

Declaration on the protection of personal data within the framework of an informal procedure following alleged psychological harassment (specific privacy treatment)

Personal data collected as part of an informal procedure following alleged psychological harassment are dealt with in accordance with the Regulation on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000,

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32001R0045&model=guicheti).

The information required by Articles 11 and 12 of the Regulation is summarised below.

Data controller

Head of Human Resources and Planning Department.

Purpose of the processing

Processing of cases of alleged harassment by the contact person of the Human Resources and the network of confidential counsellors under the informal procedure.

In accordance with the manual of procedure, data are collected and processed for the following purpose:

- 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.

Legal basis

Staff Regulations (Regulation (EC, ECSC, Euratom) No 23/2005): Articles 1d, 12a, 24, 86, 90.

Executive Board decision 2009/02 of 18 September 2009 on the policy on protecting the dignity of the person and preventing psychological and sexual harassment.

Processed data

The identity of the data subjects (i.e. alleged victim and alleged harasser) is mentioned in the opening form, and the closing form describes the main stages in the management of the case. The case files contain statements and communications of the alleged victims, of the alleged harasser(s) or of witnesses. These documents may contain data relating to third parties.

Recipients of the data

Data and information transmitted to the confidential counsellors and to the contact person in the Human Resources are dealt with in strict confidentiality. These data will only be transmitted to the competent bodies when a formal procedure is launched and with the prior consent of the person who gave them to the recipients. Transmission without prior consent can only occur in exceptional cases covered by Article 20(1)(c) of Regulation 45/2001, i.e. when necessary to ensure the protection of the alleged parties.

In the context of the informal procedure, the contact person in the Human Resources and the confidential counsellors may have to share some information with others (Medical Advisor/psychologist for instance). This transmission will be restricted to the information necessary for the competent entity to carry out its task.

When a formal procedure is launched, the opening and closing forms as well as the case file with the documents that are relevant for processing the complaint or the investigation are made available to the investigators by the contact person. The same occurs when the national or EU judicial authorities are involved.

Personal notes of the confidential counsellors are not to be shared or transmitted.

Retention of data

The contact person in the Human Resources stores the opening and closing forms in a central archive for five years. They will not contain the names of the alleged harassers who were not informed of the informal procedure.

Five years is the period considered necessary for the Human Resources to evaluate the policy, reply to any legal questions and to identify multiple or recurrent cases. Files may be held for a further five years if there is an administrative or legal procedure (requests from the Ombudsman, Civil Service Tribunal) necessitating their consultation. Statistical data is being held without limit in anonymous format.

The confidential counsellor does not keep any personal data beyond the time limit necessary for him/her to accomplish his/her task

Right to be informed and derogations

The alleged harasser(s) is only directly informed of the rules for the processing and storage of the data if and when the alleged victim has given his/her prior consent. This exception is based on the need to guarantee the protection of the alleged victim (Article 20(1)(c) of Regulation 45/2001).

If on expiry of the time limit for the confidential counsellor's involvement, the alleged victim still does not consent to the alleged harasser being informed of the existence of an informal procedure against him/her, any data relating to that person will be erased from the opening form and no element allowing the case to be traced back and the person to be identified will be kept by the contact person in the Human Resources in its archives.

Right of data subjects

Data subjects may apply to the contact person in the Human Resources (i.e. the person who coordinates the network of the confidential counsellors) or the confidential counsellor involved in his/her cases or send an e-mail to the functional mailbox (FRA-Harassement@fra.europa.eu), to access the information/documents relating to them.

Article 20(1)(c) of Regulation (EC) No 45/2001 states that the data controller may restrict access to the information/documents so as to ensure that the procedure runs smoothly. Access will be granted under the following circumstances:

- All data subjects will be able to access the documents they have themselves transmitted;
- All data subjects, either alleged victim(s) or alleged harasser(s), may have access to the opening sheet for the case relating to them. As far as alleged harassers are concerned, this access will only be granted if they have been informed by the confidential counsellor of the existence of an informal procedure, after the alleged victim has given his/her consent (with the exception already mentioned, i.e. need to protect the alleged victim);
- Alleged victims also have access to the closing form concerning their case;
- Access to any other document will only be granted if this document does not contain personal data relating to other persons or confidential statements, or if there is no risk that its transmission may impact negatively on one of the parties involved in the case, on the smooth running of the procedures or on future relations between the parties.

All data subjects have the right to rectify one's own personal data, for example providing documents as evidences to the file.

The data controller commits him/herself to deal with requests for access within the boundaries of his/her duty of care as well as to carry out the necessary verifications of the data and, if need, rectify them.

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.

Data subjects can at any time have recourse to the European Data Protection Supervisor (edps@edps.europa.eu), in particular to ask him to verify the data and inform them whether the data they could not access were dealt with correctly and, if not, whether the necessary corrections were made.

Origin of the data

Data that are not directly transmitted by the data subject may originate from third parties' statements (alleged victims, alleged harasser or witness).

NOTE

PAGE 4/4

Electronic documents sent to the contact person in the Human Resources or to confidential counsellors are kept in an encrypted USB key or in a secure environment (protected by a password) that is not accessible to third parties. The files containing paper documents are kept by the contact person in the Human Resources or by the confidential counsellors in locked cupboards.

From: [redacted]
Sent: 01 October 2010 09:23
To: [redacted]
Cc: [redacted] (FRA); [redacted]
Subject: RE: Prior notification, sorry please find below the correct message! thanks!

EDPS - Outgoing mail
DR: D. 1483
2010-2192
U/EO: DB

Dear [redacted]

Thank you for the information. We will therefore consider the processing operation on anti-harassment as a true prior checking case and deal with it as usual (prior to the adoption of the guidelines). Please take note that case number is 2010-722. We will study the notification and inform you if any further information is required.

Best regards,

[redacted]

European Data Protection Supervisor
[redacted]
Rue Wiertz, 60 - MO 63
B - 1047 Bruxelles
tel : 02/283 19 19 - fax : 02/283 19 50
edps@edps.europa.eu

-----Original Message-----

From: [redacted] [mailto:[redacted]]
Sent: 29 September 2010 16:15
To: [redacted]
Subject: RE: Prior notification, sorry please find below the correct message! thanks!

Dear [redacted]

Many thanks for your advice. As I've just explained, the decision on anti-harassment and, in particular, the informal procedure is expected to be implemented as from 01/11/2010, i.e. the date the network of the confidential counsellors will be in place.

Best regards;

[redacted]
[redacted]
[redacted]

European Union Agency for Fundamental Rights
A 1040 Vienna, Schwarzenbergplatz 11
Tel.: +43 1 58030 616
Fax: +43 1 58030 699
<http://fra.europa.eu>

-----Original Message-----

From: [redacted]
Sent: 29 September 2010 15:51
To: COZZI Paul (FRA); [redacted]
Subject: FW: Prior notification, sorry please find below the correct message! thanks!
Importance: High

Dear both,

FYI.

Regards,

[REDACTED]

From: [REDACTED] (mailto:[REDACTED])
Sent: Wednesday, September 29, 2010 3:49 PM
To: [REDACTED] (FRA)
Subject: Prior notification, sorry please find below the correct message! thanks!
Importance: High

Please find below the correct message! thanks!

Dear [REDACTED]

On behalf of the EDPS, I acknowledge receipt of your notification on "FRA anti-harassment policy", 2010-722.

The EDPS plans to issue guidelines on "anti-harassment procedure" in the coming months. Your processing operation (ex-post prior checking notification as the FRA EB decision was adopted in 2009) falls within the scope of these future guidelines and should therefore be notified again at that moment.

Best regards,

[REDACTED]

European Data Protection Supervisor

[REDACTED]

Rue Wiertz, 60 - MO 63

B - 1047 Bruxelles

tel : 02/283 19 19 - fax : 02/283 19 50

edps@edps.europa.eu <blocked::blocked::blocked::mailto:edps@edps.europa.eu>

Be environmentally friendly: do not print this email unless it is entirely necessary. This message may contain personal data and other confidential data that are entrusted to the recipients specified in the header of the message. The recipient(s) of this message shall not process the present message in ways that contradict the European legislation on the protection of personal data or jeopardize the confidentiality of the message content.

This communication does not constitute any formal commitment on behalf of FRA

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[Redacted]

From: [Redacted]
Sent: 18 October 2010 11:43
To: [Redacted]
Cc: [Redacted] European Data Protection Supervisor
Subject: Prior checking 2010-722, Request for further informations

Dear [Redacted]

As regard the prior checking 2010-722 on the FRA policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, the EDPS has further questions regarding diverse matters quoted in the notification :

1/ As for the substantial delimitation of the prior checking, the formal procedure falls in principle into the scope of "administrative inquiry and disciplinary procedures" endorsed by the AIPN and is to be separately prior checked by the EDPS. The Prior checking 2010-722 will therefore only analyse and comment on processing operations to be taken under the informal procedure. Does the FRA would like to comment this delimitation ?

We will therefore not consider the references to the formal procedure in the notification. Nevertheless, we would need additional information on the links between the "informal" and "formal" procedures including the transfers of data. Indeed, you mentioned in the 4/ "purposes":

"to provide data for the formal procedure", "to handle requests for assistance [...] within the formal procedure" and "to reply to the Ombudsman or legal authorities at national or EU level"

2 / According to Point 14 'Statistical purposes', "any further data needed for statistical purpose" are likely to be collected. Which exact categories of data or single data will be concerned ?

3 / As regard Point 13a 'Time limits for blocking and erasure', how long lasts the time period to block or erase data ?

4 / As regard Point 8 'Rights of data subjects', "data subjects may request access to their data by sending an e-mail to the specific functional mailbox". Who exactly will have access to this mailbox ?

5 / What does the FRA plan to undertake with the data collected by the counsellors if the alleged victim does not want his/her alleged harasser to know about the informal procedure or specific details of it, even after the definitive closure of the informal procedure ?

According to Article 27.4 of Regulation 45/2001, the two months period for issuing the opinion will be suspended pending your reply to these questions.

If you should have further questions, please do not hesitate to contact me or Ms Delphine Harou.

Kindest regards,
[Redacted]

[Redacted]
European Data Protection Supervisor

[Redacted]

From: [Redacted] (FRA) <[Redacted]@fra.europa.eu>
Sent: 09 November 2010 12:34
To: [Redacted]
Cc: [Redacted] European Data Protection Supervisor; [Redacted] (FRA); COZZI Paul (FRA)
Subject: RE: Prior checking 2010-722, Request for further informations

You're welcome.

Please find below the replies to your queries

Best regards,
[Redacted]

-----Original Message-----

From: [Redacted] [mailto:[Redacted]@edps.europa.eu]
Sent: 09 November 2010 11:59
To: [Redacted] (FRA)
Cc: [Redacted] European Data Protection Supervisor [Redacted] (FRA); COZZI Paul (FRA)
Subject: RE: Prior checking 2010-722, Request for further informations

Dear [Redacted]

Thanks for your reply to our additional questions in the prior checking 2010-722.

The EDPS has a last question regarding this case :

It is mentionned in the notification form at the Point 18 'Measures to ensure security of processing' that

"The data base is in a secure encrypted environment protected by password and access is given only to the Human Ressources Representative."

Which data base is exactly meant in this sentence ? Did the FRA wanted to designate the files recorded in the USB key containing electronic documents ?

[Redacted] Yes

If so, is the HR Representative to whom the access is given the contact person in the HR coordinating the confidential counsellors network ?

[Redacted] Yes, the HR representative is the person coordinating the network of the confidential counsellors

According to Article 27.4 of Regulation 45/2001, the two months period for issuing the opinion will be suspended pending your reply to this question.

Best regards,
[Redacted]

-----Original Message-----

From: [REDACTED] (FRA) (mailto:[REDACTED]@fra.europa.eu)

Sent: 29 October 2010 16:15

To: [REDACTED]

Cc: [REDACTED], European Data Protection Supervisor; [REDACTED] (FRA); COZZI Paul (FRA)

Subject: RE: Prior checking 2010-722, Request for further informations

Dear [REDACTED]

I am sorry for not being able to re-contacting you earlier on. Kindly find herewith the replies to your questions.

Best regards,
[REDACTED]

-----Original Message-----

From: [REDACTED] (mailto:[REDACTED]@edps.europa.eu)

Sent: 18 October 2010 11:43

To: [REDACTED] (FRA); [REDACTED] (FRA)

Cc: [REDACTED] European Data Protection Supervisor

Subject: Prior checking 2010-722, Request for further informations

Dear [REDACTED]

As regard the prior checking 2010-722 on the FRA policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, the EDPS has further questions regarding diverse matters quoted in the notification :

1/ As for the substantial delimitation of the prior checking, the formal procedure falls in principle into the scope of "administrative inquiry and disciplinary procedures" endorsed by the AIPN and is to be separately prior checked by the EDPS. The Prior checking 2010-722 will therefore only analyse and comment on processing operations to be taken under the informal procedure. Does the FRA would like to comment this delimitation ?

[REDACTED] The agency has not yet put in place a procedure on "administrative inquiry and disciplinary procedures" since there is an attempt among the Agencies to have an interagency policy on the subject. Would therefore be possible to proceed with the prior checking of the formal procedure at this stage?

We will therefore not consider the references to the formal procedure in the notification. Nevertheless, we would need additional information on the links between the "informal" and "formal" procedures including the transfers of data. Indeed, you mentioned in the 4/ "purposes":

"to provide data for the formal procedure", "to handle requests for assistance [...] within the formal procedure" and "to reply to the Ombudsman or legal authorities at national or EU level"

Statistical Anonymous Fiche Informal procedure

Confidential Counsellor _____

TYPE OF ISSUE (as reported by COMPLAINANT)		REQUEST	
Psychological harassment	<input type="checkbox"/>	Urgent	<input type="checkbox"/>
Sexual harassment	<input type="checkbox"/>	Party 1 needed to talk	<input type="checkbox"/>
Conflict	<input type="checkbox"/>	Party 1 needed information/support in submitting the case for informal procedure	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	Other (specify)	<input type="checkbox"/>
Multiple case (party 1)	<input type="checkbox"/>	Multiple case (party 2)	<input type="checkbox"/>

COMPLAINANT (party 1)		PERSON COMPLAINED OF (party 2)	
Female	<input type="checkbox"/>	Female	<input type="checkbox"/>
Male	<input type="checkbox"/>	Male	<input type="checkbox"/>
Unit/Dept		Unit/Dept	

CONTRACT TYPE			
Temporary Agent	<input type="checkbox"/>	Temporary Agent	<input type="checkbox"/>
Contract Agent	<input type="checkbox"/>	Contract Agent	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	Other (specify)	<input type="checkbox"/>

CATEGORY			
AD	<input type="checkbox"/>	AD	<input type="checkbox"/>
AST	<input type="checkbox"/>	AST	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	Other (specify)	<input type="checkbox"/>

NATIONALITY	
Same nationality	<input type="checkbox"/>
Different nationalities	<input type="checkbox"/>

AGE

20 - 29	<input type="checkbox"/>	20 - 29	<input type="checkbox"/>
30 - 39	<input type="checkbox"/>	30 - 39	<input type="checkbox"/>
40 - 49	<input type="checkbox"/>	40 - 49	<input type="checkbox"/>
50 - 59	<input type="checkbox"/>	50 - 59	<input type="checkbox"/>
60 and over	<input type="checkbox"/>	60 and over	<input type="checkbox"/>

Number of meetings with party complainant:

Date of first meeting:/...../.....

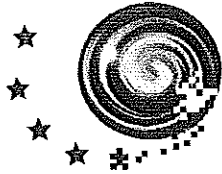
After the first contact with the Confidential Counsellor and by the closing date:

- Party 2 has been approached by Confidential Counsellor (alone)
- Party 2 has been approached by Confidential Counsellor and Party 1 (together)
- Party 2 has been approached by Party 1 (alone)
- Party 2 has been informed of informal procedure on/...../20.....
- There has been attempt at reconciliation
- There has been a positive/negative outcome of reconciliation attempt (*)
- Informal discussion(s) between Party 1 and Confidential Counsellor useful
- Informal discussion(s) between Party 1 and Confidential Counsellor solved the issue
- There has been an intervention of HRP Department
- Party 1 asked that hierarchy of Party 2 is contacted/involved by Conf. Couns¹
- Formal procedure (complaint) has been initiated
- Party 1 has been redeployed with/without his/her consent (*)
- Party 2 has been redeployed with/without his/her consent (*)
- Other

Closing Date:

(*) Delete as appropriate

¹ Confidential Counsellors shall not meet that request unless in very specific cases (such as eventually sexual harassment)



EUROPEAN DATA
PROTECTION SUPERVISOR

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GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr PAUL COZZI
Head of Human Resources
and Planning Department
European Union Agency
for Fundamental Rights (FRA)
Schwarzenbergplatz 11
A-1040 Vienna

Brussels, 21 December 2010
GB/ [REDACTED] /ktl D(2010)2077 C 2010-0722

Dear Mr Cozzi,

Please find enclosed the opinion of the European Data Protection Supervisor as concerns the case submitted for prior checking pursuant to Article 27 of Regulation (EC) 45/2001, on **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.**

Please inform the EDPS of the measures taken based on the recommendations of this opinion within a period of 3 months.

Yours sincerely,

Giovanni BUTTARELLI

Annex : Opinion

Cc : [REDACTED] European Union Agency for
Fundamental Rights.

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EDPS
DATE: 21.01.2011
DEPT: 10.13
REF: 2010-0722
U-BO: D.H.

Mr. Giovanni BUTTARELLI

Supervisor
EDPS
Rue Wiertz 60
B 1047 Brussels

Vienna 4. MRZ. 2011

Doc.Ref. FRA(2011)/PC/KE-5543

Subject: Opinion 2010/722 received by FRA on 10/01/2011

Dear Mr. Buttarelli,

The present communication aims to update EDPS on the actions undertaken by the Agency to comply with the recommendations included in the abovementioned opinion issued on 21st December 2010 and received by the FRA on 10th January 2011.

The following actions have been undertaken in respect of the twelve considerations:

- 1) In a few years time, re-evaluate the necessity and the relevance of the data collected through the opening and closing forms in relation to the purposes for which they are collected.

The FRA will re-evaluate the necessity and the relevance of the data collected through the opening and closing forms in relation to the purposes for which they are collected. This fact is stated in the Specific Privacy Statement under "Retention data".

- 2) Remind entities involved in the informal procedure that the collection of any data must be adequate, relevant and not excessive in relation with the purposes of the collection.

As stated in the Manual of Procedure, collection of data must be adequate, relevant and not excessive in relation with the purpose of the collection. This observation is now reflected in the specific privacy statement where a section is added entitled "Data quality".

- 3) Prove the necessity of collecting single data for statistical purposes and inform the EDPS of the results of each probation;

European Union Agency for Fundamental Rights

Agence des droits fondamentaux de l'Union Européenne

Agentur der Europäischen Union für Grundrechte

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Paul GOZZI
Head of Human Resources and Planning
Department
tel. +43 (1) 580 30 -

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<http://fra.europa.eu>

Reevaluate the Statistical Anonymous Fiche so as to comply with the principles of anonymisation.

PAGE 2

Data is selected through the statistical form to assess the implementation of the policy and as a monitoring tool for the contact person in HR. The form has been revised accordingly and it is part of the Manual of Procedures (i.e. Annex III).

- 4) Set beforehand precisely and numerically the time confidential counsellors can keep personal data.

The Confidential Counselors can keep all personal data for a maximum of three months. Once a case is close, and within a maximum of three months after the closure of the case all personal notes must be destroyed by the Confidential Counselors. Please refer to section 4.9 of the Manual of Procedures..

- 5) Ensure that the contact person in the HR has no access to the personal notes and his/her independence in the Department is guaranteed

Personal notes of the Confidential Counselors are not to be shared or transmitted. The contact person in the HR does not have access to the personal notes of the Confidential Counselors. The FRA included this observation in the Specific Privacy Statement as well as in the Manual of Procedures under sections 2.1 and 8.3.

- 6) Ensure that the recipients process the personal data only for the purposes for which they were transmitted in compliance with Article 7(3) of the Regulation.

Personal data collected as part of an informal procedure following alleged psychological harassment are dealt with in accordance with the Regulation. This observation is now reflected in the Specific Privacy Statement under section "Recipients of the data".

- 7) Specify the right of access and of rectification to the personal notes taken by the confidential counsellor as recommended.

Given that the personal notes are aid of memory for the confidential counselors, FRA considers that a limited right of access and rectification should be given to the persons concerned. This observation is now reflected in the Specific Privacy Statement and in the Manual of Procedures (page 19).

- 8) Specify that the right of access is not limited to the data provided by the data subject.

This observation is now reflected in the Specific Privacy Statement under section "Right of data subjects".

- 9) Grant explicitly the rights of access and rectification to witnesses and others involved.

All data subjects (alleged victim, alleged harassers, potential witnesses, and others involved) have the right to rectify one's own personal data. The FRA included this observation in the Specific Privacy Statement under section "Right of data subjects".

10) Specify the duration necessary for blocking or erasing

Data subjects have the right to block one's own data at any time during the informal procedures and not later than three months after the closure of the case. They also have the right to erase one's own data during the same period. Data may be erased if the processing of the data is unlawful. FRA included this observation in the Specific Privacy Statement under "Rights of data subject".

11) Give similar general and specific information to witnesses and others involved.

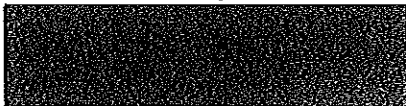
All staff (including interims, trainees and Seconded National Experts) is given similar general and specific information. FRA included this observation in the specific privacy statement and in the Manual of Procedures under sections 8.3, 8.4 and 8.7.

12) Adapt the FRA Specific privacy statement to reflect the provisions made in this Opinion.

The FRA has made the necessary revision. Please refer to Annex IV of the Manual of Procedures (Declaration on the protection of personal data within the framework of an informal procedure following alleged psychological harassment - Specific Privacy Statement).

Should you require further information concerning the above implementation of the received recommendations we remain at your disposal, and we are looking forward on the closure of this case.

Yours sincerely,



Paul Cozzi
Head of Human Resources and Planning department

Cc:





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GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr PAUL COZZI
Head of Human Resources
and Planning Department
European Union Agency
for Fundamental Rights (FRA)
Schwarzenbergplatz 11
A-1040 Vienna

Brussels, 5 May 2011
GB/█/ch D(2011)848 C 2010-0722

Subject: Your letter updating the EDPS on the measures taken by the FRA as a consequence of the EDPS recommendations made in his prior checking Opinion 2010-722

Dear Mr Cozzi,

we thank you for your letter dated 4 March 2011 describing the measures implemented by FRA to comply with the EDPS recommendations on "FRA policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment". Please find below the EDPS comments.

1) As concerns **the points 7), 8) and 12)** we would like to clarify our position: Right of access and rectification are enforceable rights of the data subject. Their application may be restricted pursuant to Article 20(1)(c) (and not because the personal notes are aid of memory). This reality should be reflected in the paragraph 8.7 of the Manual of procedures and in the privacy statement on the protection of personal data where Articles 13 and 14 are not properly quoted currently. Articles 13 and 14 are the general rule and any application of the limitations foreseen in Article 20 (1) (c) as mentioned in the paragraph 8.3 of the Manual of procedures, must be based on a on a case by case analysis.

As to the description in the privacy statement of the circumstances where access will be granted, the EDPS recommends to better emphasise that these circumstances are only examples. FRA should also distinguish access to documents and access to personal data, in particular in bullet point 4. Indeed, there is a bit of confusion for the data subject between access to documents and access to personal data and the fourth bullet point is not correct as such. A data subject may have access to his personal data from a document containing personal data of others (and not to the personal data of others contained in the same document).

2) As concerns the Annex V of the Manual -Confidentiality and data protection declaration-, we welcome the instructions given to the confidential counsellors, they will certainly help ensuring the compliance with Article 22 of the Regulation. Nevertheless, The EDPS considers that a distinction between controller and processor within an Agency is not appropriate. The EDPS recommends the co-responsibility of the HR department and the confidential counsellors¹, bearing in mind that, from a legal point of view, the controllership remains the responsibility of the FRA.

3) Transfers of data should always be analysed in the light of Articles 7, 8 and 9 of the Regulation. Restrictions foreseen in Article 20 (1)(c) do not apply to transfers of personal data. As far as Articles 7 and 8 are concerned, the consent of the data subject cannot be the basis for a transfer of data.

To keep the confidential character of the informal procedure, transfers of data should be avoided. Nevertheless, they cannot be excluded a priori. Articles 7 and 8 must be strictly respected. Article 7.1 provides for strict and cumulative conditions (necessity, legitimate performance of tasks, competence of the recipient) to allow transfer of data. Article 7.2 makes clear that both the controller and the recipient bear the responsibility for the legitimacy of the transfer in case the request comes from the recipient. All the conditions established under Article 7 must be evaluated in the light of the confidential character of the informal procedure. This approach should be reflected in the Manual and in the section "recipient of the data" in the privacy statement. Currently, it seems that there is a confusion in the first and fourth paragraphs between the right of access (to which Article 20(1)(c) may apply) and the transfer of data governed by Articles 7, 8 and 9.

4) We would like to remind you to use the EDPS Guidelines issued on 21 February as a practical guidance when dealing with processing of personal data relating to harassment.

Following the information received, all the other recommendations seem to be compliant with the Regulation. Therefore, providing that the "Manual of procedure" and the privacy statement are updated accordingly and sent back to the EDPS, the EDPS has decided to close the case.

Yours Sincerely,

Giovanni BUTTARELLI

Cc : [REDACTED] European Union Agency for
Fundamental Rights.

¹ The EDPS always recommends in his Article 28.2 consultations relating to the implementing rules concerning the tasks, duties and powers of the Data Protection Officer not to use the notion of processor within an Agency. See among other the consultation under Article 28 of the Regulation dated 20 May 2010, case number 2010-341, on the implementing rules pursuant to Article 24.8 adopted by the European Research Council Executive Agency.

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EDPS - Incoming mail

DATE: 04.07.2011

DR: A. 2269

CR: 2010-0722

U/EO: D.H.

Mr Giovanni BUTTARELLI

Assistant Supervisor
 European Data Protection Supervisor
 Rue Wiertz 60
 B 1047 Brussels

Vienna, 24/06/2011
 Doc.Ref. FRA/D(2011)/PC/SM- 6112

Subject: Opinion 2010/722

Ref.: Your letter of 05/05/2011 (GB/Dh/Ch D(2011)848 C 2010-0722

Dear Mr Buttarelli,

Thank you for your letter in reference, containing comments on the measures implemented by the Agency to comply with the EDPS recommendations on "FRA policy on protecting the dignity of the person and preventing psychological and sexual harassment".

FRA has amended its Manual of Procedures according to the comments received on point 1, 2 and 3 of your letter – please find here attached the updated version of the Manual.

Should you require further information concerning the above implementation of the received recommendations we remain at your disposal, and we are looking forward on the closure of this case.

European Union Agency for Fundamental Rights
 Agence des droits fondamentaux de l'Union Européenne
 Agentur der Europäischen Union für Grundrechte

FRA
 Schwarzenbergplatz 11
 A - 1040 Vienna
 Austria

Paul COZZI
 Head of Human Resources and Planning
 Department
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Yours sincerely,

[Redacted signature]

Paul Cozzi
 Head of Human Resources and Planning department

Cc: [Redacted]



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GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Paul COZZI
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European Union Agency
for Fundamental Rights (FRA)
Schwarzenbergplatz 11
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Brussels, 15 July 2011
GB/█/kd D(2011)1339 C 2010-0722

Subject: Your letter updating the EDPS on the measures taken by the FRA as a consequence of the EDPS follow up letter in the frame of the prior checking Opinion 2010-0722

Dear Mr Cozzi,

We thank you for your letter dated 24 June 2011 responding to our follow up letter sent on 5 May 2011. Following the information received - the updated "Manual of procedure" and privacy statement, we have decided to close the case 2010-722.

Nevertheless, we would like to make an additional precision about our paragraph requesting a better distinction between "access to document" and "access to personal data": *"As to the description in the privacy statement of the circumstances where access will be granted, the EDPS recommends to better emphasise that these circumstances are only examples. FRA should also distinguish access to documents and access to personal data, in particular in bullet point 4. Indeed, there is a bit of confusion for the data subject between access to documents and access to personal data and the fourth bullet point is not correct as such. A data subject may have access to his personal data from a document containing personal data of others (and not to the personal data of others contained in the same document)."*

What we want to avoid is the confusion for the data subject of the right to access to document established in Regulation (EC) 1049/2001 and the right of access to his/her personal data as it is laid down in Article 13 of Regulation (EC) 45/2001.

Yours Sincerely,

Giovanni BUTTARELLI

Cc : █, European Union Agency for
Fundamental Rights.

EDPS - Incoming mail

30. 11. 2011

DR: A- 3917

CR: 2010-0722

U/EO: DH



Mr Giovanni BUTTARELLI

Assistant Supervisor
European Data Protection Supervisor
Rue Wiertz 60
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Vienna, 28-11-2011
Doc. Ref. FRA/D(2011)PC/KE-343

Subject: Opinion 2010/722

Ref.: Your letter of 15/07/2011 (GB/DH/kd D(2011)1339 C 2010-0722

Dear Mr Buttarelli,

Thank you for your letter in reference, informing us on the closure of the case and containing an additional precision on the measures implemented by the Agency to comply with the EDPS recommendations on “FRA policy on protecting the dignity of the person and preventing psychological and sexual harassment”.

FRA has amended its Manual of Procedures according to the comment received in your letter. Please, find here attached the updated version of the Manual.

Should you require further information we remain at your disposal.

Yours sincerely,

[Redacted signature]

Paul Cozzi
Head of Human Resources and Planning department

Cc: [Redacted]

European Union Agency for Fundamental Rights

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MANUAL OF PROCEDURES

Within the framework of the European Agency for Fundamental Rights' policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment

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1. Legal framework and scope of the document

The prevention of harassment is dealt with under Article 12a of the Staff Regulations according to which “*Officials shall refrain from any form of psychological or sexual harassment*”. The decision 2009/02 of the Executive Board on policy of the European Union Agency for Fundamental Rights on protecting the dignity of the person and preventing psychological harassment and sexual harassment states that this policy applies to all people working at the FRA.

On the basis of that Decision, **each and every person working at the FRA**, regardless of grade or contract of employment may (this includes the trainees and all those working under a contract under national law), if they feel they are the victim of psychological or sexual harassment by a member of staff of the institution, initiate an **informal procedure**. They therefore have the option of approaching:

- the Coordinator of the network of Confidential Counsellors in the HRP Department (leading Department for prevention of harassment),
- one of the Confidential Counsellors appointed by the Director or
- their line manager.

The purpose of this manual is to set out the arrangements for the implementation of procedures between the various parties in the informal procedure, the duties and prerogatives of each of these parties and their roles in the event of passage to the formal procedure¹.

Additionally, this manual covers aspects relating to the protection of individuals with regard to the processing of data of a personal nature in accordance with the duties of confidentiality and with Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000². In this context, it must be noted that these aspects fall within the scope of a policy, the informal stage of which is intended primarily to help and protect alleged victims. The institution must be in a position to develop a preventive policy, which may be undertaken in various ways, including the detection of recurrent or multiple cases. It is in this very specific context (protection and prevention) that the questions of collection and storage of personal data are dealt with in this manual with a view to establishing the correct balance between transparency of the rules, access to data and the preservation of confidentiality, whilst retaining the informal and flexible nature of the procedure.

Further, according to the EB Decision 2009/02, it must be emphasised that the notion of “**victim**” used in this manual refers to any person who defines themselves or identifies themselves as such. However, it is important to remember that there is a fundamental legal distinction between a person “who feels they are the victim of harassment” and one “who has actually suffered harassment” and is therefore recognised as a victim on the basis of proven facts, having gone through the formal procedure. No stage of the informal procedure may prejudice the outcome of the formal procedure.

1 By way of reminder, the formal procedure is only available to staff covered by the Staff Regulations (Temporary Staff, Contract Staff) and to the Seconded National Experts.

2 Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of data.

Consequently, each time the expression “victim” is used in this manual it should be taken to mean “alleged victim”, in the above sense under the informal procedure. It should also be noted that the informal procedure does not cover the qualification of facts or the seeking of evidence by means of an enquiry, or the application of sanctions, and that therefore the “alleged harasser” is not considered to be “the accused” in the legal sense of the word.

Lastly, it should be borne in mind that this manual is intended to be an evolving work which will be continuously updated where aspects and details of procedures require expansion on the basis of experience. It has been elaborated on the basis of the European Commission’s model and that introduced in other agencies.

2. THE LEAD DEPARTMENT

2.1 *Role of the lead department and its Coordinator*

The lead department is the Human Resources and Planning Department. Its remit includes 3 main areas:

1. policy management,
2. management of requests and
3. management of the network of Confidential Counsellors.

The lead department provides an interface between Confidential Counsellors, persons who approach them and the other parties involved in the implementation of this policy. For this purpose, a specific HRP member of staff is appointed as **Coordinator of the Confidential Counsellors** for dealing with harassment issues.

The Coordinator shall, all along the procedure, be strictly bound to the duty of confidentiality, not reporting any information to any colleague. And his/her independence toward the department will be guaranteed.

S/he may assist with a case by giving advice and providing information about how to approach the situation and refer to the list of Confidential Counsellors. The Coordinator may also, at the request of an alleged victim or a Confidential Counsellor, arrange meetings with the other party or hierarchical manager(s).

2.1.1 Policy management

The lead department is primarily responsible for implementation of the general policy for the prevention of psychological and sexual harassment, for evaluation of this policy and any amendments to it; it will ensure that the decision is applied and manage the informal procedure. It will be responsible for the drafting and implementation of this manual of procedures and for compliance with it.

It is responsible for disseminating this policy within the FRA through the organisation of information and awareness sessions for staff and management.

At the end of the year, collected factual data together with the anonymous statistical forms will be included in the annual report of the lead department and used for the purposes of statistics and policy monitoring. Indeed the data is analysed to enable an assessment to be made of developments in the situation and, where appropriate, to adapt the action to be taken, notably as regards prevention.

Within the context of its responsibility for prevention, the Coordinator has also the role of identifying any recurrent or multiple cases of alleged harassment and producing regular anonymous statistics.

2.1.2 Management of requests

As regards requests, the Coordinator provides a link between alleged victims who have contacted him/her directly and Confidential Counsellors. S/he receives requests for support from persons in difficulty (where they do not contact a Confidential Counsellor directly), and directs them to the Confidential Counsellor who will be most suited to the management of each case.

S/he may also receive requests for information, notably from alleged harassers, witnesses, or managers faced with problematic situations.

2.1.3 Management of the network of Confidential Counsellors

The lead department and in particular its Coordinator coordinates the work of the network of Confidential Counsellors, and is therefore responsible for:

- ensuring the proper functioning of the network of Confidential Counsellors in accordance with the operational rules and the procedures laid down by the decision and by this manual;
- ensuring the support and protection of Confidential Counsellors in the exercise of their mandate and the provision of advice and guidance when so requested, to ensure that cases are properly managed;
- ensuring the management of selection and reappointment procedures for Confidential Counsellors;
- arranging initial training and supervision of Confidential Counsellors. In this regard, the Coordinator takes part in the network's "supervision" sessions which are led by a psychologist;
- convening and organising periodic meetings of the network;
- allocating alleged victims who have contacted him/her a Confidential Counsellor who most closely meets their desired criteria;
- monitoring the progress of cases dealt with under the informal procedure, collecting and archiving data (respecting the provisions of Regulation (EC) N° 45/2001) such as the opening, closing and anonymous statistical forms from Confidential Counsellors relating to situations dealt with by the network in order to ensure that any recurrent or multiple cases are identified.

The lead department deals with the provision to all Confidential Counsellors of information enabling their working methods to be improved and streamlined on an ongoing basis. It promotes the development, application and establishment of good practice in providing support to people.

The Confidential Counsellor network will therefore meet from 4 to 6 times per year, at the initiative of the Coordinator, to discuss the network's working methods, specific aspects of the issue of harassment or more general policy aspects. Confidential Counsellors may ask for specific issues to be included in the agenda.

Lastly, when necessary, the lead department lends support to Confidential Counsellors vis-à-vis their direct superiors to enable them to exercise their mandate in appropriate physical and professional conditions.

3. Confidential Counsellors

Confidential Counsellors are appointed by the Director as the Appointing Authority and they are authorised to act officially within their mandate when they have individual cases to deal with under the informal procedure. Confidential Counsellors are organised as a network, for which the lead department has responsibility.

3.1 Role and mandate of Confidential Counsellors in the informal procedure

Confidential Counsellors exercise their role on the basis of a voluntary commitment.

Confidential Counsellors shall, all along the procedure, be strictly bound to the duty of confidentiality, not reporting any information to any colleague and they can not act without the consent of the alleged victim unless in case of emergency or serious health risk for one of the party involved.

They receive, listen to, support, inform and accompany persons seeking their assistance in a situation perceived to involve psychological or sexual harassment. They examine in particular the possibility of attempting to reach amicable solutions.

Their principal role is to try to alleviate the suffering of persons who consider themselves to be victims of a harassment situation, by listening **without passing judgement**.

They also, depending on the needs and requests of alleged victims, shall play an active role by taking action **only when requested by and agreed with alleged victims**, such as working as intermediaries between parties, notably in attempts at conciliation or to reach amicable solutions.

With the agreement of the alleged victim, they inform the alleged harasser that one person reported difficulties in working with him/her and that an informal procedure is taking or has taken place. On that occasion, the same way they would have informed the alleged victim about the procedure and their rights, they have to inform the alleged harasser.

The Confidential Counsellors are also responsible for completing the forms (see point 4.3: opening, closing and statistical forms) for each informal procedure which they shall forward to the Coordinator in the lead department as soon as they are done.

Article 4.2 of the FRA policy on protecting the dignity of the person and preventing psychological and sexual harassment indicates that, *“In carrying out their function and mandate, Confidential Counsellors may not suffer any prejudice from the Institution, provided that they have acted in good faith and in accordance with the procedures”*.

All acts of information undertaken by a Confidential Counsellor under his/her mandate, such as the publication of articles, the presentation of policies, the publication of notices, etc., are subject to the provisions laid down by Articles 17 and 17a of the Staff Regulations and require **the prior consent** of the Director as the Appointing Authority, via the Coordinator in the lead department.

Confidential Counsellors act in accordance with the informal procedure and with the arrangements laid down in this manual. Their tasks are carried out within their normal working time. Their respective Departments are advised to take account of the tasks of Confidential Counsellors and to help them carry out their work as far as possible. The Confidential Counsellors will remain allocated to their Department and, in parallel, will exercise their mandate under the responsibility of the lead department.

3.2 Role of Confidential Counsellors in the formal procedure

If, in the course of or at the conclusion of an informal procedure, an alleged victim decides to start a formal procedure, the concerned Confidential Counsellor is required to withdraw from the case, close the informal procedure, and limit his/her role to providing support to the alleged victim if so requested by the alleged victim.

Under this procedure, and depending on the requirement of the enquiry, Confidential Counsellors may also be called by the victim as witnesses, to testify to facts relevant to the enquiry which they have been informed of during the informal procedure.

A formal procedure is initiated on the basis of a written request for assistance by the complainant under Article 24 of the Staff Regulations submitted to Human Resources.

4 The handling of cases and steps in the informal procedure

One of the basic principles of the informal procedure is that all steps taken by the Confidential Counsellors in this context are **subject to the prior consent of the alleged victim**. The only exceptions permitted are limited to cases of recourse to urgent measures or measures for the protection of a party who is at risk or when his/her health is compromised to such an extent that s/he is unable to act independently.



The other underlying principle of the procedure is **confidentiality**, which must be strictly adhered to by all parties involved.

An alleged victim's consent must also be given prior to any recording of data concerning him, except as regards data collected anonymously by the Confidential Counsellors, to be passed on to the Coordinator for storage in a database intended for research or the preparation of statistics.

4.1 General timeframe

In principle, the timeframe to treat a case in the informal procedure is one month. In the event of absence of the parties concerned due to sickness or annual leave, the timeframe may be extended in proportion of the absence. The total timeframe shall not however go beyond three months. For genuinely exceptional cases, the Coordinator in the lead department must be informed of extensions beyond the prescribed timeframes.

It is important always to deal with cases as promptly as possible to avoid any aggravation of the situation.

4.2 Initial interviews and possible scenarios

Alleged victims normally contact the Confidential Counsellor directly (list of Confidential Counsellors can be found in Intranet).

Initial interviews are very informal and the aim is to listen to a person, to determine his/her difficulties and needs and to inform him/her of what can be done to help him/her under the informal procedure. As a reminder, the role of the Confidential Counsellor is not to give instructions or to take decisions on behalf of the alleged victim.

The Confidential Counsellor must also check with the alleged victim at this stage that a formal complaint procedure (pursuant to Article 24 and/or 90 of the Staff Regulations) is not underway. If such a procedure is underway, the Confidential Counsellor must indicate that s/he is unable to handle the alleged victim's case which may only be dealt with by Human Resources.

Following an initial interview there are **3 possible scenarios**:

1. If the alleged victim feels that the problem is solved and does not wish further help or discussions then there is no need to start an informal procedure and no need to record data apart from the anonymous statistical data.
2. If it appears that the problem does not concern a typical harassment issue but seems instead to relate to a more a minor problem (minor dispute, problem of

communication or conflict, temporary misunderstanding etc.) to which an acceptable solution (which may be discussed with the alleged harasser) is likely to be found easily and swiftly (after 2 or 3 interviews), the procedure will be limited to these 2 or 3 interviews and will go no further. Then there is not need to start an informal procedure and no need to record apart from the anonymous statistical data.

The informal procedure may only start in the event of the 3rd scenario described below:

3. If, at the end of the initial interview, an alleged victim confirms that s/he wishes to have the case dealt with under the informal procedure, the Confidential Counsellor will:
 - explain the arrangements in place (the policy on psychological and sexual harassment and the manual of procedures);
 - explain the rights of the alleged victim;
 - inform the alleged victim that s/he is bound by confidentiality and has signed a declaration of confidentiality relating to the processing of personal data (see **Annex V**);
 - inform the alleged victim that s/he will take personal notes with his/her explicit consent, which are not intended to be disclosed.
 - inform the alleged victim about the creation of a file opening form (see **Annex I**) including the names of the persons involved which s/he will must send to the Coordinator in the lead department as a measure of protection with regard to the alleged victim. The date of the alleged victim's agreement will be considered as the point at which an informal procedure starts and will serve as a reference for the period of storage of data (see point 8.5)

For all cases which they have handled, even where only a single interview took place, Confidential Counsellors must promptly draw up an anonymous statistics form which they will send to the Coordinator as soon as done.

4.3 File forms compilation

4.3.1 File Opening Form

An informal procedure can not start without the compilation by the Confidential Counsellors of the opening form (see **Annex I**).

In order to enable the Coordinator to identify any recurrent cases, to comply with the duty of prevention and to check that one alleged victim is not approaching several Confidential Counsellors simultaneously or in succession, it is important that the Confidential Counsellors complete and forward that opening form to the Coordinator in the lead department within 1 working day of its completion.

The opening form contains the name of the alleged victim, of the alleged harasser, their Department and the start date of the informal procedure.

The Coordinator will then assign a unique number (comprising digits and letters) to the file, which it passes to the Confidential Counsellor in charge of each case. From this point onwards, with a view to retaining its confidentiality, a file will be identified exclusively by its numerical code and no names will be included in the file reference during communications with the Coordinator.

The Coordinator and Confidential Counsellors are required to maintain confidentiality regarding the identity of the person with whom they are dealing.

4.3.2 File Closing Form

Once the period has expired (except where it has been extended), a case will be considered closed.

A closing form (see **Annex II**) with the identification number relating to the case will be passed to the Coordinator. The content of the file closing form is the reference number, the steps taken, the result, the solution, move or not to formal procedure.

If alleged harassers have not been advised of the existence of an informal procedure relating to them, no traces of their names will be recorded on the forms.

4.3.3 Statistical Form

Confidential Counsellors are responsible for completing an anonymous statistical form (see **Annex III**) for each case handled, even where only a single meeting took place and they send it to the Coordinator.

The collection of such data will enable the HRP Department to evaluate the collective workload of the Confidential Counsellors and to monitor trends in cases handled.

4.4 *Constructing a helping relationship*

Over the course of interview with the alleged victim a relation of confidence will be built up, an essential step underlying any helping relationship. Within an atmosphere of trust the Confidential Counsellors accompany and guide the alleged victim through the informal procedure. Together they look at different aspects of the case and examine possible options in particular the possibility of attempting to reach amicable solutions.

4.5 *Conciliation: attempting to reach amicable solutions*

Confidential Counsellors may, **with the alleged victim's consent**, meet the other party, bring parties together and seek amicable settlements between disputing parties. In these

3 The name of the alleged harasser can be kept on the relevant form after the closure of the case only if, at the latest when the case is closed, the alleged harasser is informed of the informal procedure which took place and upon agreement of the alleged victim.

circumstances, one or more meetings are likely to ensue. It is important to emphasise that it is not an investigation. Confidential Counsellors do not carry out enquiries or make accusations. They must be impartial and neutral.

The Confidential Counsellor listens, remains objective, clarifies facts and ensure that there is good communication. It may be the case that the other party is unaware of the impact of his/her conduct on the alleged victim. The Confidential Counsellor will help the alleged victim to express his/her unease vis-à-vis the other party, without any judgement being made regarding an alleged harasser or the alleged events.

When attempts to reach an amicable solution are made, an alleged harasser will be informed by a Confidential Counsellor of the fact that an informal procedure concerning him/her is underway, of the steps in the procedures, of his/her rights and of the option of seeking an amicable solution. Alleged harassers do not have access to any file produced by Confidential Counsellors.

4.6 Other solutions

If an attempt to reach an amicable solution fails or if such an attempt is out of question in view of the seriousness of the case (when health and safety of one of the parties is seriously at risk), or because one party refuses to seek such a solution, other possible options will be considered, such as approaches to other parties concerned, job redeployment of that of the alleged victims or reassignment, preferably with their consent, or of that of the alleged harasser, directing alleged victims to other procedures.

The redeployment of jobs or reassignment (always subject to the Appointing Authority's decision) may not be always feasible due to the limited size of the FRA, and other acceptable solutions (for example training, coaching, ..) must have been sought before coming to that one, unless in case of serious risk for the health or safety of one of the parties.

4.7 Contact with other services

In seeking solutions, Confidential Counsellors may also, depending on the needs of the people who have contacted them and for the purpose of properly managing cases, put them in contact with other actors such as the Head of HRP Department or a psychologist, where it would be appropriate for them to intervene. If there is a serious risk to the health or safety of an alleged victim, Confidential Counsellors must direct them to a psychologist for a medical assessment of the case, to the Medical Emergency or call the Security for their intervention. They may also request the assistance and intervention of the HRP Department in case of need.

4.8 Closing a case

Once a solution has been found with the agreement of an alleged victim, and/or once the three-months period has expired (except where it has been extended), or a person has been directed towards other solutions, a case will be considered closed. The file closing form with the identification number relating to the case will be passed to the Coordinator.

At the latest upon closure of the case, if the alleged victim wants that the name of the alleged harasser is kept, the Confidential Counsellors must inform the alleged harasser that a case has been brought to their attention and that an opening and closing note are kept confidentially by the Coordinator.

If the alleged harasser is not informed of the existence of an informal procedure concerning him/her, no data relating to that person will be retained by the Coordinator or by a Confidential Counsellor beyond an additional period of 3 months after the closing date of the case. Those 3 months are considered as the timeframe necessary to enable an alleged victim to potentially change his/her mind to seek an amicable solution and therefore have the alleged harasser informed of the reported issue.

4.9 *Personal notes upon closure of a case*

Once a case is closed, and within a maximum of 3 months after the closure of the case all personal notes (which are not to be shared or further processed even if a formal procedure is initiated) must be destroyed by the Confidential Counsellors.

Documents provided by the alleged victim will be given back to him/her. i.e. Confidential Counsellors will not retain any documents.

At any time, upon request from an alleged victim, the opening and closing file forms will be destroyed. The request must be done in writing to the Coordinator.

5 Rules of professional conduct

The rules of professional conduct are intended to serve as a reference both for Confidential Counsellors and for the Coordinator who undertake to comply with these rules.

5.1 *Respect for the person*

It is considered that dealings between Confidential Counsellors and persons who approach them should be based on mutual respect. The primary concern of Confidential Counsellors is to safeguard the alleged victim's well-being, remembering at all times that an alleged victim of harassment is above all a person who has become vulnerable. Respect for alleged victims

therefore implies that any manipulation of their suffering or problems for the unauthorised purposes of altering their moral views is prohibited⁴.

The exercise of the role of Confidential Counsellor entails in all cases:

- respect for the integrity of the person without discrimination of any nature⁵;
- respect for a person's moral values. Confidential Counsellors must therefore respect the right of alleged victims to live according to their own beliefs;
- a prohibition on the use of values or facts of which Confidential Counsellors have become aware to make moral judgements concerning the alleged victim or the alleged harasser;
- respect for the person applies during the whole process and after it has terminated.

5.2 Confidentiality

Respect for confidentiality means that confidence forms an integral part of the relationship of trust which will be established from the time of the initial interviews.

Confidential Counsellors are bound by confidentiality whenever their services are called upon. It must be respected at all times. Nevertheless, they may exceptionally act without the consent of an alleged victim if urgent action is necessary as a measure of protection for the persons concerned. Clearly, in this very specific context of protection of a party or of parties, it will only be permissible to send information to persons who need to be aware of it in order to exercise their functions or carry out their role.

After termination of a helping relationship, Confidential Counsellors shall not use their knowledge regarding alleged victims for their personal ends.

The closing of a case does not remove the duty of confidentiality.

5.3 Skills and remit

In exercising their role Confidential Counsellors will rely on their personal skills and seek to develop them, notably by taking part in training courses and compulsory supervision sessions arranged by the Coordinator in the HRP Department.

Confidential Counsellors shall demonstrate honesty and integrity in the general exercise of their mandates and shall recognise the limitations of the conclusions and opinions expressed in the declarations made in the context of their mandates. They must not be judgemental as regards either situations presented by alleged victims or alleged victims themselves.

⁴ See Article 12 of the Universal Declaration of Human Rights.

⁵ See Article 1d of the Staff Regulations.

They are not allowed to undertake enquiries or to give instructions and they are not authorised to play the role of psychotherapist.

They shall apply only the methods and forms of intervention in which they have had adequate training. They undertake to direct alleged victims, if this proves necessary, to other services, notably to a psychologist, in order to meet those needs which are not within their remit. In order to do so, they may seek advice from the Coordinator.

Confidential Counsellors must adhere to the limits of their “functional” remit and shall exercise the utmost objectivity in the course of their activity. They may not exercise their role in the event that their judgement or abilities are impaired, including circumstances where this is due to temporary problems. In these circumstances, they shall withdraw temporarily from their role.

Delegation of cases to persons who are not Confidential Counsellors is not permitted unless upon request from an alleged victim and only to the Coordinator.

5.4 Continuity of assistance

Confidential Counsellors shall ensure continuity of the assistance to alleged victims, where necessary with the collaboration of another Confidential Counsellor or of the Coordinator. They shall take the necessary steps when they are required to suspend or terminate their involvement, ensuring that the Coordinator is notified.

5.5 Duty of loyalty

The Confidential Counsellors shall establish a special relationship of loyalty with alleged victims, which they must not allow to be compromised. Any external interference with this relationship, even of a purely informative nature, must be viewed with the utmost caution.

In the event of pressure or intimidation in the exercise of their mandate, Confidential Counsellors shall immediately notify the Coordinator, who may take such measures as are necessary and appropriate in the circumstances.

Independently of this duty of loyalty to alleged victims, Confidential Counsellors also have a duty to cooperate with the Human Resources and Planning Department and in particular with its Coordinator in the course of exercising their mandates and of properly managing cases.

5.6 Integrity

Confidential Counsellors shall demonstrate honesty and integrity in the general exercise of their mandates and shall recognise the limitations of the conclusions and opinions expressed in the declarations made in the context of their mandates. They must not be judgemental as regards either situations presented by alleged victims or alleged victims themselves.

They shall demonstrate honesty in their dealings with alleged victims, have a duty to provide them with all necessary information and to avoid untruthfulness and inaccuracies when exercising their mandates. Confidential Counsellors must be explicit as regards the objectives pursued and the steps which they might take. They must invite alleged victims to play an active role in the process and must explain the process and the rights of all parties.

5.7 Ethical issues

When, during the management of an individual case, a problem of an ethical nature (as defined by Articles 11 to 23 of the Staff Regulations) arises, Confidential Counsellors must take account of this in seeking possible solutions, relying on the regulations in force and ensuring that they do not exceed their own means or abilities to resolve such problems. If necessary, Confidential Counsellors shall not hesitate to consult colleagues in the network, the supervisor or the Coordinator on any ethical issues or concerns.

5.8 Neutrality

Confidential Counsellors must avoid conflicts of interest in accordance with article 11a of the Staff Regulations. It is strongly recommended that Confidential Counsellors do not take cases within their own Department. This recommendation may occasionally not be followed, however if the Confidential Counsellor feels there is a confusion of roles for professional or personal reasons, s/he should reconsider being involved in the case.

If a situation presents a more general conflict of interest, they shall consider whether their mandate should continue or not. If they fail to do so, the Coordinator may remove particular cases from Confidential Counsellors.

5.9 Relationship between Confidential Counsellors

All Confidential Counsellors shall provide full support to each other, including assisting them in the management of their cases (on an anonymous basis) and in the implementation of the manual of procedures where necessary.

Confidential Counsellors must respect the beliefs and practices of their colleagues in the network. If they believe that a colleague is not acting in accordance with the principles laid down in this manual, they shall notify him/her accordingly.

When what is requested of a Confidential Counsellor by a third party, in the course of exercising his/her mandate, contravenes the principles of professional conduct and the procedures set out in this manual, s/he has a duty to act in accordance with these principles and, if s/he feels it is necessary, to refer the matter to the Coordinator and to the network.

The views of other listening points must be respected and mutual respect and constructive discussions is an important part of the role.

6 Rights and duties of alleged victims

Rights:

In the informal procedure, alleged victims have the right to select the Confidential Counsellors whose assistance they wish to seek and are entitled to:

- be listened to;
- be certain that any step concerning them is subject to their prior consent and be informed of those agreed steps undertaken;
- confidentiality in dealing with Confidential Counsellors and the Coordinator;
- the right to inspect files prepared by Confidential Counsellors in the course of handling their cases;
- the right to consult the Confidential Counsellor during working hours according to their availability;
- ask complete destruction of opening and closing files upon request.

In the formal procedure, alleged victims are entitled to:

- submit a request for assistance without embarrassment or fear or reprisals or indiscretions;
- be accompanied by a person of their choice during meetings with actors in the administrative enquiry (referred to as “investigators”), provided that the person cannot be called as a witness in the course of the inquiry;
- be assured of a fair and impartial investigation;
- be informed of the result of the investigation and, where applicable, of the measures that will be taken;
- be informed of the nature of the processing of data concerning them and their rights in the matter (see **Annex IV**).

Duties:

The alleged victim must notify the Confidential Counsellors of the outcome of any steps which they have decided to undertake themselves, in order to enable them to judge whether a file may be considered as closed.

A failure to demonstrate courtesy and respect towards the Confidential Counsellor, violent behaviour, psychological threats or intimidation will not be tolerated. Such conduct may constitute a valid reason for Confidential Counsellors to refuse to continue to provide the requested assistance.

If they believe that a professional error or mistake has been committed by a Confidential Counsellor, or that a Confidential Counsellor has acted in breach of his/her mandate, alleged victims shall refrain from making any unfavourable comment or written statement to third parties during or after the handling of their file. Alleged victims shall sort this out directly with the Confidential Counsellor or may inform the Coordinator.

The alleged victim may only ask for help from one Confidential Counsellor and must inform the Confidential Counsellor if s/he is receiving help from other services or has started a formal procedure.

7 Rights and duties of alleged harassers

Rights:

In the informal procedure the alleged harasser has the right to:

- approach the Coordinator for advice and information to obtain non-judgmental advice or assistance in complete confidence;
- agree or refuse to see Confidential Counsellors and to agree or refuse any attempts at conciliation proposed by Confidential Counsellors on behalf of the alleged victim;
- be informed at the latest upon closure of the informal procedure (if data concerning them is mentioned in file) that file forms will be kept for record in the lead department by the Coordinator.

In the formal procedure the alleged harasser has the right to:

- be informed that an official complaint has been lodged against them and have the opportunity to react to it;
- be accompanied by a person of their choice during meetings with actors in the administrative enquiry (referred to as “investigators”), provided that the person cannot be called as a witness in the course of the inquiry;
- be assured of a fair and impartial investigation;
- be informed of the result of the investigation and, where applicable, of the measures taken;
- be informed of the nature of the processing of data concerning them and their rights in the matter.

Duty:

If they are not opposed to conciliation, they have a duty to do their utmost to cooperate with Confidential Counsellors in seeking a solution.

8. Data processing

8.1 Purpose of the data processing

Data that are collected and held with the following objectives:

- 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 to actors in the formal procedure (as appropriate: members of the enquiry team, legal service, Ombudsman or legal authorities at national or EU level).

Personal data collected cannot be used later in a way that is incompatible with the above principles.

Entities involved in the informal procedure should be explicitly reminded that the collection of any data must be adequate, relevant and not excessive in relation with the purposes of the collection.

8.2 Data categories

The data in question is the data linked to the statements addressed to the Confidential Counsellors or the Coordinator by the alleged victims. They are contained in the opening and closing forms.

Data also concern the alleged harasser and, potentially, witnesses.

There is no systematic rule on how to handle the kind of data which may be collected. They may be of different types; this depends largely on the case in question. Due to the nature of the phenomenon of harassment, the data collected must be considered to be of a subjective nature and tainted by emotions and strictly linked to the viewpoint of the person providing the information.

The Confidential Counsellors and the Coordinator must ensure in particular that data are relevant, adequate and not excessive in relation to the purpose for which they are collected. The Confidential Counsellors and the Coordinator will not retain any documents given to him/her. Forms from the informal procedure made available for the formal procedure can only be provided with the written consent of the alleged victim.

Data of a racial or ethnic nature, political opinions, religious or philosophical convictions as well as data on health or sexuality is prohibited under Art 10.1 of the Staff Regulation. Their processing is prohibited unless in well defined exceptional circumstances. The Confidential Counsellors do not retain data of this nature in the files or closing forms unless they are the reason for alleged harassment or a key point within a case.

8.3 *Processing and transmission of data*

Information received by the Confidential Counsellors is confidential. It cannot be transmitted within the informal procedure except to the parties involved in the informal procedure and with the explicit consent of the alleged victim except in exceptional cases when it is necessary to protect that individual.

When the informal procedure starts, the Confidential Counsellor informs the alleged victim during the first interview about the processing of personal data and their rights. After having informed the alleged victim, a Confidential Counsellor will transmit to the Coordinator notification of the opening of a file (file opening form), indicating the name of the alleged victim and of the alleged harasser and the date of the first contact together with the date of the first face-to-face interview (or phone discussion).

The date of the alleged victim's consent to the processing is treated as the reference date for retention of data. The Coordinator attributes a unique number to preserve confidentiality in all correspondence.

With the consent of the alleged victims, during interviews, Confidential Counsellors are permitted to take personal notes which are not intended to be shared or transmitted to any third parties and they will be serving as aid of memory. They may receive documents or emails which alleged victims wish to submit to them, provided that they consider this information/data to be necessary to the performance of their mandate and the proper management of cases. The Confidential Counsellors will not retain any documents given to him/her.

The Coordinator has no access to the personal notes of the Confidential Counsellors. The alleged victim has access to the personal note of the Confidential Counsellor. The personal notes of the Confidential Counsellors are taken as aid of memory and, according to Article 20.1 (c) of the Regulation (EC) N° 45/2011⁶, there might be a limitation to the rights of access and rectification of the persons concerned. This limitation must be interpreted restrictively and applied on a case by case basis, never automatically.

Where alleged victims indicate their agreement to an attempt at conciliation or to an informative measure concerning an alleged harasser, Confidential Counsellors will inform

⁶ Article 20.1 (c) of the Regulation reads as follows: "*The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Articles 13 to 17 and Article 37(1) where such restriction constitutes a necessary measure to safeguard:*

(c) the protection of the data subject or of the rights and freedoms of others".



alleged harassers that data of a personal nature will be processed and of their rights. In case of witnesses the Confidential Counsellor will inform them about the processing of their personal data and their rights.

When the case is closed the Confidential Counsellor will send the closing form to the Coordinator with the reference number, a summary of the main steps, actions/initiatives taken and the outcome. The Coordinator will file all forms.

8.4 Information to concerned persons

All staff (including interims, trainees and Seconded National Experts) is bound by the provisions of the FRA policy on psychological and sexual harassment and the informal procedure.

While the informal procedure supports conciliation the alleged victim might seek support for a solution without confronting the alleged harasser.

If the alleged victim wishes to seek conciliation or that the other party is informed of the informal procedure opened, the Confidential Counsellor must take contact with him/her in order to inform him/her of the policy on the processing of personal data.

If, following a maximum period of two months (except in the event of reasonable extension, for example in the case of absence or leave) for intervention by a Confidential Counsellor, a victim continues to refuse to make the alleged harasser aware of the steps he is taking, all data relating to this person shall be erased from the file opening form of the case and no information enabling him to be identified will be retained by the lead department in the files. In such cases, after a file has been closed, a Confidential Counsellor may keep the file for a further 3 months in order to enable conciliation or notification to take place in the event that the victim changes his mind.

The Confidential Counsellor's duty is to support, protect and help the alleged victim and is not subordinated to information given by the alleged harasser.

8.5 File retention

Aside from the opening and closing forms, the Confidential Counsellors may keep personal notes serving as an aid of memory during the course of the case.

In any event, on closing a case, only the relevant forms (file opening form / file closing form) are kept in the file that is established and only with the consent of the alleged victim. The Confidential Counsellors should not keep any personal data beyond the time needed to deal with a case (i.e. three months after the closure of the case).

All relevant forms are sent to the Coordinator after having informed the alleged victim except when the alleged harasser was never informed about the informal procedure.

The Coordinator will hold the historical memory of informal procedures. A central file will be kept with opening forms and closing forms on each case for a maximum of five years from the start date of the informal procedure. They will not contain the names of alleged harassers who were not informed of the informal procedure.

Five years is the period considered necessary for the HRP Department 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 (requests from the Ombudsman, Civil Service Tribunal) necessitating their consultation.

Statistical data is being held without limit in anonymous format.

8.6 Persons receiving data

The Confidential Counsellors or the Coordinator may, in order to resolve a case, need to contact or inform other services on a need to know basis. Sharing of confidentiality is inherent in the informal procedure and based on the alleged victim's consent except for the protection of persons concerned. This applies to oral exchanges at meetings or on the phone.

The HRP Department will also respond to questions from the Ombudsman and legal services at national and EU level.

In the event of recurrent cases the Coordinator must inform the Director.

8.7 Access to data

The persons concerned, alleged victim or alleged harasser or potential witnesses, are informed by the Confidential Counsellors about the processing of their personal data and their rights. Articles 13 and 14 of the Regulation (EC) No 45/2001 regarding rights of access and rectifications apply.

These rights are subject to the limits of Article 20 1 (c) of the Regulation (EC) N° 45/2001⁷. This limitation must be interpreted restrictively and applied on a case by case basis, never automatically.

After 15 working days the processing party must give access to the person who seeks it for the concerned forms following the procedure:

⁷ Article 20.1 (c) of the Regulation reads as follows: "*The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Articles 13 to 17 and Article 37(1) where such restriction constitutes a necessary measure to safeguard:*
(c) *the protection of the data subject or of the rights and freedoms of others*".



- Persons concerned, alleged victim or alleged harasser, can see the opening form for a case that concerns them. The alleged harasser's access is dependent on the fact that they are only informed of the informal procedure by the Confidential Counsellor after consent of the victim (for the protection of the victim);
- The alleged victim of harassment can have access to the closing form of their case.

A data subject may have access to his/her personal data from a document containing personal data of others, but not to the personal data of others contained in the same document.

8.8 Security

To guarantee security of confidential data provided to Confidential Counsellors and the lead department respectively, all written exchanges must be in hard copy in sealed envelopes marked "private and confidential".

All notes made during meetings are kept in a locked cabinet or drawer. This concern the time when the notes are held by the Confidential Counsellors as well as when all forms have been sent to the Coordinator.

Transmission of documents (i.e. opening form, closing form and statistical form) between the Confidential Counsellors and the Coordinator must be delivered by hand in a sealed envelope marked "staff matters" and "confidential".

ANNEXES



Annex I – Opening Form

Opening of informal procedure - CONFIDENTIAL

Confidential Counsellor _____

Informal procedure Nr⁸ _____

Date of first contact _____

Date of first meeting _____

Channel used for first contact Phone Orally Email

via the Coordinator Yes No

TYPE OF COMPLAINT (as reported by party 1)

Psychological harassment

Sexual harassment

Conflict

Other (specify)

COMPLAINANT

Name _____

Department _____

Category/Grade _____

PERSON(S) COMPLAINED OF (optional)

Name(s) _____

Department _____

Category/Grade _____

ROUTING

Provided to the Coordinator on: _____

⁸ Number provided by the Coordinator upon receipt of this form

Annex II – Closing Form

Closure of complaint

Nr. _____

Name of Confidential Counsellor:

Date of first contact

Closing date:

TYPE OF COMPLAINT

Psychological harassment

Sexual harassment

Conflict

REQUEST

Urgent

Complainant needs to talk

Complainant needs to be accompanied/assisted when submitting complaint

Other (give details)

Emergency intervention

Hierarchical link between parties concerned, if any (give details)

.....

CONTACTS WITH OTHER PARTIES

(Give date where possible)

	date
Line manager/hierarchical <input type="checkbox"/>
Superior	
HRP department <input type="checkbox"/>
Psychologist <input type="checkbox"/>
Security <input type="checkbox"/>
Other CCs <input type="checkbox"/>

TYPE OF PROBLEM IDENTIFIED

- Complainant feels prevented from expressing him/herself
- Complainant feels isolated/excluded/humiliated
- Complainant feels discredited in eyes of colleagues/criticised in front of colleagues
- Complainant feels discredited professionally/work criticised
- Physical or sexual violence
- Threats

REASON GIVEN FOR COMPLAINT

- Change in work/organisation/working conditions
- Change in line manager/hierarchical superior
- Working environment/climate/management style
- Tasks allocated do not match functions in job description
- Lack of or scant recognition (by line manager/superior or colleagues)
- Lack of or poor communication/information
- Career development (CDR)
- Intimidation, pressure
- Inappropriate or degrading language/insults
- Unrealistic objectives set
- Abusive language with sexual connotations/innuendos
- Threats of retaliation or actual retaliation linked to sexual harassment
- Deliberate physical contacts
- Other (specify)

ACTION TAKEN

- Person cited as responsible has been informed of the complaint
- Attempt at reconciliation
- Positive/negative outcome of reconciliation attempt (*)
- Reassignment of complainant with/without his/her consent (*)
- Reassignment of person complained of with/without his/her consent (*)
- Intervention of the Coordinator
- Contact/involved of line managers/hierarchical superiors
- Initiation of formal complaint procedure
- Involvement of Medical Advisor (Psychologist)
- Other (give details)

.....

(*) Delete as appropriate

CONCLUSIONS/REMARKS

.....

PROVIDED TO THE COORDINATOR ON

Statistical Anonymous Fiche Informal procedure

Confidential Counsellor _____

TYPE OF ISSUE (as reported by COMPLAINANT)		REQUEST	
Psychological harassment	<input type="checkbox"/>	Urgent	<input type="checkbox"/>
Sexual harassment	<input type="checkbox"/>	Party 1 needed to talk	<input type="checkbox"/>
Conflict	<input type="checkbox"/>	Party 1 needed information/support in submitting the case for informal procedure	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	Other (specify)	<input type="checkbox"/>
Multiple case (party 1)	<input type="checkbox"/>	Multiple case (party 2)	<input type="checkbox"/>

COMPLAINANT (party 1)		PERSON COMPLAINED OF (party 2)	
Female	<input type="checkbox"/>	Female	<input type="checkbox"/>
Male	<input type="checkbox"/>	Male	<input type="checkbox"/>
Dept		Dept	

CONTRACT TYPE			
Temporary Agent	<input type="checkbox"/>	Temporary Agent	<input type="checkbox"/>
Contract Agent	<input type="checkbox"/>	Contract Agent	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	Other (specify)	<input type="checkbox"/>

CATEGORY			
AD	<input type="checkbox"/>	AD	<input type="checkbox"/>
AST	<input type="checkbox"/>	AST	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	Other (specify)	<input type="checkbox"/>

NATIONALITY	
Same nationality	<input type="checkbox"/>

Different nationalities

AGE

Less than 30	<input type="checkbox"/>	Less than 30	<input type="checkbox"/>
Between 30 and 45	<input type="checkbox"/>	Between 30 and 45	<input type="checkbox"/>
More than 45	<input type="checkbox"/>	More than 45	<input type="checkbox"/>

Number of meetings with party complainant: Date of first meeting:/...../.....

After the first contact with the Confidential Counsellor and by the closing date:

- Party 2 has been approached by Confidential Counsellor (alone)
- Party 2 has been approached by Confidential Counsellor and Party 1 (together)
- Party 2 has been approached by Party 1 (alone)
- Party 2 has been informed of informal procedure on/...../20.....
- There has been attempt at reconciliation
- There has been a positive/negative outcome of reconciliation attempt (*)
- Informal discussion(s) between Party 1 and Confidential Counsellor useful
- Informal discussion(s) between Party 1 and Confidential Counsellor solved the issue
- There has been an intervention of HRP Department
- Party 1 asked that hierarchy of Party 2 is contacted/involved by Conf. Couns⁹.
- Formal procedure (complaint) has been initiated
- Party 1 has been redeployed with/without his/her consent (*)
- Party 2 has been redeployed with/without his/her consent (*)
- Other

Closing Date:

(*) *Delete as appropriate*

⁹ Confidential Counselors **shall not meet that request** unless in very specific cases (such as eventually sexual harassment)

Annex IV – Declaration on the protection of personal data

**Declaration on the protection of personal data within the framework of an informal procedure following alleged psychological harassment
(specific privacy statement)**

Personal data collected as part of an informal procedure following alleged psychological harassment are dealt with in accordance with the Regulation on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000,

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32001R0045&model=guicheti).

The information required by Articles 11 and 12 of the Regulation is summarised below.

Data controller

Head of Human Resources and Planning Department

FRA Network of Confidential Counsellors: coordinator and confidential counsellors

Purpose of the processing

Processing of cases of alleged harassment by the contact person of the Human Resources and the network of Confidential Counsellors under the informal procedure.

In accordance with the manual of procedure, data are collected and processed for the following purpose:

- 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.

Legal basis

Staff Regulations (Regulation (EC, ECSC, Euratom) No 23/2005): Articles 1d, 12a, 24, 86, 90.

Executive Board decision 2009/02 of 18 September 2009 on the policy on protecting the dignity of the person and preventing psychological and sexual harassment.

Processed data

The identity of the data subjects (i.e. alleged victim and alleged harasser) is mentioned in the opening form, and the closing form describes the main stages in the management of the case.

The closing form may contain data relating to the identity of third parties (i.e. witnesses).

Documents provided by the alleged victim will be given back to him/her.

Recipients of the data

Transfer of personal data is regulated by Art 7, 8 and 9 of the (EC) No 45/2001.

Data and information transmitted to the Confidential Counsellors and to the contact person in the Human Resources for the purpose of processing cases of alleged harassment are dealt with in strict confidentiality. These data will only be transmitted to the competent bodies when a formal procedure is launched and with the prior consent of the person who gave them to the recipients.

In the context of the informal procedure, in order to grant confidentiality, transfers of data should be avoided but they cannot be excluded a priori. The coordinator in the Human Resources and the Confidential Counsellors may have to share some information with others (Medical Advisor/psychologist for instance). This transmission will be restricted to the information necessary for the competent entity to carry out its task. In other words only adequate, relevant and not excessive in relation to the purpose for which it is processed data, will be transmitted if necessary. The recipients will process the personal data only for the purpose for which they will be transmitted.

When a formal procedure is launched, the opening and closing forms are made available to the investigators by the contact person. The same occurs when the national or EU judicial authorities are involved.

Personal notes of the Confidential Counsellors are not to be shared or transmitted.

Retention of data

The contact person in the Human Resources stores the opening and closing forms in a central archive for five years. They will not contain the names of the alleged harassers who were not informed of the informal procedure.

Five years is the period considered necessary for the Human Resources to evaluate the policy, reply to any legal questions and to identify multiple or recurrent cases. Files may be held for a further five years if there is an administrative or legal procedure (requests from the Ombudsman, Civil Service Tribunal) necessitating their consultation. Statistical data is being held without limit in anonymous format.

The Confidential Counsellor does not keep any personal data beyond the time limit necessary for him/her to accomplish his/her task, i.e. maximum three months. Once a case is

closed, and within a maximum of 3 months after the closure of the case all personal notes (which are not to be shared or further processed even if a formal procedure is initiated) must be destroyed by the Confidential Counsellors.

Right to be informed and derogations

The alleged harasser(s) is only directly informed of the rules for the processing and storage of the data if and when the alleged victim has given his/her prior consent. This exception is based on the need to guarantee the protection of the alleged victim (Article 20(1)(c) of Regulation 45/2001).

If on expiry of the time limit for the Confidential Counsellor's involvement, the alleged victim still does not consent to the alleged harasser being informed of the existence of an informal procedure against him/her, any data relating to that person will be erased from the opening form and no element allowing the case to be traced back and the person to be identified will be kept by the contact person in the Human Resources in its archives.

Witnesses will be informed by the Confidential Counsellor about the processing of their personal data and their rights.

Right of data subjects

Articles 13 and 14 of the Regulation (EC) No 45/2001 regarding rights of access and rectifications apply.

This right is subject to the limits of Article 20 1 (c) of the Regulation (EC) N° 45/2001¹⁰. This limitation must be interpreted restrictively and applied on a case by case basis, never automatically.

Data subjects may apply to the contact person in the Human Resources (i.e. the person who coordinates the network of the Confidential Counsellors) or the Confidential Counsellor involved in his/her cases or send an e-mail to the functional mailbox (FRA-Harassement@fra.europa.eu), to access the information/documents relating to them.

With regard to access to personal data, all data subjects will be able to access the personal data they have themselves transmitted; data subject may have access to their personal data retained on any document (not to personal data of other subject contained in the same document).

With regard to the access to documents, as an example, it may be granted under the following circumstances:

- All data subjects, either alleged victim(s) or alleged harasser(s), may have access to the opening form for the case relating to them. As far as alleged harassers are concerned, this access will only be granted if they have been informed by the

¹⁰ Article 20.1 (c) of the Regulation reads as follows: “*The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Articles 13 to 17 and Article 37(1) where such restriction constitutes a necessary measure to safeguard:*
(c) the protection of the data subject or of the rights and freedoms of others”.

Confidential Counsellor of the existence of an informal procedure, after the alleged victim has given his/her consent (with the exception already mentioned, i.e. need to protect the alleged victim);

- Alleged victims also have access to the closing form concerning their case;

A data subject may have access to his/her personal data from a document containing personal data of others, but not to the personal data of others contained in the same document.

All data subjects (alleged victim, alleged harasser, potential witnesses, others involved) have the right to rectify one's own personal data, for example providing documents as evidences to the file.

The data controller commits him/herself to deal with requests for access within the boundaries of his/her duty of care as well as to carry out the necessary verifications of the data and, if need, rectify them.

Data subjects have the right to block one's own data at any time during the informal procedure and not later than three months after the closure of the case. They also have the right to erase one's own data during the same period. Data may be erased if the processing of data is unlawful.

Data subjects can at any time have recourse to the European Data Protection Supervisor (edps@edps.europa.eu), in particular to ask him to verify the data and inform them whether the data they could not access were dealt with correctly and, if not, whether the necessary corrections were made.

Origin of the data

Data that are not directly transmitted by the data subject may originate from third parties' statements (alleged victims, alleged harasser or witness).

Data quality

Collection of any data must be adequate, relevant, and not excessive in relation with the purpose of the collection.

Security measures taken to prevent any improper use of or unauthorised access to the data

Electronic documents sent to the contact person in the Human Resources or to Confidential Counsellors are kept in an encrypted USB key or in a secure environment (protected by a password) that is not accessible to third parties. The files containing paper documents are kept by the Confidential Counsellors in locked cupboards.

Annex V – Confidentiality and data protection declaration

Data Protection Declaration

DEPT	Human Resources and Planning Department
DATE	
REF	
SUBJECT	Data protection declaration for confidential counsellors

In accordance with articles 22 of the regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies, the Data Controllers are required to implement the appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected.

The principle mentioned above applies to the data controlled by **Confidential Counsellors**.

The Confidential Counsellors' role within the informal procedure is described both in the **FRA policy on protecting the dignity of the person and preventing psychological and sexual harassment and its manual of procedure**.

As Data Controller, the Confidential Counsellor is:

- allowed to use these data for the sole legitimate purpose of the work required as **Confidential Counsellor**;
- asked to guarantee at all times confidentiality of the information contained in the documents and conversations related to cases brought to your attention;
- asked to take all possible steps to prevent access by any third party to the above mentioned information while they are in your possession
- asked to ensure the destruction of these information as soon as you no longer need them for the reasons they are in your possession (3 months after the closure of a case).

I, xxx, have read and accept this declaration and its annex.

Date:

Signature

Date:

Signature:

Encl.: Annex “Regulation (EC) No 45/2001 of the European Parliament and of the Council”

ANNEX

REGULATION (EC) No 45/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (EC 45/2001)

Article 2 Definitions

For the purposes of this Regulation:

- (a) **‘personal data’** shall mean any information relating to an identified or identifiable natural person hereinafter referred to as ‘data subject’; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;
- (b) **‘processing of personal data’** hereinafter referred to as ‘processing’ shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (c) **‘personal data filing system’** hereinafter referred to as ‘filing system’ shall mean any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (d) **‘controller’** shall mean the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by a specific Community act, the controller or the specific criteria for its nomination may be designated by such Community act;
- (e) **‘processor’** shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;
- (f) **‘third party’** shall mean a natural or legal person, public authority, agency or body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorised to process the data;
- (g) **‘recipient’** shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients;

(h) ‘the data subject's consent’ shall mean any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed.

Article 4 Data quality

1. Personal data must be:

- (a) processed fairly and lawfully;
- (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible provided that the controller provides appropriate safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual;
- (c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
- (e) 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. The Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes.

2. It shall be for the controller to ensure that paragraph 1 is complied with.

Article 5 Lawfulness of processing

Personal data may be processed only if:

- (a) processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed, or
- (b) processing is necessary for compliance with a legal obligation to which the controller is subject, or
- (c) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, or

- (d) the data subject has unambiguously given his or her consent, or
- (e) processing is necessary in order to protect the vital interests of the data subject.

Article 13 Right of access

The data subject shall have the right to obtain, without constraint, at any time within three months from the receipt of the request and free of charge from the controller:

- (a) confirmation as to whether or not data related to him or her are being processed;
- (b) information at least as to the purposes of the processing operation, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;
- (c) communication in an intelligible form of the data undergoing processing and of any available information as to their source;
- (d) knowledge of the logic involved in any automated decision process concerning him or her.

Article 21 Confidentiality of processing

A person employed with a Community institution or body and any Community institution or body itself acting as processor, with access to personal data, shall not process them except on instructions from the controller, unless required to do so by national or Community law.

Article 22 Security of processing

1. Having regard to the state of the art and the cost of their implementation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected.

Such measures shall be taken in particular to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing.

2. Where personal data are processed by automated means, measures shall be taken as appropriate in view of the risks in particular with the aim of:

- (a) preventing any unauthorised person from gaining access to computer systems processing personal data;
- (b) preventing any unauthorised reading, copying, alteration or removal of storage media;
- (c) preventing any unauthorised memory inputs as well as any unauthorised disclosure, alteration or erasure of stored personal data;
- (d) preventing unauthorised persons from using data-processing systems by means of data transmission facilities;
- (e) ensuring that authorised users of a data-processing system can access no personal data other than those to which their access right refers;

- (f) recording which personal data have been communicated, at what times and to whom;
- (g) ensuring that it will subsequently be possible to check which personal data have been processed, at what times and by whom;
- (h) ensuring that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- (i) ensuring that, during communication of personal data and during transport of storage media, the data cannot be read, copied or erased without authorisation;
- (j) designing the organisational structure within an institution or body in such a way that it will meet the special requirements of data protection.

Article 23 Processing of personal data on behalf of controllers

1. Where a processing operation is carried out on its behalf, the controller shall choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by Article 22 and ensure compliance with those measures.
2. The carrying out of a processing operation by way of a processor shall be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:
 - (a) the processor shall act only on instructions from the controller;
 - (b) the obligations set out in Articles 21 and 22 shall also be incumbent on the processor unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC, the processor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.
3. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in Article 22 shall be in writing or in another equivalent form.

[Redacted]

From: [Redacted]; (FRA) <[Redacted]@fra.europa.eu>
Sent: 28 August 2012 16:32
To: [Redacted]
Cc: European Data Protection Supervisor
Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)
Attachments: Annex I-Draft EB Decision-Conduct of administrative inquiries and disc procedures_.pdf; DPN-2012-079.docx

Dear [Redacted]
Please find attached the prior notification in MS Word format.
I also attached the related Annex.

If you need any further information, I remain at your disposal.
Regards,

[Redacted]

From: [Redacted] [mailto:[Redacted]@edps.europa.eu]
Sent: 27 August 2012 17:37
To: [Redacted] (FRA)
Cc: European Data Protection Supervisor
Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)

Dear [Redacted]

On behalf of the EDPS Secretariat, I would like to kindly ask you to submit the notification in Word format (attached herewith for your convenience).

The Excel format in which you submitted the above notification does not allow its full printing and formatting that is necessary for our internal registration system and also for the public register of all notifications maintained by the EDPS.

We would highly appreciate if you take into consideration these constraints and submit all new notifications in the future in Word format.

Many thanks in advance for your understanding, collaboration and support on this issue.

Kind regards,

[Redacted]

European Data Protection Supervisor
Contrôleur Européen de la protection des données
Postal address :rue Wiertz 60, Brussels B-1047
Office address: rue Montoyer 63, Brussels
+32-2-283. [Redacted] (direct phone)
+32-2-283.19.50 (fax)
www.edps.europa.eu

[Redacted]

From: [Redacted]
Sent: 27 August 2012 10:43
To: [Redacted]@fra.europa.eu'
Cc: [Redacted]
Subject: 2012-0683 Notification on Administrative Inquiries

Dear [Redacted]

Please note that DPOs have been informed that when the EDPS had adopted Thematic Guidelines the procedure for prior checking notification is slightly adapted. Indeed, the notification form should be accompanied by a letter where it is specified if the processing activity in question differs or not from the Guidelines (comparative assessment). As a result, the EDPS Opinion will only analyse those aspects that differ from what is stated in the Guidelines.

The EDPS has adopted Thematic Guidelines on Administrative inquiries and disciplinary proceedings on 23 April 2010: http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/10-04-23_Guidelines_inquiries_EN.pdf

I have observed that such letter with the mentioned specification is not present in the documents you sent for prior check on 8 August 2012. I would like to kindly ask you prepare the comparative assessment and submit it to us.

Please do not hesitate to contact us should you have any doubt (the contact person for the Guidelines on Administrative inquiries and disciplinary proceedings is [Redacted] in copy).

Best regards,

[Redacted signature]

European Data Protection Supervisor
Contrôleur Européen de la Protection des Données

[Redacted]
Tel: 02/283. [Redacted]
Fax: 02/283.19.50
Website: www.edps.europa.eu
Mail address: Rue Wiertz 60 - MO 63
B-1047 Brussels

Office: Rue Montoyer 63, 6th floor

[Redacted]

From: [Redacted]
Sent: 24 September 2012 15:44
To: [Redacted] (FRA)
Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)

Dear [Redacted]

I have tried to call you earlier today regarding the notification on administrative inquiries and disciplinary procedures.

The draft Decision on implementing rules, the privacy statement and the notification seem to have taken into account the EDPS Guidelines. However, before I close the case, I would like to raise the following questions:

- 1) You have mentioned that the retention period of the administrative and disciplinary files is 18 months. Is this the minimum period? Empirically speaking, is this period realistic and reasonable in light of the purpose of the processing under analysis?
- 2) Have you set-up a retention period in cases where an inquiry is closed without a disciplinary follow-up? Please inform us about it.
- 3) Have you prepared any confidentiality declarations to be signed by the investigators in light of Article 10(2), (4) and (5) of Regulation 45/2001 as well as by all internal recipients in light of Article 7(3), in the framework of administrative inquiries and disciplinary procedures? Please provide us copies.

Please do not hesitate to contact me in case you have questions.

The period of analysis is suspended under Article 27(4) of Regulation 45/2001.

Regards,

[Redacted]

[Redacted]

[Redacted]

European Data Protection Supervisor
Contrôleur Européen de la protection des données
Postal address :rue Wiertz 60, Brussels B-1047
Office address: rue Montoyer 63, Brussels
+32-2-283 [Redacted] (direct phone)
+32-2-283.19.50 (fax)
www.edps.europa.eu

From: [Redacted] (FRA) [mailto:[Redacted]@fra.europa.eu]
Sent: 28 August 2012 16:32
To: [Redacted]
Cc: European Data Protection Supervisor
Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)

15

Vienna, 25/9/2012
Ref: 2012-outgoing-001143

Subject: 2012-0683 Notification on Administrative Inquiries

Dear EDPS,

Please find below a summary of the "Administrative inquiries" prior notification in comparison with the thematic guidelines.

1. **Lawfulness of the processing operation:** The legal basis presented is in accordance with the guidelines.
2. **Processing of special categories of data:** The presented information is in line with the guidelines.
3. **Data Quality:** The provisions of data quality are respected and the concerned data subject is informed of the conclusions and interview records.
4. **Data Retention:** The retention period for the records is provided and it is in accordance with the provision not to make use of extensive periods.
5. **Transfer data:** The provisions presented are in accordance with the regulation.
6. **Right of access and rectification:** Data subject's rights are respected and information is also provided in cases of inquiries.
7. **Information to data subjects:** The administrative procedure foresees the information to data subjects as presented in the regulation and it is part of the Executive Board Decision.
8. **Confidentiality of electronic communications:** Any electronic and traffic data is foreseen to be used in the process of an investigation.

In case you require additional information I remain at your disposal

Yours sincerely,

[signed]



16

From: [REDACTED] (FRA) <[REDACTED]@fra.europa.eu>
 Sent: 11 October 2012 15:53
 To: [REDACTED] (FRA)
 Cc: European Data Protection Supervisor
 Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)
 Attachments: DPN-2012-079 - Copy.docx; Draft EB Decision-Conduct of administrative inquiries and disc procedures_.doc

Dear [REDACTED]

As per your request, please find attached the revised notification and the privacy statement (which is annexed to the draft EB decision).
 For your convenience the change is highlighted in both documents.

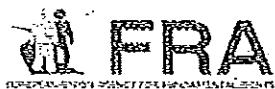
Many thanks for your kind support.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]
 Human Resources and Planning Department
 European Union Agency for Fundamental Rights
 Schwarzenbergplatz 11
 1040 Vienna, Austria
 Tel: +43 1 58030 [REDACTED]
 Email: [REDACTED]@fra.europa.eu
 Visit us on: <http://fra.europa.eu> | [Facebook](#) | [Twitter](#) | [YouTube](#) | [LinkedIn](#)



From: [REDACTED] [mailto:[REDACTED]@edps.europa.eu]
 Sent: 11 October 2012 14:12
 To: [REDACTED] (FRA)
 Cc: [REDACTED] (FRA); European Data Protection Supervisor
 Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)

Dear [REDACTED]

Thanks a lot!!

All docs are fine. I would nevertheless ask you to add in the notification and privacy statement on retention period that 18 months is the minimum retention period and 20 years maximum in order to be consistent with the rest of the institutions.

Please re-send me both docs with the new info and I will then close the case.

Regards,

[REDACTED]

From: [REDACTED] (FRA) [mailto:[REDACTED]@fra.europa.eu]
Sent: 11 October 2012 11:54
To: [REDACTED]
Cc: [REDACTED] (FRA); European Data Protection Supervisor
Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)

and the annexes.

From: [REDACTED] (FRA)
Sent: 11 October 2012 11:54
To: [REDACTED]
Cc: [REDACTED] (FRA); European Data Protection Supervisor (EDPS@edps.europa.eu)
Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)

Dear [REDACTED]

Following the last discussion we had, please find attached the updated notification form. The changes made are:

- Notification for prior checking form
 - Updated under no. 13, specifying retention period in the case when an administrative inquiry is closed without a disciplinary follow-up, and no 17 by adding the two annexes
- Annex II to the notification: Declaration of confidentiality and absence of conflict of interests for the investigators
- Annex III to the notification: Declaration of confidentiality (processing of personal data related to conduct of an administrative inquiry and /or a disciplinary procedures).

Best regards,
[REDACTED]

From: [REDACTED] [mailto:[REDACTED]@edps.europa.eu]
Sent: 24 September 2012 15:44
To: [REDACTED] (FRA)
Subject: RE: Prior notification: Administrative inquiries (EDPS case 2012-0683)

Dear [REDACTED]

I have tried to call you earlier today regarding the notification on administrative inquiries and disciplinary procedures.

The draft Decision on implementing rules, the privacy statement and the notification seem to have taken into account the EDPS Guidelines. However, before I close the case, I would like to raise the following questions:

- 1) You have mentioned that the retention period of the administrative and disciplinary files is 18 months. Is this the minimum period? Empirically speaking, is this period realistic and reasonable in light of the purpose of the processing under analysis?
- 2) Have you set-up a retention period in cases where an inquiry is closed without a disciplinary follow-up? Please inform us about it.
- 3) Have you prepared any confidentiality declarations to be signed by the investigators in light of Article 10(2), (4) and (5) of Regulation 45/2001 as well as by all internal recipients in light of Article 7(3), in the framework of administrative inquiries and disciplinary procedures? Please provide us copies.



4

ANNEX II TO NOTIFICATION ON
CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES

Declaration of confidentiality and absence of conflict of interests

Reference: Administrative inquiry No [...] / Disciplinary procedure No [...]

I, the undersigned _____¹, having been appointed [tick as appropriate]

member of the Investigation Panel

member of the Disciplinary Board

for the above mentioned procedure, declare that, to my knowledge, I have no conflict of interest* with the person subject to the above mentioned procedure.

**There is a conflict of interest where the impartial and objective exercise of the functions of any other person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.*

I confirm that, if I discover during the investigation that such a conflict exists, I will declare it immediately to the Director of the FRA.

I also confirm that I will keep all matters entrusted to me confidential. I will not communicate any confidential information that is revealed to me or that I have discovered or any information relating to the views expressed during the investigation. I will not make any adverse use of information given to me.

Furthermore, I confirm that I will process the personal data supplied by the data subject and/or other parties involved in the investigation only for the purposes for which they are transmitted and that I will not collect and process data that are irrelevant or excessive to what is requested for the purpose of the investigation in compliance with Articles 4(1) (c) and 7(3) of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. I acknowledge that the principles of necessity and proportionality under Article 4(1) (c) of Regulation (EC) No 45/2001 are applicable not only to the reports on administrative enquiry or

¹ Please specify your first name and surname.



FRA

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

**ANNEX 2 TO NOTIFICATION ON
CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES**

disciplinary procedure, but also to the disciplinary board reports referred to in Article 15 of Annex IX to the Staff Regulations.

I also acknowledge that I shall avoid processing any sensitive data as defined in Article 10(1) of Regulation (EC) No 45/2001 unless it is strictly authorised by any of the exceptions provided in Article 10(2), 10(4) and 10(5) of that regulation. I acknowledge that similarly I shall avoid processing any traffic data as defined in Article 37 of Regulation (EC) No 45/2001 unless in very exceptional circumstances where no other less invasive method could be used and after the FRA Data Protection Officer is consulted on the matter. In such cases, I acknowledge that traffic data which are strictly necessary shall be processed in strict compliance with the provisions of Articles 20 and 36 of Regulation (EC) No 45/2001.

Signature: _____

Date: _____

**ANNEX 2 TO NOTIFICATION ON
CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES****Appendix***Article 4(1) (c) of Regulation (EC) No 45/2001**Data quality*

1. Personal data must be:
(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;

*Article 7(3) of Regulation (EC) No 45/2001**Transfer of personal data within or between Community institutions or bodies*

Without prejudice to Articles 4, 5, 6 and 10:

3. The recipient shall process the personal data only for the purposes for which they were transmitted.

*Articles 10(1), 10(2), 10(4) and 10(5) of Regulation (EC) No 45/2001**The processing of special categories of data*

1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited.
2. Paragraph 1 shall not apply where:
(a) the data subject has given his or her express consent to the processing of those data, except where the internal rules of the Community institution or body provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his or her consent, or (b) processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or, if necessary, insofar as it is agreed upon by the European Data Protection Supervisor, subject to adequate safeguards, or
(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his or her consent, or (d) processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims, or
(e) processing is carried out in the course of its legitimate activities with appropriate safeguards by a non-profit-seeking body which constitutes an entity integrated in a Community institution or body, not subject to national data protection law by virtue of Article 4 of Directive 95/46/EC, and with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of this body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects.
4. Subject to the provision of appropriate safeguards, and for reasons of substantial public interest, exemptions in addition to those laid down in paragraph 2 may be laid down by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by decision of the European Data Protection Supervisor.

**ANNEX 2 TO NOTIFICATION ON
CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES**

5. Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards.

*Article 20 of Regulation (EC) No 45/2001****Exemptions and restrictions***

1. The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Articles 13 to 17 and Article 37(1) where such restriction constitutes a necessary measure to safeguard:

- (a) the prevention, investigation, detection and prosecution of criminal offences;
- (b) an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters;
- (c) the protection of the data subject or of the rights and freedoms of others;
- (d) the national security, public security or defence of the Member States;
- (e) a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in (a) and (b).

2. Articles 13 to 16 shall not apply when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that there is clearly no risk of breaching the privacy of the data subject and that the controller provides adequate legal safeguards, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

3. 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.

4. 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.

5. 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.

*Article 36 of Regulation (EC) No 45/2001****Confidentiality of communications***

Community institutions and bodies shall ensure the confidentiality of communications by means of telecommunications networks and terminal equipment, in accordance with the general principles of Community law.

**ANNEX 2 TO NOTIFICATION ON
CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES**

Article 37 of Regulation (EC) No 45/2001

Traffic and billing data

1. Without prejudice to the provisions of paragraphs 2, 3 and 4, traffic data relating to users which are processed and stored to establish calls and other connections over the telecommunications network shall be erased or made anonymous upon termination of the call or other connection.
2. If necessary, traffic data as indicated in a list agreed by the European Data Protection Supervisor may be processed for the purpose of telecommunications budget and traffic management, including the verification of authorised use of the telecommunications systems. These data shall be erased or made anonymous as soon as possible and no later than six months after collection, unless they need to be kept for a longer period to establish, exercise or defend a right in a legal claim pending before a court.
3. Processing of traffic and billing data shall only be carried out by persons handling billing, traffic or budget management.
4. Users of the telecommunication networks shall have the right to receive non-itemised bills or other records of calls made.

Article 15 (96) of Annex IX to the Staff Regulations

Before the first meeting of the Board, the chairman shall give one of its members the task of preparing a general report on the matter and shall inform the other members of the Board accordingly.

**ANNEX 3 TO NOTIFICATION
ON CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES****Declaration of confidentiality**

Reference: Processing of personal data related to conduct of an administrative inquiry and/or a disciplinary procedure

I, the undersigned, _____¹, being recipient of administrative and disciplinary related data processed in relation with an administrative inquiry and/or disciplinary procedure conducted against a staff member of the European Union Agency for Fundamental Rights (FRA), hereby confirm that I will keep all matters entrusted to me confidential. I will not communicate any confidential information that is revealed to me or that I have discovered or any information relating to the views expressed during the investigation. I will not make any adverse use of information given to me.

Furthermore, I confirm that I will process the personal data supplied by the data subject and/or any other parties involved in the investigation only for the purposes for which they are transmitted and that I will not collect and process data that are irrelevant or excessive to what is requested for the purpose of the investigation in compliance with Articles 4(1) (c) and 7(3) of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Signature: _____

Date: _____

¹ Please specify your first name, surname, function and department.

ANNEX 3 TO NOTIFICATION ON
CONDUCT OF ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEDURES

Appendix

Article 4(1) (c) of Regulation (EC) No 45/2001

Data quality

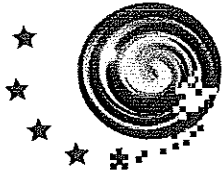
1. Personal data must be:
(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;

Article 7(3) of Regulation (EC) No 45/2001

Transfer of personal data within or between Community institutions or bodies

Without prejudice to Articles 4, 5, 6 and 10:

3. The recipient shall process the personal data only for the purposes for which they were transmitted.



EUROPEAN DATA
PROTECTION SUPERVISOR

17

GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

[REDACTED]

European Union Agency for Fundamental
Rights (FRA)
Schwarzenbergplatz 11
AT - 1040 Vienna
AUSTRIA

Brussels, 23 November 2012
GB/[REDACTED]/mch/D(2012) 2253 C 2012-0683
"Please use edps@edps.europa.eu for all
correspondence"

Dear [REDACTED],

Thank you for the notification that you have provided the EDPS on the "processing of administrative inquiries and disciplinary proceedings" carried out by FRA.

The EDPS notes that FRA has taken into consideration the EDPS Guidelines for the preparation of the notification, the draft Decision on implementing rules and the privacy statement. According to the documents enclosed and following some additional measures adopted by FRA, the EDPS considers that FRA is in compliance with Regulation 45/2001 in the field under analysis and the case can therefore be closed.

Yours sincerely,

Giovanni BUTTARELLI

Cc : [REDACTED] - FRA
[REDACTED] - FRA



ISABELLE CHATELIER
ACTING HEAD OF UNIT
SUPERVISION AND ENFORCEMENT

Ms Cornelia TRENTEA
By email: cornelia.trentea@chello.at

Brussels, 8 July 2016
IC/ALS/cpl/D(2016) 1480 C 2016-0554
Please use edps@edps.europa.eu for all
correspondence

Subject: Your request for access to documents

Dear Ms Trentea,

On 16 June 2016, you sent an access to documents request to the EDPS on the basis of Regulation (EC) No 1049/2001.

Your request concerns:

- (1) FRA request to EDPS dated 23 May 2014 related to access of email/s accounts of former staff of the FRA;
- (2) EDPS replies dated 20 June 2014 to FRA request under point 1;
- (3) All FRA requests for Prior Opinion of EDPS (only the ones related to internal investigation by FRA or FRA external investigators), and;
- (4) EDPS replies/opinions and correspondence related to point 3 above.
- (5) FRA request and the EDPS Opinion related to FRA staff investigation launched in February 2016.

On 17 June 2016 the EDPS sent an acknowledgement of receipt with a link to our prior notification registry and to two identified Opinions that concern internal/external investigations at FRA (anti-harassment process and administrative inquiries). We asked whether these two Opinions met your request. In a reply on 18 June 2016 you specified that you would like to access the (5) FRA request and the EDPS Opinion related to FRA staff investigation launched in February 2016. On 27 June you confirmed that you are also interested in the Opinions identified above and the related background information.

As regards the documents held by the EDPS which needed further examination, some of the documents originate from FRA. The EDPS has consulted FRA in accordance with Article 4(4) of Regulation 1049/2001. This was done with a view to assess whether any of the exceptions in Article 4(1), 4(2) or 4(3) would be applicable.¹

¹4(1) - the institutions shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Union or a Member State; or (b) privacy and the integrity of the individual.
4(2) - documents where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice, the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.
4(3) - internal decision-making for on-going procedures and space to think.

We have identified the following documents in relation to your requests:

In relation to request no 1 and 2:

We regret to inform you that we have searched our records and have not found any documents corresponding to this request.

In relation to request no 3:

As mentioned in our reply of 17 June we have identified two Opinions that relate to internal/external investigations by FRA; anti-harassment process (EDPS case 2010-0722), and administrative inquiries (EDPS case 2012-0683). Under the following links you find the notifications from FRA in relation to these processing activities.

Anti-harassment process:

<https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Priorchecks/Notifications/601to700/0624-2010-722.pdf>

Administrative inquiries:

<https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Priorchecks/Notifications/801to900/0880-2012-0683.pdf>

In relation to request no 4:

The EDPS Opinions are already publicly available and can be found on the EDPS website in our Register. Please see the following links to EDPS Register and the specific Opinions.

The EDPS register:

<https://secure.edps.europa.eu/EDPSWEB/edps/cache/bypass/Supervision/priorchecking/Register>

The EDPS Opinion on FRA's Anti-harassment process:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Priorchecks/Opinions/2010/10-12-21_FRA_EN.pdf

Regarding the Administrative inquiries we considered FRA's draft internal rules in compliance with our Guidelines, which can be found on the following link:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/10-04-23_Guidelines_inquiries_EN.pdf

Other documents relating to the Anti-harassment process

1. FRAs request for prior checking 23 September 2010 + draft decision on protecting the dignity of the person and preventing psychological and sexual harassment and the specific privacy statement.
2. Email exchange EDPS - FRA 29 September-1 October 2010
3. EDPS request for complementary information 18 October 2010
4. FRAs reply and email correspondence + Statistical Anonymous Fiche 29 October - 9 November 2010
5. Cover letter to the EDPS Opinion 21 December 2010 (Opinion available on the link above)
6. FRAs reply/follow-up letter 14 March 2011 + manual of procedures in relation to FRAs policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment.
7. The EDPS reply 5 May 2011
8. FRAs reply 24 June 2011 + updated manual of procedures

9. The EDPS closure letter 15 July 2012
10. FRAs final reply 28 November 2011 + updated manual of procedures

Other documents relating to the Administrative inquiries

11. FRAs request for prior checking 8 August 2012 + draft decision on conduct of administrative inquiries and disciplinary procedures
12. Email correspondence 27-28 August 2012 + notification (available on the link above)
13. EDPS request for complementary information 27 August 2012
14. EDPS request for complementary information 24 September 2012
15. Cover letter FRA 25 September 2012
16. Email exchange 11 October 2012 + declarations of confidentiality and draft decision on conduct of administrative inquiries and disciplinary procedures.
17. EDPS decision 23 November 2012

Analysis in relation to request no 4

Documents originating from FRA

Since documents 1, 4, 6, 8, 10, 11, 15 and 16 were originating from FRA, we have consulted FRA in accordance with Article 4(4) of Regulation 1049/2001 with the following outcome:

Document 1: Access is denied on the basis of Article 4(3) of Regulation 1049/2001. Please note, however, that the final decision is available online under the following link:

http://fra.europa.eu/sites/default/files/eb_decision_2009_2_anti-harassment.pdf

In relation to the specific privacy statement FRA has decided to disclose this document in full.

Documents 4, 6, 8 10, 15 and 16: Partial access is granted on the basis of Article 4(1)(b) of Regulation 1049/2001 since full disclosure would undermine the protection of privacy and the integrity of the individual. Considering the draft manual of procedures attached to document 6 and 8, access is refused on the basis of Article 4(3). Note, however, that access is granted to the final version (document 10).

Document 11: Access is denied on the basis of Article 4(3). The final decision is however available online under the following link:

http://fra.europa.eu/sites/default/files/eb-decision-conduct-admin-enquiries-2013_01.pdf

Document 16: Partial access is granted on the basis of Article 4(1)(b) in order to protect the privacy and integrity of the individual. The declarations of confidentiality can be disclosed in full. In relation to the draft decision, access is denied on the basis of Article 4(3) (however, the final version is available online at: http://fra.europa.eu/sites/default/files/eb-decision-conduct-admin-enquiries-2013_01.pdf).

Documents originating from EDPS

The EDPS has decided to grant access to all the documents (2-3, 5, 7, 9, 12-14 and 17) with the exception of names and email addresses of EDPS staff (below Head of Unit/Sector) and FRA staff. The decision to partially grant access to the document is based on Article 4(1)(b) of Regulation 1049/2001. According to this provision access to a document is refused where disclosure would undermine the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data, including Article 8 of Regulation 45/2001.

In relation to some of the documents originated from FRA which included names and email addresses to EDPS staff, this information has been redacted in accordance with Article 4(1)(b) Regulation 1049/2001 mentioned above.

If you would like to request access to the redacted personal data please provide the EDPS with a legitimate justification or compelling argument to demonstrate the necessity for the personal data to be disclosed² (see below for information about the confirmatory application).

In relation to request no 5:

We have searched our records but have not found any document corresponding to this request. It can be mentioned that certain processing activities that are likely to present specific risks should be prior checked by the EDPS³ but it is done on a procedural level, such as administrative inquiries and harassment procedures, not on a case-by-case basis when a specific enquiry is launched.

Please note that pursuant to Article 7(2) of Regulation 1049/2001, you may make a confirmatory application asking the EDPS to reconsider his position as regards to the partial refusal of your request. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the EDPS general e-mail: edps@edps.europa.eu

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Isabelle Chatelier', with a long horizontal flourish extending to the right.

Isabelle Chatelier

² In accordance with Article 8(b) of Regulation 45/2001 as interpreted by the Court of Justice in Case C-28/08 P *Bavarian Lager*.

³ See Article 27 of Regulation (EC) 45/2001.