

Handling of complaints submitted under Article 90(2) of the Staff Regulations submitted to FRA Appeals Committee against decisions of the Director

The European Union Agency for Fundamental Rights (FRA or Agency) processes the personal data of a natural person in compliance with Regulation 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

This data protection notice explains FRA's policies and practices regarding its collection and use of your personal data, and sets forth your privacy rights. We recognise that information privacy is an ongoing responsibility, and we will update this notice where necessary.

The present notice concerns the processing of personal data in complaints under Article 90(2) of the Staff Regulations (SR) against decisions taken at the level of the Director, which are handled by the Agency's 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 notice.

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1. Why do we collect personal data?

The purpose of the processing of personal data is to handle complaints submitted by data subjects under Article 90(2) of the [Staff Regulations](#) against decisions taken by the Director of FRA (collectively referred to as “Article 90(2) complaints”).

Such complaints are handled, on behalf of FRA’s Management Board (MB), by an Appeals Committee established by [MB Decision 2022/08](#). The Appeals Committee exercises the Appointing Authority (AA) powers on behalf of the MB concerning Article 90(2) complaints when the contested decision was taken by the Director.

Data subjects can be any person to whom the Staff Regulations apply (e.g., FRA staff members or former staff members, candidates in a recruitment procedure, etc.) and who submit to the Appeals Committee a complaint against an act affecting them adversely, either where the Director has taken a decision or where the Director has failed to adopt a measure prescribed by the Staff Regulations.

Requests under Article 90(1) SR to the Director or to the AA 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 notice](#).

2. What kind of personal data does the Agency collect?

We will collect only the following personal data necessary for the processing operation described above.

(a) General personal data:

- identification (name, surname of the person submitting the complaint);
- contact details (email address of the person submitting the complaint);
- 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:

- 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) complaint, depending on the subject matter:
 - Information on race or ethnic origin, health, political opinions, religious or philosophical beliefs, trade union membership, sexual orientation.

3. How do we collect and process your personal data?

We collect and process only the personal data you provide when you submit to the Appeals Committee an Article 90(2) complaint and any data necessary for the proper and effective handling of your complaint.

You should submit your complaint under Article 90(2) SR to the dedicated functional mailbox AppealsCommittee@fra.europa.eu. Any Article 90(2) complaint submitted by other means, e.g. directly to the Director, to HR, by post, etc. shall be forwarded by the recipient to the aforementioned functional mailbox without delay.

The Article 90(2) complaint will be registered by the assigned legal officer, who will inform the members of the Appeals Committee and send you an acknowledgment of receipt 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.

You will receive a reply from the Appeals Committee by email within four (4) months of the date in which the complaint was received by the Appeals Committee. A copy of the reply to the complaint will be forwarded by the assigned legal officer to HR for filing in your personal file, in accordance with the retention policy referred to in section 10 below.

4. Who is responsible for processing your personal data?

The Agency is the legal entity responsible for the processing of your personal data and determines the objective of this processing activity. The Appeals Committee is responsible for this processing operation on behalf of the Management Board of FRA.

5. Which is the legal basis for this processing operation?

The processing is necessary for the functioning and management of the Agency and therefore lawful under Article 5(1)(a) and recital 22 of Regulation (EU) 2018/1725. FRA's Founding Regulation (Regulation 168/2007, as amended), provides in Article 12.6(e) that the Appointing Authority (AA) powers are conferred on the Management Board of the Agency, which, by virtue of Article 12.7a and MB Decision 2022/07 delegated them to the Director of the Agency, except the AA powers concerning Article 90(2) SR when the contested decision was taken by the Director.

The processing is also necessary for compliance with a legal obligation to which the controller is subject (the handling of and reply to your complaint submitted in accordance with Article 90(2) SR) and therefore is lawful under Article 5(1)(b) of Regulation 2018/1725.

Moreover, the processing of special categories of data is lawful under Article 10(2)(a) of Regulation 2018/1725 insofar it is based on the explicit consent given by the applicant when submitting a complaint under Article 90(2) SR.

6. Who can see your data?

The members of the Appeals Committee, the legal officer assigned by the Agency to assist the Appeals Committee in handling the complaint and the designated staff member(s) responsible in Corporate Services Unit to provide the Appeals Committee with the factual and legal analysis of the file.

In preparing the factual and legal analysis, it may be necessary to consult relevant services to verify the factual background (e.g. HR, Finance, the line manager), and in such instances, access to any personal information by persons consulted shall be as limited as possible to the extent necessary to prepare the file. Documents will be anonymised where possible.

If considered necessary, the Appeals Committee 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. Documents will be anonymised where possible.

In the event that the Appeals Committee rejects the complaint, 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.

7. Do we share your data with other organisations?

Personal data is processed by the Agency (and its processors, namely, any external lawyer contracted to assist the Appeals Committee and DG HR of the European Commission) only. In case that we need to share your data with third parties, you will be notified to whom your personal data has been shared with.

8. Do we intend to transfer your personal data to Third Countries/International Organizations

No

9. When we will start the processing operation?

We will start the processing operation when you submit your Article 90(2) complaint to the Appeals Committee.

10. How long do we keep your data?

In defining the retention of documents, FRA follows the common Commission-level retention list (CRL) of the European Commission, and the rules and guidelines on data protection and retention. The retention period is 15 years.

11. How can you control your data?

Under Regulation 2018/1725, you have rights we need to make you aware of. The rights available to you depend on our reason for processing your information. You are not required to pay any charges for

exercising your rights except in cases where the requests are manifestly unfounded or excessive, in particular because of their repetitive character.

We will reply to your request without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests.

You can exercise your rights described below by sending an email request to AppealsCommittee@fra.europa.eu.

11.1. Do we need your consent?

As the processing of your personal data is necessary for the functioning of the Agency and to comply with a legal obligation to which the Agency is subject, it is not based upon your consent. By submitting a complaint under Article 90(2) SR, you explicitly consent to the processing of any special categories of personal data that you include in your complaint. You have the right to withdraw your consent at any time, and we will delete your data or restrict its processing. All processing operations up until the withdrawal of consent will still be lawful.

11.2. Your data protection rights

a. Can you access your data?

You have the right to receive information on whether we process your personal data or not, the purposes of the processing, the categories of personal data concerned, any recipients to whom the personal data have been disclosed and their storage period. Furthermore, you can have access to such data, as well as obtain copies of your data undergoing processing.

b. Can you modify your data?

You have the right to ask us to rectify your data you think is inaccurate or incomplete at any time.

c. Can you restrict us from processing your data?

You have the right to restrict the processing of your personal data. If you do, we can no longer process them, but we can still store them. In some exceptional cases, we will still be able to use them (e.g. with your consent or for legal claims). You have this right in a few different situations: when you contest the accuracy of your personal data, when the Agency no longer needs the data for completing its tasks, when the processing activity is unlawful, and finally, when you have exercised your right to object.

d. Can you delete your data?

You have the right to ask us to delete your data when the personal data are no longer necessary for the purposes for which they were collected, when you have withdrawn your consent or when the processing activity is unlawful. In certain occasions we will have to erase your data in order to comply with a legal obligation to which we are subject.

We will notify to each recipient to whom your personal data have been disclosed of any rectification or erasure of personal data or restriction of processing carried out in accordance with the above rights unless this proves impossible or involves disproportionate effort from our side.

e. Are you entitled to data portability?

Data portability is a right guaranteed under Regulation 1725/2018 and consists in the right to have your personal data transmitted to you or directly to another controller of your choice.

In this case, this does not apply for two reasons: I) in order for this right to be guaranteed, the processing should be based on automated means, however we do not base our processing on any automated means; II) this processing operation is carried out in the public interest, which is an exception to the right to data portability in the Regulation.

f. Do you have the right to object?

When the legal base of the processing is “*necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body*” which is the case in most of our processing operations, you have the right to object to the processing. In case you object, we have to stop the processing of your personal data, unless we demonstrate a compelling reason that can override your objection.

g. Do we do automated decision making, including profiling?

Your personal data will not be used for an automated decision-making including profiling.

12. What security measures are taken to safeguard your personal data?

The Agency has several security controls in place to protect your personal data from unauthorised access, use or disclosure. We keep your data stored on our internal servers with limited access to a specified audience only. Hard copies are stored in locked safes with access granted to designated persons only.

13. What can you do in the event of a problem?

a) The first step is to notify the Agency by sending an email to AppealsCommittee@fra.europa.eu and ask us to take action.

b) The second step, if you obtain no reply from us or if you are not satisfied with it, contact our Data Protection Officer (DPO) at dpo@fra.europa.eu.

c) At any time you can lodge a complaint with the EDPS at <http://www.edps.europa.eu>, who will examine your request and adopt the necessary measures.

14. How do we update our data protection notice?

We keep our data protection notice under regular review to make sure it is up to date and accurate.

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