

Data Protection Statement/Privacy Statement on the processing of personal data in the procedure/context of Management of the prevention of harassment policy at EMSA – Informal Procedure

The protection of privacy is of high importance to the European Maritime Safety Agency ('EMSA'). EMSA is responsible for the personal data it processes. Therefore, we are committed to respecting and protecting the personal data of every individual and to ensuring efficient exercising of data subject's rights. All the data of personal nature, namely data that can identify an individual directly or indirectly, will be handled fairly and lawfully with the necessary due care.

This processing operation is subject to Regulation 2018/1725 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. The information in this Privacy Statement is given pursuant to Articles 15 and 16 of the Regulation 2018/1725.

1. Nature and the purpose(s) of the processing operation

The purpose(s) of the processing of personal data is/are:

The processing aims at preventing and remedying cases of alleged harassment and conflict resolution within the Agency during the informal procedure. The informal procedure aims at helping and protecting staff members seeking support at an early stage.

Data will be collected and processed for the following purposes:

- carrying out the informal procedure in case of alleged psychological or sexual harassment;
- monitoring and evaluation of the policy on protecting the dignity of the person and preventing psychological and sexual harassment;
- prevention and identification of recurrent cases in view of undertaking disciplinary actions and providing data for the formal procedure/replying to the judicial, administrative or other competent authorities at national or EU level.

The implementation modalities and the role of parties involved in the informal procedure are described in the [Manual on informal procedures](#) within the framework of the EMSA policy annexed to the Decision of the Administrative Board of 20 November 2009 on the European Maritime Safety policy on protecting the dignity of the person and preventing psychological and sexual harassment.

Personal data processed in the context of the informal procedure is the data linked to the statements addressed to the confidential counsellors by the person seeking support within the informal procedure (party

1) .They are contained in the opening and closing forms and in an anonymous statistical form and the files or documents collected to properly administer the case.

Data may also concern the person cited as responsible (party 2). If party 1 has asked for conciliation/mediation with party 2, party 2 is informed of the existence of an informal procedure concerning him/her.

The following two categories of data can be distinguished:

- hard data: the administrative and identification data, usually collected directly from the data subjects through the files or documents collected to properly administer the case..
- soft data: the allegations and declaration based upon the subjective perceptions of data subjects, processed orally during the meetings with the confidential counsellors.

EMSA will not reuse the personal data for another purpose that is different to the one stated above.

The processing is not intended to be used for any automated decision making, including profiling.

2. Categories/types of personal data processed

The categories/types of personal data processed are the following:

- Personal details: Name and Surname and signature
- Employment Details: Unit, job title, etc
- Other: Type of complaint, start date of informal procedure and end date of the informal procedure, channel used for first contact, steps taken during the case, result, solution, move to formal procedure (if applicable), contact with other parties (if applicable), name of party 2 (if applicable)

The allegations and declaration based upon the subjective perceptions of data subjects, processed orally during the meetings with the confidential counsellors.

- Sensitive personal data:

To manage the informal procedure, EMSA may process special categories of personal data.

This personal information may be disclosed voluntarily by the data subjects during the confidential counsellors' meetings. The collection (orally only) of this type of data does not follow systematic rules as to the type of data processed as it is not possible to determine a priori the type of data collected.

This does not mean that the collection may be random. The data collected by the counsellors must be adequate, relevant, and not excessive in relation to the fight against harassment. This analysis must be conducted on a case-by-case basis by the counsellors.

3. Processing the personal data

The processing of the personal data is carried out under the responsibility of the Head of Unit 4.1 Human Resources and Internal Support, acting as delegated EMSA data controller.

Personal data are processed by the Confidential Counsellors and the Coordinator of the Network of Confidential Counsellors in the Unit 4.1.

4. Access to and disclosure of personal data

The personal data is disclosed to the following recipients:

Structural transfers: taking account of the principle of confidentiality to be strictly adhered to by all parties involved in the informal procedure, the following persons receive personal data in a structured way:

- Data Subject Themselves:
 - Every person working at EMSA, regardless of grade or contract of employment and seeking assistance in the context of the Policy at hand (hereinafter known as party 1)
 - The person who party 1 identifies as being the source of their difficulties at work (hereinafter known as party 2) is also considered as a data subject in so far as he/she is involved in the informal procedure.
- The Coordinator for Confidential Counsellors in the informal procedure, solely with regard to the opening and closing forms;
- Confidential Counsellors, in charge of the core activity in the informal procedure and therefore keeping any information provided by Party 1 in strict confidentiality.
- Managers of data subjects: The Coordinator/Confidential Counsellor may also, at the request of party 1 or a Confidential Counsellor, arrange meetings with party 2 or hierarchical managers. If such a meeting is arranged, party 2 should always be informed should his/her name be mentioned during that meeting.
- Designated EMSA staff members: The Appointing Authority (Executive Director) and/or the Head of Department 4 and/or the Head of Human Resources, for the sole purpose of identifying multiple or recurrent harassment cases;

Ad hoc (case-by-case) transfers: Ad hoc data transfers to recipients listed below may happen on a 'need to know' basis and should meet the cumulative conditions laid down in Article 9 of Regulation (EU) 2018/1725, i.e. the transfer should be necessary for the legitimate performance of tasks covered by the competence of the recipient and the recipients should process the data received only for the purposes for which they were transferred. Article 9 prescribes further conditions to be observed in any ad hoc transfer.

Subject to the above and after the informal procedure has been completed case-by-case transfers are possible to:

- Others:
 - The Inquiry Team in the context of formal follow-up on the case by means of an administrative inquiry or disciplinary procedure,
 - In the context of an admin inquiry, there is a need to contact OLAF to determine whether they have opened a case on the same matter, regardless of the subject.
 - the European Data Protection Supervisor, the European Ombudsman, as well as the Court of the European Union or competent national judicial authorities in the context of legal action, which possibly justifies a transfer also to EMSA's Legal and Financial Affairs Unit in charge of follow-up on legal action involving EMSA.

The information concerning Management of the prevention of harassment policy at EMSA –Informal Procedure will only be shared with people necessary for the implementation of such measures *on a need to know* basis. The data are not used for any other purposes nor disclosed to any other recipient.

The information in question will not be communicated to third parties, except where necessary for the purpose(s) outlined above.

Personal data are not intended to be transferred to third countries.

5. Protecting and safeguarding personal information

EMSA implements appropriate technical and organisational measures in order to safeguard and protect data subjects' personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to them.

All personal data related to Management of the prevention of harassment policy at EMSA –Informal Procedure is stored in locked safe to which only the Coordinator of the Network of Confidential Counsellors in the Unit 4.1 has access.

6. Access, rectification, erasure or restriction of processing of personal data

The right of access and information

- The rights of access and rectification are enforceable rights of the data subject. Articles 17 and 18 of Regulation (EU) 2018/1725 are the general rule and any application of the limitations foreseen in Article 25 (must be considered on the basis of a case-by-case analysis).

Ordinarily, data subjects have a right to access the personal information being processed about them. However, party 2 right of access may be restricted. Party 1 needs to be able to rely on the confidentiality of their interactions with the counsellor. Therefore, the right of party 2 to be informed may need to be restricted. In practice, at the informal stage of the prevention of harassment procedure, party 2 is only be informed about the procedure with the consent of party 1.

In granting the right of rectification, inaccurate hard data should be rectified without delay upon the data subject's request made to the controller in accordance with Article 18 of Regulation (EU) 2018/1725.

For soft data, such as the allegations made by Party 1, which by its very nature is subjective, the right of rectification on the grounds of inaccuracy is not applicable as EMSA does not record this type of information.

The right to erase and block data

Erasement and blockage of data will take place immediately after receiving in writing the request from the party 1. Only party 1 is authorised to request to unblock the data.

The above requests will be answered without undue delay, and in any event within one month of receipt of the request. However, according to article 14 (3) of the Regulation 2018/1725, that period may be extended by two further months where necessary, taking into account the complexity and number of the requests. EMSA shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay.

7. Legal basis for Data processing

Processing is based on Article 5(a) of the Regulation 2018/1725.

The personal data are collected and processed in accordance with:

Article 1d, Article 12, Article 12a of the Staff Regulations and Articles 11 of the Conditions of Employment of Other Agents.

The Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS), in particular Article 12(a) (SR) and Article 11 (CEOS)

[Administrative Board of 20th November of 2009 on protecting the dignity of the person and preventing psychosocial harassment and sexual harassment](#)

[Manual of Procedures Prevention of Harassment updated 07 10 2020 inc annexes](#)

8. Storing Personal data

EMSA does not keep personal data longer than necessary for the purpose(s) for which that personal data is collected. The data will be only retained as following:

The tendency is to close the informal procedure approximately two months after its opening, unless there are substantive reasons for an extension, e.g. a period of absence of a key party involved. At the closure of the informal procedure:

- Confidential Counsellors shall pass the completed opening form, closing form and anonymous statistical form to the Coordinator;
- Confidential Counsellors shall under no circumstances retain personal data on a case for a period longer than three months following its closure. Personal data should be either destroyed or returned to the data subject who provided them (party 1) The Coordinator holds the historical memory of informal procedures:
- A central file is kept with opening and closing forms on each case for a maximum of five years from the opening of the informal procedure with the Coordinator of the Network of Confidential Counsellors in the Unit 4.1. Five years is the period considered necessary for Human Resources to evaluate the harassment prevention policy, to reply to any legal questions and to identify multiple or recurrent cases. Files may be retained for a further five years period in case an administrative or legal action is pending (e.g. with the European Ombudsman or the Court of the European Union);
- If the central file does not contain the name of the part 2, the retention is 3 months.
- An anonymous statistical record on informal proceedings is kept by the Coordinator without time limit.

9. Data protection points of contact

Should data subjects have any queries/questions concerning the processing of your personal data, they should address them to the data controller, Head of Unit 4.1 Human Resources and Internal Support under the following mailbox: cristina.romay-lopez@emsa.europa.eu .

Any data subject may also consult EMSA Data Protection Officer at: DPO@emsa.europa.eu.

Recourse:

Complaints, in cases where the conflict is not resolved by the Data Controller and/or the Data Protection Officer, can be addressed at any time to the European Data Protection Supervisor: edps@edps.europa.eu.

