



SUPERVISION AND ENFORCEMENT UNIT

[REDACTED]
[REDACTED]
[REDACTED]

Brussels,

[REDACTED] D(2019) 0599 C **2019-0291**
Please use edps@edps.europa.eu for all
correspondence

CONFIDENTIAL

Subject: Your complaint of 14 March 2019

Dear [REDACTED],

We hereby acknowledge receipt of your complaint (Case number 2019-0291) against the European Union Agency for Fundamental Rights (FRA) of 14 March 2019 concerning the alleged non-respect of Regulation (EC) No 2018/1725 (the Regulation) by FRA in the context of an administrative inquiry ([REDACTED]) conducted against you. You explain in your complaint that the processing of your personal data in the administrative inquiry [REDACTED] violates Article 4(1)(a) and 5(1)(a) of the Regulation. You also explain that on 1 March 2019 you (1) requested erasure of your personal data according to Article 19 of the Regulation, (2) objected according to Article 23, and (3) requested to restrict processing according to Article 20 of the Regulation. You state in your complaint that, despite your request submitted to FRA, the data controller continues to process your personal data without demonstrating compelling legitimate grounds for the data processing and without verifying whether the legitimate grounds of the controller override your interest as a data subject. You informed the EDPS that the data controller were to provide a reply by 1 April 2019 and had invited you to a hearing in the context of the administrative inquiry on 22 March 2019.

In your complaint, you base the alleged infringement of the Regulation on three points:

1. Your request to erase your personal data according to Article 19 of the Regulation

A data subject can request erasure of their personal data processed by the data controller under Article 19 (1)(c) and (d) of the Regulation:

1.1. As regards grounds for erasure under Article 19(1)(c), you have the right to obtain from the controller the erasure of your personal data in case you object to the processing pursuant to Article 23(1) and there are no overriding legitimate grounds for the processing. In this context please note that Article 23(1) requires "*grounds relating to the complainant's particular situation*" to exercise the right to object. In your complaint to the EDPS, you

refer to unfair and unlawful processing of your personal data, violating Article 4(1)(a), and in your email to FRA of 1 March 2019, you refer to the following three grounds:

- a) The investigator went beyond the scope of his investigative mandate;
- b) The inquiry was opened without sufficiently serious suspicion;
- c) The investigator did not give the right to the data subject to comment on certain findings of the report and therefore Article 4(1)(a) has been violated by the controller.

The EDPS concludes that all the grounds you refer in your complaint regard the way FRA conducted the administrative inquiry. For all points above, including the case where the inquirer had indeed gone beyond the purpose of the inquiry as defined in the opening decision, or the case where the inquirer had not given the opportunity to comment on certain parts of the findings, the resulting processing of personal data the controller may indeed not have complied with the Regulation. However, any such infringement of the Regulation when processing your personal data would be purely incidental in the light of the actually alleged maladministration. In the light of the EDPS' tasks, he cannot investigate or invalidate the procedure as such. There appears to be no valid grounds relating to your particular situation under Article 23(1) and you cannot therefore exercise the right to object to the processing. Consequently the request to erase personal data cannot be based on Article 19(1)(c) of the Regulation. The complaint to the EDPS is thus inadmissible on this point. Should you wish to pursue this point of your complaint further, we suggest you turn to the European Ombudsman (see <https://www.ombudsman.europa.eu/en/home> for further information).

1.2. As regards grounds for erasure under Article 19(1)(d), you have the right to obtain from the controller the erasure of your personal data in case the personal data have been unlawfully processed. As already set out under point 1.1, any such infringement of the Regulation when processing your personal data would be purely incidental in the light of the actually alleged maladministration. In the light of the EDPS' tasks, he cannot investigate or invalidate the procedure as such. Consequently the request to erase personal data cannot be based on Article 19(1)(d) of the Regulation either. The complaint to the EDPS is thus inadmissible on this point as well. Should you wish to pursue this point of your complaint further, we suggest you turn to the European Ombudsman (see <https://www.ombudsman.europa.eu/en/home> for further information).

2. Your objection to the processing of your personal data according to Article 23(1) of the Regulation

Based on the arguments set out in point 1.1, the EDPS concludes that the complaint to the EDPS is thus inadmissible on this point. Should you wish to pursue this point of your complaint further, we suggest you turn to the European Ombudsman (see <https://www.ombudsman.europa.eu/en/home> for further information).

3. Your request to restrict processing according to Article 20 of the Regulation

You request to restrict processing according to Article 20(1)(d) of the Regulation, which –inter alia- requires a valid objection under Article 23(1) and grounds related to the particular situation of the data subject. As outlined above in point 1, the EDPS concludes that there are no grounds relating to your particular situation. The objection under Article 23(1) is thus not valid and therefore the conditions set out by Article 20(1)(d) are not met. The complaint to the EDPS is thus inadmissible on this point as well. Should you wish to pursue this point of your complaint further, we suggest you turn to the European Ombudsman (see <https://www.ombudsman.europa.eu/en/home> for further information).

For the above reasons, your complaint (Case 2019-0291) has been declared inadmissible.

You may ask for a review by the EDPS of the present Decision within one month of receiving this letter. The request for revision should be lodged with the EDPS in writing and contain new factual elements or legal arguments which so far have not been taken into account by the EDPS.

You may bring an action for annulment against this decision before the Court of Justice of the European Union, within two months¹ from the adoption of the present Decision and according to the conditions laid down in Article 263 TFEU.

Yours sincerely,

[REDACTED]
Delphine
Head of Unit

Data Protection Notice

*According to Articles 15 and 16 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, please be informed that your personal data will be processed by the EDPS, where proportionate and necessary, for the purpose of investigating your complaint. The legal basis for this processing operation is Article 57(1)(e) of Regulation (EU) 2018/1725. The data processed will have been submitted by you, or from other sources during the inquiry of your complaint, and this may include sensitive data. Your data will only be transferred to other EU institutions and bodies or to third parties when it is necessary to ensure the appropriate investigation or follow up of your complaint. Your data will be stored by the EDPS in electronic and paper files for up to ten years (five years for *prima facie* inadmissible complaints) after the case closure, unless legal proceedings require us to keep them for a longer period. You have the right to access your personal data held by the EDPS and to obtain the rectification thereof, if necessary. Any such request should be addressed to the EDPS at edps@edps.europa.eu. Your data might be transferred to other EU institutions and bodies or to any third parties only where necessary to ensure the appropriate handling of your request. You may also contact the data protection officer of the EDPS (EDPS-DPO@edps.europa.eu), if you have any remarks or complaints regarding the way we process your personal data. You can find the full version of our data protection notice on complaint handling at: https://edps.europa.eu/data-protection/our-role-supervisor/complaints-handling-data-protection-notice_en.*

¹ Please note that any request for revision of the present Decision lodged with the EDPS does not interrupt this deadline.