

Explanatory Notes
to the
Inter-Agency Scheme for the Disclosure of Safeguarding-related Misconduct
in Recruitment Processes
within the Humanitarian and Development Sector

The following notes provide elements of background on specific aspects of the Scheme. The Notes do not form part of the Scheme but are meant to complement it by setting out the rationale for certain choices that have been made by the drafters and to guide organisations contemplating their participation in the Scheme to make an informed decision.

Scope

The origin of this Scheme is a sector-wide need and collective willingness by humanitarian and development organisations to take concrete measures to allow them to access relevant information in the recruitment process about individuals who have committed misconduct that poses a safeguarding risk.

While the high integrity requirements that organisations participating in the Scheme (Participating Organisations) set in terms of recruitment apply to all types of misconducts, they recognize that the need to address safeguarding-related risks and to be especially demanding in that regard is particularly important for the humanitarian/development sector and requires collective effort on ensuring as a priority that information can be shared across organisations on safeguarding-related misconduct.

For this reason, the Scheme defines “Misconduct” only as sexual exploitation, sexual abuse and the most serious cases of sexual harassment, which are among the most serious safeguarding-related offences. The possibility to extend the definition to other types of misconducts could be discussed at a later stage and on the basis of lessons learned from the initial implementation of the Scheme.

Legal and regulatory requirements

In general

One of the greatest challenges of the Scheme is to devise concrete, effective and meaningful measures that can be broadly implemented by humanitarian/development and other civil society organisations, regardless of any single organisation’s legal status or country of registration/operation, thereby making the Scheme a set of best practices applicable by the entire humanitarian/development sector. It is a challenge because of the wide variety of legal and regulatory regimes that are applicable to the numerous organisations in the sector.

Each organisation’s ability to request and/or disclose information related to Misconducts as defined by the Scheme is limited by requirements of the employment and data protection/privacy¹ legislations and regulations that the organisation is subject to.

¹ These, although linked, are distinct.

While the drafters have not verified the compatibility of the Scheme with every possible legal and regulatory regime, they have obtained expert legal advice and have taken it into account to adapt the Scheme in a way that allows for the widest possible endorsement and implementation, while acknowledging the specificities of each Participating Organisation.

The Scheme expressly acknowledges that its implementation by each Participating Organisation is subject to applicable legislation and regulations. The drafters have chosen not to be prescriptive on the internal processes and mechanisms which are required to support the effective implementation of the Scheme. Beyond common principles and core elements considered to be mandatory (such as the “Statement of Conduct”; see below), the Scheme avoids being prescriptive and encourages – instead of compelling – Participating Organisations to adopt certain implementing practices.

In addition, the Scheme aims for full transparency throughout all stages of implementation. This means that Participating Organisations are expected to disclose to each other when they are not in a position to apply specific aspects of the Scheme and why, whether as a matter of course or in a particular case. When Participating Organisations need to adapt certain aspects of the Scheme to meet local requirements, they should also be transparent about this with other Participating Organisations, and internally.

This approach was considered by the drafters as the most sensible, given the numerous differences between Participating Organisations and the objective to have the Scheme endorsed by as many organisations as possible.

Data Protection in particular

Participating Organisations are aware of the challenges – and concerns - posed by data protection requirements in terms of sharing the information contemplated by the Scheme.

As the most stringent data protection regulation at the time of drafting the Scheme, which applies to a number of Participating Organisations and serves as the reference for data protection regulations in numerous jurisdictions, the European General Data Protection Regulation (GDPR) has been specifically taken into account in the analysis of the admissibility of the Scheme.

From a GDPR standpoint, Participating Organisations consider that the lawful basis for processing personal data in this context is the legitimate interests of the Participating Organisations and, to a certain extent, the public interest of protecting potential victims. Moreover, many of the Scheme’s principles around the processing of personal data and recommended processes to actually request, transfer and obtain such data are meant to bring the Scheme in line with GDPR requirements by ensuring a fair, transparent and proportionate processing, protecting the information processed and maintaining the rights of data subjects.

One of the main ways of achieving fairness in the processing of employees’ personal data is through transparency for the individuals whose information is processed. The Scheme emphasizes in several instances that they should be duly informed, as employees, by their current employer, and as candidates, by their prospective employer, of the existence of this Scheme, and the modalities of its application. Participating Organisations are encouraged to take necessary measures to that end, including by ensuring that employees acknowledge their understanding of the process and, where possible, confirm that they agree with it. More generally, Participating Organisations are encouraged to raise awareness and communicate about this Scheme, both internally and externally.

Statement of Conduct

The “Statement of Conduct” is the form that Participating Organisations commit to use to share information in the recruitment process about safeguarding-related misconduct (i.e. sexual exploitation, sexual abuse or sexual harassment) that a candidate has been found to have committed. Participating Organisations consider it an essential element to be requested and provided in the recruitment process. In fact, it constitutes the core of the Scheme and serves as the documentary support to one of the few mandatory requirements of the Scheme, namely sharing relevant information.

The Statement of Conduct provided in the Scheme as Appendix 1 is a template, which Participating Organisations are encouraged to use in the proposed format. However, each Participating Organisation may adapt it to fit into its own recruitment documents, so long as it includes substantially the same minimum information.

The use of the Statement of Conduct is independent from the referencing process carried out by each Participating Organisation and has to be requested and provided regardless of each Participating Organisation’s practices in relation to references.

Review of the Scheme

The Scheme is a first in terms of collective commitment in this area. Participating Organisations consider very important to review the Scheme on a regular basis (initially one year from launch of the Scheme) and to work at improving, strengthening and potentially expanding it over time. To that end, Participating Organisations are encouraged to carefully monitor the implementation of the Scheme and to document where it succeeds and where it fails so as to draw lessons from its application.