

REGISTER NUMBER:

NOTIFICATION FOR PRIOR CHECKINGDate of submission: **05 May 2011**Case number: **2011-396**Institution: **Frontex**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****Tomasz Cybulski, Head of Human Resources Sector, Frontex, Rondo ONZ 1, 00-124 Warsaw, Poland****2/ Organisational parts of the institution or body entrusted with the processing of personal data****1) The Head of Human Resources Sector; 2) The Coordinator for anti-harassment procedures; 3) The Confidential Counsellors appointed by the Executive Director.****3/ Name of the processing****Frontex policy protecting the dignity of the person and preventing psychological harassment and sexual harassment.****4/ Purpose or purposes of the processing****To implement the procedures intended to combat and prevent psychological harassment and sexual harassment at Frontex, and in particular:**

- **To carry out selection of Confidential Counsellors;**
- **To produce documentation related to informal procedure stipulated in the above mentioned Frontex Policy.**

5/ Description of the category or categories of data subjects**Staff members (Temporary Agents and Contract Agents) and Seconded National Experts, trainees, special advisors and local staff****6/ Description of the data or categories of data***(including, if applicable, special categories of data (article 10) and/or origin of data)***All data likely to be found in the course of a selection procedure for confidential counsellors and in the course of an informal procedure but prohibition of processing special categories of data according to Article 10(1) of the Data Protection Regulation, except in the circumstances mentioned in the 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, paragraph 2 " Processing of special categories of data".**

7/ Information to be given to data subjects

Information is provided in the 'Manual of Procedures for the application of the Implementing Rule on Frontex policy protecting the dignity of the person and preventing psychological harassment and sexual harassment' (called hereandafter **Manual of Procedures**) in the heading 8 'Data processing' (in particular point 8.4 'Information to the persons concerned') - the data subject, 'who approach Confidential Counsellors or the Coordinator, will receive a copy of the declaration on the protection of data of a personal nature (Annex IV to the Manual) and once they confirm their wish to start an informal procedure and following an initial interview.'

The Confidential Counsellor and Data Controller will sign a relevant confidentiality and data protection declaration, which is annexed to the this Manual (Annex V) - by this declaration the Confidential Counsellor is obliged to process the data according to the data protection regulation.

Both Annexes cite the provisions of the Data Protection Regulation, extract of which is also included in the Manual of Procedure.

8/ Procedures to grant rights of data subjects

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

The procedures are provided in the Manual of Procedures in the heading 8 about data protection, in particular point 8.7 "Access of data". The alleged harassers and the alleged victims will be informed by means of the declaration on data protection that they may approach the data controller to exercise their right of access to the data concerning them, subject to limitations described in the Article 20(1) (c) of the Regulation No 45/2001.

The data controller will give those persons requesting the access to the following documents concerning him/her:

- opening form for a case that relates to them, but in the case of the alleged harasser, this access will depend on whether he/she has been informed by the Confidential Counsellor, following agreement of the victim, of the existence of an informal procedure relating to them (an exception on agreement of the victim exists, when it is intended to constitute a measure of protection for victims);
- documents which they have transmitted themselves;
- closing form of their case;
- other documents, if they do not contain personal data relating to another person or confidential declarations

The persons concerned will be informed in the "declaration on data protection" of their right to make an approach to the European Data Protection Supervisor to check whether their data has been processed correctly.

9/ Automated / Manual processing operation

Primarily automated processing operations with the use of IT applications. Manual processing also foreseen.

10/ Storage media of data

Paper files, may also be digital media.

11/ Legal basis and lawfulness of the processing operation

Articles 1(d), 12, 12(a) and 24 of the Staff Regulations of Officials of the European Communities and Article 11 of the Conditions of Employment of other Servants of the European Communities.

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

Internal: Executive Director, Deputy Executive Director (when deputising ED), Director of Administration Division; Legal Affairs Unit; Frontex DPO, Head of Human Resources Sector. **External :** in exceptional circumstances, to third actors who have to play a role in the harassment procedure: medical staff, social advisors, psychologists or Polish judicial authorities (only upon reception of a Court summons). The latter in particular respect to the EDPS suggestions stipulated under point 5 of the Guidelines concerning the processing of personal data during the selection of confidential counsellors and the informal procedures for cases of harassment in European institution and bodies.

It is stipulated in the Manual in the point 8.6 "Data recipients" that, in order to gain an understanding of a case and resolve it successfully under the informal procedure, certain information may be communicated to other services on a 'need to know' basis. Such a need shall be thoroughly assessed by the Confidential Counsellors or the Coordinator on the case by case basis. Access to the information will only be authorized during the informal procedure for those persons with a 'need to know' for the exercise of their functions or fulfilment of their role. This sharing of confidential information will be undertaken, in principle, with the consent of the victim, except in the event of concerns relating to the protection of the person concerned (described in point 2.2.1 of the Manual). Sharing of confidential information, within this context, will generally take place by way of verbal exchanges in the course of meetings or telephone conversations.

The Head of HR or Head of LEG could also provide information in response to questions from the EU Ombudsman or the Court of Justice of the EU.

13/ Retention policy of (categories of) personal data

Retention policy is defined under heading 8.5 'File retention' of the Manual of Procedures.

In the point 8.5.1 'Selection of the Confidential Counsellor' it is stipulated that the data related to not selected candidates for the Confidential Counsellors will be stored for seven months following the appointment decision. The data related to the appointed Confidential Counsellors will be stored during their term of office.

In the point 8.5.2 'Informal procedure' it is stipulated that the Confidential Counsellor may keep the documents for the case he/she deals with for a period of:

- opening and closing forms - for max of 3 months following the closure of a case;
- other relevant documents, for which the consent of the alleged victim has been attained - the same as the opening and closing forms;
- personal notes ('aid of memory') - will be kept only during the course of the case.

If alleged harasser has not been advised of the existence of the informal procedure relating to him - his name can be recorded for on the forms for max three months after the closing date of the case (see points 4.3.2 'File closing form', 4.9 'Closing a case', 8.4 'Information to the persons concerned'.

All relevant forms and documents are sent then to the Coordinator after having informed the alleged victim. The Coordinator will keep those documents for a maximum of five years from the start date of an informal procedure. This file will not contain the names of alleged harassers who were not informed of the informal procedure. This period is considered necessary for the HR to evaluate the policy, reply to any legal questions and for the Coordinator to identify multiple or recurrent cases.

Files may be held for a further five years if there is an administrative or legal procedure ongoing (requests from the Ombudsman, the EU Civil Service Tribunal) which require consultation of the files.

Statistical data will be held without limit in an anonymous format, in accordance with Article 4(1)(e) of Regulation No 45/2001.

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)

Annex IV and point 8.5.2 'Informal procedure' of the Manual of Procedures foresees that data subjects have the right to block one's own data at any time. They also have the right to erase one's own data. Data may be erased if the processing of data is unlawful.

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,

Statistical data is foreseen to be kept without time limits in anonymous format, in accordance with Article 4(1)(e) of the Data Protection Regulation.

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

No transfers foreseen.

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

As foreseen in 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, paragraph 2 "Processing of special categories of data"

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