

REGISTER NUMBER: 624

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 23/09/2010

Case number: 2010-0722

Institution: FRA

Legal basis: article 27-5 of the regulation CE 45/2001⁽¹⁾

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and adress of the controller

Paul Cozzi (Head of Human Resources and Planning Department), European Union Agency for Fundamental Rights (FRA), Schwarzenbergplatz 11, 1040 Vienna, Austria

2/ Organisational parts of the institution or body entrusted with the processing of personal data

Head of Human Resources and Planning Department: Human Resources

3/ Name of the processing

Implementation of the policy of the European Union Agency for Fundamental Rights on protecting the dignity of the person and preventing harassment and sexual harassment.

4/ Purpose or purposes of the processing

In accordance with the EB Decision 2009/02, data is collected and processed for the following purpose:

- To handle requests for assistance in cases of psychological and sexual harassment within the informal or formal procedure.
- To support and protect the alleged victim;
- Efficient and proper administration of cases to be resolved as soon as possible;
- Guarantee confidentiality;
- Create conciliation;
- Prevention of cases;
- Follow up and evaluate the policy;
- Identify recurrent cases and provide reference for disciplinary actions;
- Provide data for the formal procedure;
- Reply to the Ombudsman or legal authorities at national or EU level.

5/ Description of the category or categories of data subjects

Data subjects are individuals who feel they are the victim of psychological harassment or sexual harassment and submit a request for assistance, as well as individuals who have been accused of such a conduct.

6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)

It is the data provided by the individuals who feel they are the victims of psychological or sexual harassment in connection with their request for assistance and subsequent informal or formal procedure, as well as individuals who have been accused of psychological or sexual harassment in connection with conducting the informal or formal procedure; e.g. identification, administrative and career data, data about the conduct of individuals. They are contained in the opening and closing forms (**see Annex 1**) and the files or documents collected to properly administer the case.

In principle, the processing operation does not include sensitive data as described under Article 10.1 of Regulation (EC) No 45/2001. However, the possibility that personal data related to sex life and health could be processed cannot be excluded if they are the reason for harassment or a key point within a case (Article 10.2 and 10.3 of the Regulation).

7/ Information to be given to data subjects

The EB Decision 2009/02 laying down the rules for preventing psychological or sexual harassment contains general provision on compliance with the data protection legislation of both the formal and informal procedures. Data subjects will be provided with the information on their rights by the confidential counsellor after having requested his/her assistance.

A specific privacy statement will be published to all staff and be put in the FRA Intranet (**see Annex 2**)

8/ Procedures to grant rights of data subjects (rights of access, to rectify, to block, to erase, to object)

Right to access data - data subjects may request access to their data by sending an e-mail to the specific functional mailbox or by contacting the contact person in Human Resources (i.e. the person who coordinates the network of the confidential counsellors)

Right to rectify - data subjects have the right to rectification of the factual data by for example providing documents as evidence to the file. The data subject's right of rectification only covers objective and factual data, and not assessments of those involved in, and responsible for conducting the procedure.

Right to block - data subjects have the right to block one's own data at any time.

Right to erase - Data may be erased if the processing of data is unlawful.

In all the above-mentioned cases data subjects must send an e-mail to the specific functional mailbox with their request or contact the Human Resources or the confidential counsellors who is dealing with his/her case.

Confidentiality is guaranteed during and after the informal and formal procedure.

However, data subjects have a right of access to the overall final assessment of the situation (recorded in the report after completing the administrative inquiry).

To obtain access, they must send a written note or e-mail to the data controller.

9/ Automated / Manual processing operation

Automated: Receipt of requests for assistance via e-mail to the dedicated functional mailbox (FRA-HArasement@fra.europa.eu).

Manual: Receipt of requests for assistance via calling the central telephone number or by contacting the Human Resources Manager/confidential counsellor in person.

During consultations confidential counsellors may take notes.

10/ Storage media of data

Electronic documents are stored in an encrypted USB key or in a secure environment (protected by a password) .

The paper files are locked in cupboards.

11/ Legal basis and lawfulness of the processing operation

- Articles 1d, 12a of the Staff Regulations
- Article 5(a), 5(d) of the Regulation (EC) No 45/2001,
- FRA EB Decision 2009/2 of 18 September 2009 on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment.

12/ The recipients or categories of recipient to whom the data might be disclosed

The recipients are:

- The contact person in the Human Resources (i.e. the person who assist the Confidential Counsellors)
- Confidential Counsellors officially appointed by the Director and specifically trained for providing assistance in cases of psychological or sexual harassment.
- Director in the event of recurrent cases and the formal procedure
- Under the formal procedure, third parties who will deal with the investigation

13/ retention policy of (categories of) personal data

Under informal procedure, the Human Resources stores the opening and closing forms in a central archive for five years from the start date of the informal procedure. They will not contain the names of the alleged harassers who were not informed of the informal procedure.

The confidential counsellors will not keep any personal data together with any documents beyond the time needed to deal with the case

Under formal procedure data is retained for five years with an extension of five years in cases a judicial or administrative procedure is still ongoing (e.g. action before the Civil Service Tribunal or national judicial authorities)

**13 a/ time limits for blocking and erasure of the different categories of data
(on justified legitimate request from the data subject)
(Please, specify the time limits for every category, if applicable)**

For as long as the case is not closed. Under the informal procedure the case should be closed within a period of one to three months in general.

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,

After the elapse of the abovementioned storage period any further data needed for statistical purposes is extracted and the remaining personal data is destroyed.

15/ Proposed transfers of data to third countries or international organisations

In the formal procedure where an administrative inquiry is opened, personal data might be transferred to third parties. In such cases a sentence will be included in the document stating that the personal data can be used only for the purposes of the specific harassment investigation procedure.

In case that personal data are transferred to national authorities for investigation, the Agency should comply with Article 8 of Regulation (EC) No 45/2001.

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):

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,

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

Annex 1: opening and closing forms

Annex 2: Specific privacy statement

PLACE AND DATE: Vienna,

DATA PROTECTION OFFICER: Nikolaos FIKATAS

INSTITUTION OR BODY: European Union Agency for Fundamental Rights