

Specific Privacy Notice on personal data protection in the context of selecting and appointing Confidential Counsellors and within the Informal Procedure defined in the Fusion for Energy Policy protecting the Dignity of the Person and preventing Psychological Harassment and Sexual Harassment.

Fusion for Energy processes the personal data in accordance with the *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* (the “**Regulation (EC) 45/2001**”). As laid down in Articles 11 and 12 of the Regulation (EC) 45/2001, Fusion for Energy provides data subjects with the following information:

Identity of the Data Controller:

The European Joint Undertaking for ITER and the Development of Fusion for Energy
C./ Josep Pla, nº 2,
Torres Diagonal Litoral,
Edificio B3,
08019 Barcelona, Spain
Mr. Hans Jahreiss - Head of the Administration Department.

Purposes of the processing operation:

Data used for the selection of the Confidential Counsellors and for managing the informal procedure.

Legal basis:

Articles 1 and 31.1 of the Charter of the Fundamental Rights of the European Union (2000/C 364/01)

Council decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it – 2007/198/Euratom, in particular Article 6 thereof

The Statutes annexed to the Council decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it – 2007/198/Euratom, in particular Article 10 thereof

Articles 1d, 12a of the Staff Regulations of Officials of the European Communities (“Staff Regulations”) and Article 11 of the Conditions of Employment of other servants (CEOS)

F4E Governing Board Decision F4E(14)-GB30-11-16 of 03/12/2014 on well-being at work and on the application of the Implementing Rules on the policy protecting the dignity of the person and preventing psychological harassment and sexual harassment (hereinafter “the Policy”). Manual of procedures for the implementing of Fusion for Energy policy protecting the dignity of the person and preventing psychological harassment and sexual harassment signed on 26th March 2014

Lawfulness of the processing:

In accordance with Article 5 (a) of Regulation (EC) 45/2001, the processing of the personal data is necessary for the performance of Fusion for Energy tasks carried out in the public interest on the basis of the Fusion for Energy founding instrument and in the legitimate exercise of official authority vested in Fusion for Energy and in a third party to whom the data are disclosed.

Data Subjects concerned:

a) In what concerns the **selection of Confidential Counsellors, and the External Psychologist**, their administrative data (name, surname, personal number, professional e-mail and address) shall be collected and processed for the necessary administrative steps leading to their appointment. For that reason, they shall be considered data subjects.

b) Within the **informal procedure**, data subjects are each and every person working at Fusion for Energy, regardless of grade and contract of employment (this includes the Seconded National Experts, trainees and all those working under a contract under national law) that may, if they feel they are the victim of psychological harassment and sexual harassment by a member of staff of Fusion for Energy, initiate an informal procedure.

Equally, those persons accused of harassment within an informal procedure will have their personal data processed as described above and in the Policy and its Manual of Procedures and therefore will become data subjects.

Together with the Coordinator for the prevention of harassment, the Human Resources Head of Unit or Deputy Head of Unit, in case of reassignment of the alleged victim/harasser and any members of management for the same purposes may have access to the data.

As well the following people shall be considered as data subjects:

- Coordinator for the prevention of harassment.
- Any HR Unit member involved at any stage of the informal procedure (in case the alleged victim/alleged harasser contacts directly with a member of the Human Resources Unit)
- Witnesses and any other people involved (Coordinator for the prevention of harassment, Human Resources contact persons, security officers, police officers if the case may be etc.) that may have their data processed within the informal procedure shall be considered as well

Categories of data:

- Identification data: name, surname, age, gender, personal number, grade and function and position assigned, and ID number, home address, permanent address, personal telephone

number, personal e-mail, professional e-mail and next of kin (i.e. the contact person – husband/wife, partner, sisters/brothers, family in general, friends or other selected person with whom the data subject has narrow links, as indicated by the staff member in the requested documents on taking up duties).

- Special categories of data (not health data): personal notes taken by the Confidential Counsellor or the External Psychologist that may contain data of Article 10 of the Regulation, administrative and other data included in forms to request the reassignment procedure evaluated by the Human Resources Unit.
- Health data: any psychosocial or medical report that may contain information related to the health of the data subject; medical certificates, tests, evidence or reports provided by the data subject.

Recipients of the data processed:

(i) Administrative data:

- Confidential Counsellors
- External Psychologist
- Coordinator for the prevention of harassment and his/her alternate
- Human Resources Head of Unit or staff (in case of a proposed reassignment)
- Data Protection Officer (in case if he/she is involved by victim/the alleged harasser)
- Head of Administration Department (in case of a proposed reassignment or if the alleged victim wanted to involve him/her in any way)
- Secretary to the Head of Administration Department
- Appointing Authority (in case of a proposed reassignment or if the alleged victim wants to involve him in any way)
- Secretary to the Director (in case of a proposed reassignment or if the alleged victim wants to involve him in any way)
- Fusion for Energy responsible officer within the Legal Service unit (in case of a complaint submitted to the Director or if a case is submitted to Court or for ruling or appeal)• Internal Auditor and Court of Auditors (for auditing purposes only)
- European Ombudsman (if a case is submitted to him and upon justified request)
- OLAF (upon justified request)
- Civil Service Tribunal (if a case is submitted to this court and upon justified request)
- Court of Justice of the European Union (if a case is submitted to this court and upon justified request)
- Fusion for Energy security officer (in cases of recourse to urgent measures or measures for the protection of the alleged victim where he/she is at risk or when his/her health or security are compromised to such an extent that he/she is unable to act independently)
- Autonomic and State Police of the Host Member State (if needed and requested for a criminal investigation linked to harassment)

If recurrent cases are identified:

The name, surname of the alleged harasser and alleged victim as well as the documents which would assist in a potential inquiry are transmitted to the Head of Administration Department and/or Head of Human Resources unit. Victims must be informed of this communication, which cannot take place without their consent.

(ii) Health data:

- Medical service / External Doctors ((in cases of recourse to urgent measures or measures for the protection of the alleged victim where he/she is at risk or when his/her health or security are compromised to such an extent that he/she is unable to act independently))

Date when processing starts:

Date of the submission of applications of Confidential Counsellors/External Psychologists; date in which the opening form for the informal procedure is issued.

Time limits for storage:

a) In what concerns **Confidential Counsellors/the External Psychologist**, personal data of those selected applicants shall be kept during two years following the end of their mandate; non-selected applicants personal data shall be retained for two years after the appointing decision is published, to cover any possible complaint or litigation procedure.

b) Documents regarding the **informal procedure** shall be kept for a period of five years (from the start of the procedure). In addition, confidential counsellors will not keep any personal data together with any documents beyond the time needed to informally deal with the case and accomplish his/her tasks. Finally, the opening and closing forms (as well as the related documents) concerning an informal procedure may only be kept by the coordinator if the alleged victim gave his/her prior consent.

Data stored for a longer period (for statistical purpose) are kept in anonymous form only.

Transfer of data

Articles 7 to 9 of the Regulation shall be complied with. It is not likely to transfer personal data as foreseen in article 9 of the Regulation within the frame of an informal procedure in a harassment case for a Fusion for Energy staff member, but on the contrary as very exceptional. The data subject would be informed in advance in the Privacy Notice that will be provided to him/her of the possibility to proceed with a transfer if necessary according to the data recipient doctor established by him/her in a third

country. Consent of the data subject would always be obtained in advance in the eventual need to proceed in this way.

Taking into account the EDPS “Guidelines concerning the processing of personal data during the selection of Confidential Counsellors and the informal procedures for cases of harassment in European institutions and bodies”, point 5.2 “External Transfers”, that personal data may only be transferred to recipients who are not the subject to national law adopted pursuant to Directive 95/46/EC, if the third country or organisation provides an adequate level of protection (Article 9.1). It is possible to derogate from this principle if the data subject has given his/her unambiguous consent or if the transfer is necessary in order to protect the vital interests of the data subject. However, it is advised that decisions shall be taken on a case by case basis and Fusion for Energy fully endorses this policy; therefore any external transfer shall be duly justified.

Considering that third countries are not subject to Directive 95/46/EC, F4E would request from the third country authorities (in fact the data recipient should provide this evidence) at least reciprocity on the management on data protection and the legislation covering it before enforcing a transfer procedure of article 9.1 of the Regulation.

The data subject has also a reinforced protection: through the diplomatic system of the State Member from which the concerned person is a national. By means of the Embassy of the country for which the F4E staff member is a national (and using the “valise diplomatique”), the closed envelope containing documents with personal data would be delivered from the Embassy to the appointed data recipient of the 3rd country in his/her address there.

Rights of the data subject:

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

Right of access: according to Article 13 of Regulation, data subjects have the right of access to the personal data that are processed by the Institution, specifically:

- if data related to him or her are being processed
- information on the purposes of the processing operation
- categories of data concerned
- recipients or categories of recipients to whom the data are disclosed
- communication in an intelligible form of the data undergoing processing and their source
- logics involved in any automated decision process concerning him/her

Data subjects shall always have their right of access granted to control if the data reflect the facts and perceptions that they wanted to transmit and if their statements are as complete and accurate as possible.

Even if Confidential Counsellors/External Psychologist provide themselves all data that is processed for them, it shall be borne in mind that they shall always have their right of access granted for any data collected by the Selection Panel/Coordinator for the prevention of harassment..

Access shall always be granted for the following:

- documents they have themselves transmitted;
- opening form and closing form for the case relating to them (alleged victims and alleged harassers). Access to any other document will only be granted if this document does not contain personal data relating to other individuals 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.

Right of rectification: according to Article 14 of Regulation, data subjects have the right of modification of any inaccurate or incomplete personal data.

Data subject shall always have their right of rectification granted to control if the data reflect the facts and perceptions that they wanted to transmit and if their statements are as complete and accurate as possible.

Right of blocking: according to Article 15 of the Regulation, data subjects can request the blocking of their personal data when:

- they contest the accuracy of the data
 - the Controller no longer needs them but they need to be maintained for purposes of proof
 - the processing is unlawful and the data subject requests blocking instead of erasure
- Personal data blocked shall only be processed for the purposes of proof (with the consent of the data subject) or for the protection of the rights of a third party.

Right of erasure: according to Article 16 of the Regulation, data subjects can request the cancellation of their personal data if they consider that they are subject to an unlawful processing.

Right to object: according to Article 18 of Regulation 45/2001, data subjects can object the processing of their personal data unless the processing is needed for the purposes of Article 5 b) and d) of the Regulation:

- on legitimate grounds relating to his/her particular situation
- before their personal data are disclosed to third parties

Article 20(1)(c) of Regulation states that the data Controller may restrict access to the information/documents to safeguard:

- the prevention, investigation, detection and prosecution of criminal offences
- any important financial or economic interest of the Member States
- the protection of the data subject or the rights of freedoms of others
- the national security, public security or defence of the Member States
- the monitoring, inspection or regulatory task connected with the exercise of official authority.

Common steps for the exercise of any of the above mentioned rights:

Any request from a data subject concerning the rights above described should be addressed to the Controller through the following contact e-mail addresses:

Resources-Controller@f4e.europa.eu

DataProtectionOfficer@f4e.europa.eu

The Controller shall provide an answer to the data subject concerning his/her request on the exercise of his/her rights, as defined above, within 10 working days. Any contestation by the data subject to the Controller's reply shall be submitted within 10 working days of the response received and the Controller shall have another 10 working days to provide a replica revising his previous decision or confirming it.

The data subject may put in place the procedure established in article 90 of the Staff Regulations to contest any action of the data controller related to his/her rights.

All data subjects have also right of recourse at any time to the European Data Protection Supervisor: EDPS@edps.europa.eu. The EDPS receives complaints from EU staff members as well as from other people who feel that their personal data have been mishandled by a European institution or body. If a complaint is admissible, the EDPS usually carries out an inquiry. The findings are communicated to the complainant, and necessary measures are adopted.

In case of dispute, the competent forum to lodge an appeal is that of the Civil Service Tribunal, Rue du Fort Niedergrünwald, L-2925 Luxembourg, as per article 91 of the Staff Regulations.