

**RECORD OF PROCESSING ACTIVITY  
ACCORDING TO ARTICLE 31 REGULATION 2018/1725<sup>1</sup>  
NOTIFICATION TO THE DATA PROTECTION OFFICER**

**NAME OF PROCESSING OPERATION<sup>2</sup>: Handling of complaints under Article 90(2) of the Staff Regulations submitted to FRA Appeals Committee against decisions of the Director**

DPR-2024-222 (to be completed by the DPO)
Creation date of this record: 14/06/2024
Last update of this record:
Version: 1

<b>1) Controller(s)<sup>3</sup> of data processing operation (Article 31.1(a))</b>
<p>Controller: European Union Agency for Fundamental Rights (FRA)          Schwarzenbergplatz 11, A-1040 Vienna, Austria          Telephone: +43 1 580 30 – 0          Email: <a href="mailto:contact@fra.europa.eu">contact@fra.europa.eu</a>          Organisational unit <b>responsible<sup>4</sup></b> for the processing activity: The Appeals Committee, on behalf of FRA's Management Board          Contact details: <a href="mailto:AppealsCommittee@fra.europa.eu">AppealsCommittee@fra.europa.eu</a>.          Data Protection Officer (DPO): <a href="mailto:dpo@fra.europa.eu">dpo@fra.europa.eu</a></p>

<b>2) Who is actually conducting the processing? (Article 31.1(a))<sup>5</sup></b>
<p>The data is processed by FRA itself <input checked="" type="checkbox"/></p> <p>The data may also be processed by a third party (contractor) when recourse is made to external legal services, provided under a contract for services, or by DG HR of the</p>

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725>

<sup>2</sup> **Personal data** is any information relating to an identified or identifiable natural person, i.e. someone who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity. This information may, for example, be the name, date of birth, a telephone number, biometric data, medical data, a picture, professional details, etc.

**Processing** means any operation or set of operations which is performed on personal data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

<sup>3</sup> In case of more than one controller (e.g. joint FRA research), all controllers need to be listed here

<sup>4</sup> This is the unit that decides that the processing takes place and why.

<sup>5</sup> Is the FRA itself conducting the processing? Or has a provider been contracted?

European Commission when the handling of the complaint is outsourced to DG HR under the Service Level Agreement between FRA and DG HR.

### 3) Purpose of the processing (Article 31.1(b))

*Why are the personal data being processed? Please provide a very concise description of what you intend to achieve with the processing operation. Specify the rationale and underlying reason for the processing and describe the individual steps used for the processing. If you do this on a specific legal basis, mention it as well (e.g. staff regulations for selection procedures).*

#### Scope

In accordance with Article 90(2) Staff Regulations (SR), any person to whom the SR apply may submit to the Appointing Authority a complaint against an act adversely affecting them, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the SR (an implied decision rejecting the measure).

At FRA, the Appointing Authority powers are exercised at different levels depending on the subject matter:

- a) The Director exercises the Appointing Authority powers vis-à-vis FRA staff by delegation of the Management Board (MB Decision 2022/07), with the possibility for the Director to sub-delegate (some of) these powers. Director's Decision 2023/001 defines the further sub-delegations of Appointing Authority powers.
- b) The Management Board exercises the Appointing Authority powers with regard to the Director of FRA and the Appointing Authority powers concerning Article 90(2) SR complaints when the contested decision was taken by the Director.

The present record concerns complaints under Article 90(2) SR where the contested decision was taken by the Director. Such complaints are handled by the Appeals Committee established by Management Board in its [Decision 2022/08](#). By FRA's Executive Board Decision 2022/05, the members of the Appeals Committee were nominated, and they adopted their Rules of Procedure (Decision 2022/02 of the Appeals Committee).

Requests under Article 90(1) SR to the Director or to the Appointing Authority by sub-delegation as well as complaints under Article 90(2) SR where the contested decision was taken by sub-delegation at a level below that of the Director are covered by a separate data protection record available [here](#).

#### Process

The process to handle complaints under Article 90(2) SR by the Appeals Committee is described in its Rules of Procedure:

Any person wishing to submit a complaint under Article 90(2) SR against a decision of the Director or a failure by the Director to adopt a measure prescribed in the SR (together referred to as an "Article 90(2) complaint") should send their complaint to the dedicated functional mailbox [AppealsCommittee@fra.europa.eu](mailto:AppealsCommittee@fra.europa.eu). Any Article 90(2) complaint received by other means, even if not explicitly named as such, shall be forwarded by the recipient to the aforementioned functional mailbox without delay.

Article 90(2) complaints are registered by the legal officer assigned to assist the Appeals Committee upon receipt. The assigned legal officer will inform the members of the Appeals Committee of the receipt of the complaint and send an acknowledgment of receipt to the complainant on behalf of the Appeals Committee.

The assigned legal officer will forward the complaint to the designated staff in Corporate Services on behalf of the Appeals Committee. Corporate Services will prepare the file of the case with the relevant facts, background documents and a factual and legal analysis of the complaint. In doing so, they may need to consult with relevant services to verify the factual background and may make recourse to external legal advice. In such cases, access to any personal information by persons consulted shall be as limited as possible to the extent necessary to provide the factual background or legal advice required. Documents will be anonymised where possible.

Corporate Services will transmit the file of the case to the Appeals Committee using the functional mailbox [AppealsCommittee@fra.europa.eu](mailto:AppealsCommittee@fra.europa.eu) or the secure system for sharing documents set up by the Agency.

The assigned legal officer will assist the Appeals Committee in drafting the reply. If the Appeals Committee considers it necessary to consult an external lawyer to advise on the complaint or to prepare a reply, it may do so. Recourse may also be made to the services of the Directorate General for Human Resources of the European Commission (DGHR). In such cases, access to any personal information by persons consulted shall be as limited as possible to the extent necessary to reply to the complaint. Documents will be anonymised where possible.

Before taking a decision, the Appeals Committee may request clarifications in writing and/or hear the views of the complainant, the Director, Corporate Services or any other person relevant for the case.

The decision of the Appeals Committee on the Article 90(2) complaint shall be adopted and communicated to the complainant within 4 months from the date it was received. The reply letter containing the decision signed by the Chair of the Appeals Committee will be sent by the assigned legal officer to the complainant by email from the functional mailbox [AppealsCommittee@fra.europa.eu](mailto:AppealsCommittee@fra.europa.eu), on behalf of the Appeals Committee. When necessary, the reply might also be sent by registered email.

A copy of the reply to the complaint will be forwarded by the assigned legal officer to Corporate Services for filing in the complainant's personal file, in accordance with the retention policy.

The Chair of the Appeals Committee will inform the Management Board once per year about the activities of the Appeals Committee during the respective period. The information provided shall be limited to the number of meetings held, the number of complaints received, the subject matter of those complaints and the percentage of decisions where the Appeals Committee endorsed the decision of the Director. Such information shall not contain any personal data or information of the substance of the complaints.

In the event that the Appeals Committee, as Appointing Authority, rejects the complaint or request, the staff member affected may appeal to the Court of Justice of the EU or have recourse to the European Ombudsman within the prescribed time limits. These entities would then have access to the data contained in the initial complaint and the Agency's reply, as well as any relevant information to support the handling of the appeal.

#### 4) Description of the categories of data subjects (Article 31.1(c))

*Whose personal data are being processed?*

FRA staff: staff members (TA/CA)



Non-FRA staff: Other persons subject to the EU Staff Regulations: applicants in a selection procedure, former staff members

### 5) Categories of personal data processed (Article 31.1(c))

*Please tick all that apply and give details where appropriate. Include information if automated decision making takes place, evaluation and monitoring*

The following categories of personal data are processed for all Article 90s:

#### (a) General personal data

Personal details: name, surname

Contact details: email address of the requestor/complainant

In addition, some of the following categories of personal data may be processed, to the extent relevant for and/or if provided by the complainant in the Article 90(2) complaint, depending on the subject matter:

- Additional contact details (address, phone number), details on current job, education and prior professional experience, information on entitlements to allowances and benefits, family and social circumstances.

#### (b) Special categories of personal data (Article 10)

Some of the following special categories of personal data may be processed, to the extent relevant for and/or if provided by the complainant in the Article 90(2), depending on the subject matter of the Article 90(2):

- Information on race or ethnic origin, health, political opinions, religious or philosophical beliefs, trade union membership, sexual orientation.

(c) **Personal data relating to criminal convictions and offences** (Article 11)

### 6) Recipient(s) of the data (Article 31.1 (d))<sup>6</sup>

*Recipients are all parties who have access to the personal data. Who will have access to the data **within** FRA? Who will have access to the data **outside** FRA? No need to mention entities that may have access in the course of a particular investigation (e.g. OLAF, EO, EDPS).*

Designated **FRA** staff members

Access is limited to the legal officer designated to assist the Appeals Committee and to the members of the Appeals Committee. Designated staff in Corporate Services will have access to the complaint in order to prepare the factual and legal analysis of the case. If, in the course of preparing the factual and legal analysis, the designated staff in

<sup>6</sup> No need to mention entities that may have access in the course of a particular investigation (e.g. OLAF, EO, EDPS).

Corporate Services needs to consult other internal services to verify the factual situation (e.g. HR, the line manager), the sharing of information with such persons will be limited to the extent strictly necessary for proper preparation of the file and documents will be anonymised where possible.

Designated persons **outside** FRA: (please specify)

External lawyer(s) engaged by FRA under a contract for services may be requested to provide legal support to the Appeals Committee or been asked to prepare a reply. External lawyer(s) are bound by the confidentiality and data protection clauses included in the respective service contract. The legal services of the European Commission, under the SLA with DG HR, may be requested to provide legal support or to draft a reply to the complaint. They are bound by the data protection clauses included in the SLA and by Regulation 2018/1725.

Moreover, when preparing the factual and legal analysis of the file, Corporate Services may make recourse to external legal advice in the handling of the Article 90(2) complaint, either under the SLA with DG HR of the European Commission or through a procurement contract with an external lawyer.

Access will be limited to the personal data necessary to handle the complaint and documents will be anonymised where possible.

## 7) Transfers to third countries or recipients outside the EEA (Article 31.1 (e))<sup>7</sup>

*If the personal data are transferred outside the European Economic Area, this needs to be specifically mentioned, since it increases the risks of the processing operation.*

Data are transferred to third country recipients:

Yes

No

If yes specify to which organisation:

### **Legal basis for the data transfer**

Transfer on the basis of the European Commission's adequacy decision (Article 47)

Transfer subject to appropriate safeguards (Article 48.2 and .3), specify:

a)  A legally binding and enforceable instrument between public authorities or bodies.

Standard data protection clauses, adopted by

b)  the Commission, or

<sup>7</sup> **Processor** in a third country using standard contractual clauses, a third-country public authority you cooperate with based on a treaty. If needed, consult your DPO for more information on how to ensure safeguards.

- c)  the European Data Protection Supervisor and approved by the Commission, pursuant to the examination procedure referred to in Article 96(2) .
- d)  Binding corporate rules,  Codes of conduct,  Certification mechanism pursuant to points (b), (e) and (f) of Article 46(2) of Regulation (EU) 2016/679, where the processor is not a Union institution or body.

Subject to the authorisation from the European Data Protection Supervisor:

Contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation.

Administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

Transfer based on an international agreement (Article 49), specify:

***Derogations for specific situations (Article 50.1 (a) –(g))***

N /A

Yes, derogation(s) for specific situations in accordance with article 50.1 (a) –(g) apply  
In the absence of an adequacy decision, or of appropriate safeguards, transfer of personal data to a third country or an international organisation is based on the following condition(s):

(a) The data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards

(b) The transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request

(c) The transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person

(d) The transfer is necessary for important reasons of public interest

(e) The transfer is necessary for the establishment, exercise or defense of legal claims

(f) The transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent

(g) The transfer is made from a register which, according to Union law, is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down in Union law for consultation are fulfilled in the particular case.

**8) Retention time (Article 4(e))**

*How long will the data be retained and what is the justification for the retention period? Please indicate the starting point and differentiate between categories of persons or data where needed (e.g. in selection procedures candidates who made it onto the reserve list vs. those who didn't).*

*Are the data limited according to the adage "as long as necessary, as short as possible"?*

FRA applies the Common Commission Level Retention List ([current version SEC\(2019\)900/3](#)), which provides for a retention period of 15 years. After this time, the file will be either fully anonymised (if deemed relevant to preserve institutional knowledge and jurisprudence) or destroyed.

## 9) Technical and organisational security measures (Article 31.1(g))

*Please specify where/how the data are stored during and after the processing; please describe the security measures taken by FRA or by the contractor*

### How is the data stored?

- |  |                                     |
|--|-------------------------------------|
| FRA network shared drive   | <input type="checkbox"/>            |
| FRA DMS<br>(access is restricted to the legal officer designated to assist the Appeals Committee in handling Article 90(2) files and individual staff in Corporate Services responsible to prepare the factual and legal analysis of the case) | <input checked="" type="checkbox"/> |
| Outlook Folder(s)<br>(access is restricted to the legal officer designated to assist the Appeals Committee in handling Article 90(2) files)  | <input checked="" type="checkbox"/> |
| CRM  | <input type="checkbox"/>            |
| Hardcopy file (in locked safes)  | <input checked="" type="checkbox"/> |
| Cloud (MS 365 record <a href="#">link</a> )  | <input checked="" type="checkbox"/> |
| Servers of external provider   | <input type="checkbox"/>            |
- Other (please specify):  
Should the services of an external lawyer or of DGHR (based on their SLA with FRA) be deemed necessary to prepare the reply to the complaint, the personal data (if any) necessary to provide the services will be stored in the servers of the respective processor. In that case, appropriate technical and security measures are adopted by the processor, in accordance with the data protection clauses included in the procurement contract and SLA, respectively.

## 10) Exercising the rights of the data subject (Article 14 (2))

*How can people contact you if they want to know what you have about them, want to correct or delete the data, have it blocked or oppose to the processing? How will you react?*

See further details in the Data Protection notice

**Data subject rights**

- Right of access
- Right to rectification
- Right to erasure (right to be forgotten)
- Right to restriction of processing
- Right to data portability
- Right to object
- Notification obligation regarding rectification or erasure of personal data or restriction of processing
- Right to have recourse
- Right to withdraw consent at any time