^2\) See also EDPS Opinion in case 2010-0722 (informal procedure in harassment cases at FRA), available on our
website.
EIGE to notify these processing operations after consulting the *Guidelines on administrative inquiries and disciplinary proceedings*³.

In addition, the modalities of selection of the confidential counsellors, who play an essential role in the informal procedure, are not addressed in this notification. The EDPS invites EIGE to notify the procedure of selection of the confidential counsellors, after consulting the *Guidelines concerning the anti-harassment procedure*.

**Information to be given to the data subjects**

According to the notification, "staff members are made aware that their claims remain confidential unless they wish to make them public" and "the policy is available to all staff members on the Internet". Indeed, section 5 of the policy specifies that "confidentiality is guaranteed during and after the informal and formal procedures" and that "compliance with the legislation on the protection of personal data applies within (...) the informal procedure". These specifications are not sufficient to inform the data subjects with regard to the processing operation under review, pursuant to Articles 11 and 12 of the Regulation. In order to comply with these provisions, EIGE should adopt a **distinct privacy notice** for the informal procedure in harassment cases, which should contain information on the controller, the purpose of the processing, the legal basis, the data processed, the recipients of the data, the retention period, the rights of the data subject, the origin of the data and the security measures taken.

The privacy notice should be published on the intranet. In addition, the staff members seeking the assistance of the confidential counsellors, as well as the other data subjects (alleged harasser and witnesses) should be informed individually with regard to the processing of their personal data, taking into account the limitations in Article 20 of the Regulation⁴.

**Rights of the data subject**

EIGE specified in the notification that "the data subject's rights will vary dependent on the case and the procedure (informal, formal) that is taking place". The rights of the data subject are clearly provided in Section 5 of the Regulation⁵. Therefore they do not vary, while the procedures and modalities for granting the exercise of these rights may, indeed, vary⁶. EDPS recommends EIGE to foresee the modalities of exercising the rights of the data subject, establishing contact points for requests (e.g. for access, rectification) and clear procedures, following the recommendations set out in the Guidelines on the anti-harassment procedure. The modalities of exercising the rights of the data subject should be included in the Privacy notice.

**Retention policy**

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⁴ See *Guidelines on the anti-harassment procedure*, p. 12.
⁶ See *Guidelines on the anti-harassment procedure*, Section 6 on "The rights of the data subject".
Pursuant to Article 4(e) of the Regulation, data must be "kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed". According to the notification, there is no retention policy in place yet. EIGE should define a time period for which the data processed are kept, taking into account the requirement in Article 4(e) of the Regulation.

[...]

3. Conclusion

There is no reason to believe that there is a breach of the provisions of the Regulation, provided that the EDPS recommendations are fully taken into account. In particular, EIGE should:

- Adopt a distinct privacy notice for the informal procedure in harassment cases, which should contain information according to Articles 11 and 12 of the Regulation;
- Publish the privacy notice on the intranet and make it available individually to the data subjects concerned;
- Foresee the modalities of exercising the rights of the data subject, establishing contact points for requests and clear procedures and include them in the Privacy notice;
- Define a time period for which the data processed are kept, taking into account the requirement in Article 4(e) of the Regulation;
- ...
- Obtain confidentiality declarations from all the persons involved in the processing.

We would like to invite the EIGE to inform us about the implementation of these recommendations within three months after receipt of this letter.

(signed)

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Supervisor