



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

Brussels, 18 December 2014  
(Case 2013-0732)

## 1. Proceedings

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

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

## 2. Legal analysis

### Scope of the notification

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

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

---

<sup>1</sup> EDPS *Guidelines concerning the processing of personal data during the selection of confidential counsellors and the informal procedures for cases of harassment in European institutions and bodies*, adopted in February 2011 (available at [https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-02-18\\_Harassment\\_Guidelines\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-02-18_Harassment_Guidelines_EN.pdf)).

<sup>2</sup> See also EDPS Opinion in case 2010-0722 (informal procedure in harassment cases at FRA), available on our website.

EIGE to notify these processing operations after consulting the *Guidelines on administrative inquiries and disciplinary proceedings*<sup>3</sup>.

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

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

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

The privacy notice should be published on the intranet. In addition, the staff members seeking the assistance of the confidential counsellors, as well as the other data subjects (alleged harasser and witnesses) should be informed individually with regard to the processing of their personal data, taking into account the limitations in Article 20 of the Regulation<sup>4</sup>.

### **Rights of the data subject**

EIGE specified in the notification that "the data subject's rights *will vary* dependent on the case and the procedure (informal, formal) that is taking place". The rights of the data subject are clearly provided in Section 5 of the Regulation<sup>5</sup>. Therefore they do not vary, while the procedures and modalities for granting the exercise of these rights may, indeed, vary<sup>6</sup>. EDPS recommends EIGE to foresee the modalities of exercising the rights of the data subject, establishing contact points for requests (e.g. for access, rectification) and clear procedures, following the recommendations set out in the *Guidelines on the anti-harassment procedure*. The modalities of exercising the rights of the data subject should be included in the Privacy notice.

### **Retention policy**

---

<sup>3</sup> EDPS *Guidelines concerning the processing of personal data in administrative inquiries and disciplinary proceedings by European institutions and bodies*, 23 April 2010, available at [https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/10-04-23\\_Guidelines\\_inquiries\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/10-04-23_Guidelines_inquiries_EN.pdf).

<sup>4</sup> See *Guidelines on the anti-harassment procedure*, p. 12.

<sup>5</sup> See the *Guidelines on the Rights of Individuals with regard to the Processing of Personal Data*, issued by EDPS on 25 February 2014, available on the website [https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/14-02-25\\_GL\\_DS\\_rights\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/14-02-25_GL_DS_rights_EN.pdf).

<sup>6</sup> See *Guidelines on the anti-harassment procedure*, Section 6 on "The rights of the data subject".

Pursuant to Article 4(e) of the Regulation, data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*". According to the notification, there is no retention policy in place yet. EIGE should define a time period for which the data processed are kept, taking into account the requirement in Article 4(e) of the Regulation.

[...]

### **3. Conclusion**

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

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

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

**(signed)**

Giovanni BUTTARELLI  
Supervisor