

REGISTER NUMBER: 95
NOTIFICATION FOR PRIOR CHECKING
<p>Date of submission: 04/05/2006</p> <p>Case number: 2005-120</p> <p>Institution: European Commission</p> <p>Legal basis: article 27-5 of the regulation CE 45/2001 ⁽¹⁾</p> <p style="text-align: right;"><i>(1) OJ L 8, 12.01.2001</i></p>

INFORMATION TO BE GIVEN⁽²⁾
<i>(2) Please attach all necessary backup documents</i>
<p>1/ Name and adress of the controller</p> <p>2) Name and First Name of the Controller:HOEBEECK Willy</p> <p>3) Title:Head of Unit</p> <p>4) Directorate, Unit or Service to which the Controller is attached:C.01</p> <p>5) Directorate General to which the Controller is attached:BUDG</p>
<p>2/ Organisational parts of the institution or body entrusted with the processing of personal data</p> <p>26) External Company or Directorate General to which the Processor is attached:</p> <p>25) External Company or Directorate, Unit or Service to which the Processor is attached:</p> <p>DIGIT.A.03</p> <p>BUDG.R.04</p>
<p>3/ Name of the processing</p> <p>Register a Data Subject in the Early Warning System</p>
<p>4/ Purpose or purposes of the processing</p> <p>The principal purpose of the EWS is to circulate information among all Commission departments about recipients of Community funds (beneficiaries) who have committed fraud, administrative errors or irregularities and about other circumstances related to these beneficiaries who could represent a threat to the Communities' financial interests. At authorising departments' request, a flag is entered against these recipients in the Commission's central legal entity file (LEF), indicating the category of warning and the originating department.</p> <p>In the ABAC-workflow application, when Authorising Officers enter or validate transactions related to these flagged entities, a warning will be issued. The Authorising Officer must act upon these warnings as indicated in the EWS Decision (Articles 12 to 20).</p>

5/ Description of the category or categories of data subjects

14) Data Subject(s) concerned:

All individuals who have been registered in the Commission's Legal Entity File and

1) where information obtained give sufficient reason to believe that findings of fraud, serious administrative errors or other irregularities will be recorded against them

2) who are subject to findings of serious administrative errors or fraud

3) who are subject to pending legal proceedings

4) who are subject to recovery orders issued by the Commission exceeding a certain amount and on which payment is significantly overdue

5) who are excluded in accordance with regulatory provisions (Financial Regulation or Council Regulation (EC) N° 881/2002 of 27 May 2002 (OJ L 139 of 29 May 2002, p. 9)

16) Category(ies) of Data Subjects:

All individuals registered in the Commission's Legal Entity File.

See also Notification N° 372.

6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data) *(including, if applicable, special categories of data (article 10) and/or origin of data)*

17) Data field(s) of Data Subjects:

Attention: Please indicate and describe in the answer to this question also data fields which fall under article 10

Name and address of the individual.

Type of EWS-warning.

Start date - end date of active warning.

Commission service that has requested the EWS flag to be set.

18) Category(ies) of data fields of Data Subjects:

Attention: Please indicate and describe in the answer to this question also categories of data fields which fall under article 10

Name and address.

7/ Information to be given to data subjects

15a) Which kind of communication(s) have you foreseen to inform the Data Subjects as described in articles 11 - 12 under 'Information to be given to the Data Subject'

None.

EWS flaggings concerning data subjects falling under categories 1) to 4) (see point 14) are meant to be an internal tool available to Commission authorising services only in order to help them in safeguarding the financial interests of the Commission.

EWS related data is to be made available to certain bodies, listed in Article 21 of the EWS Decision, subject to Article 4 of Regulation 1049/2001 regarding exceptions to public access to Community Institutions documents and to Articles 4 to 9 in particular of Regulation 45/2001.

Following Art. 8 § 3 of the EWS Decision, parties registered in accordance with Article 95 FR can request, from the Commission's Accounting Officer, confirmation of their registration and communication of a contact point for further information.

This processing has to be evaluated against article 20, b) of Regulation (EC) 45/2001, in order to safeguard "an important economic or financial interest of ... the European Communities".

8/ Procedures to grant rights of data subjects (rights of access, to rectify, to block, to erase, to object) (*rights of access, to rectify, to block, to erase, to object*)

15b) Which procedure(s) did you put in place to enable Data Subjects to exert their rights: access, verify, correct, etc., their Personal Data as described in articles 13 - 19 under 'Rights of the Data Subject' :

This processing has to be evaluated against article 20, b) of Regulation (EC) 45/2001, in order to safeguard "an important economic or financial interest of ... the European Communities".

9/ Automated / Manual processing operation

7) Description of Processing:

Attention: Please describe in the answer to this question if you process personal data falling under article 27 "Prior-Checking (by the EDPS - European Data Protection Supervisor)"

Pursuant to the annexed Commission Decision C(2004) 193/3 of 03.03.2004 as last modified by the 2006 Internal rules, EWS warnings are entered (and - except for cases of automatic removal after 180 days - removed) centrally by DG BUDG, in the Commission's legal entity file (LEF), after receipt of a formal letter sent by the responsible authorising officer (or by an authorised officer in other Commission services), giving the relevant details on a standard form defined in the Commission's EWS Decision. No changes are made to the legal entity record until such a letter is received. If no record for the legal entity exists in the file, then the authorising department that has obtained information about the entity must first request the creation of a new entry in the LEF, following the appropriate procedure, and then request entry of an alert against that record.

8) Automated Processing operation(s):

The EWS flags set centrally in the SAP part of ABAC, managed by the Accounting Officer, are made available automatically to the "Workflow" part of the application to which all ABAC users in the Commission have consultation access. Also by standard interfaces these data are made available to local management systems.

Depending on the nature of the warning entered, de-activation of the EWS flag intervenes either automatically after a fixed period, or must be requested explicitly by the initiator of the warning.

9) Manual Processing operation(s):

Requests for flagging are always made to the Accounting Officer using a standard form, (example annexed). This form is a "RESTREINT UE" document, signed by the Authorising Officer by Delegation (or by subdelegation with a rank no lower than Director) ; it is sent to the Accounting Officer under a "single closed envelope" and it is archived, after its processing, in a secured safe.

Pursuant to Articles 95 of the Financial Regulation (see further on, under point 11) and 21 of the Commission's EWS Decision, the list of entities flagged in application of article 7 of this Decision, is made available, via a secured protocol, to the bodies mentioned in this same article 21.

10/ Storage media of data

The EWS flags are set and stored in the Commission's ABAC accounting system.
The transmitted request forms, after processing, are archived in a secured safe.

11/ Legal basis and lawfulness of the processing operation

11) Legal basis of Processing:

Commission Decision C(2004) 193/3 of 03.03.2004 as last modified by the 2006 Internal rules (SEC(2006)131).

Article 95 FR : "Each institution shall establish a central database containing details of candidates and tenderers who are in one of the situations described in Articles 93 and 94. The sole purpose of the database shall be to ensure, in compliance with Community rules on the processing of personal data, the correct application of articles 93 and 94. Each institution shall have access to the databases of the other institutions."

Article 167 FR : "The provisions of Article 56 and of Chapter 1 of Title V of part one relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts laid down in the implementing rules."

Articles 74 & 75 of Commission Regulation 2343/2002 : " As regards procurement, the relevant provisions of the general FR and the detailed rules for implementing that Regulation shall apply." - "Where the Community body may award

12) Lawfulness of Processing:

Answering this question please also verify and indicate if your processing has to comply with articles 20 "Exemptions and restrictions" and 27 "Prior checking (by the EDPS)"

Processing of personal data in the EWS is lawful and necessary under articles 5 (a) and 5 (b) of Regulation (EC) 45/2001 : it is necessary because the legal basis mentioned before makes it an obligation for the controller to process personal data, as it aims at ensuring circulation of restricted information concerning third parties who could represent a threat to the Communities' financial interests and reputation, should the Commission enter, or if it has already entered a contractual/conventional relationship with them.

This processing is subject to be prior-checked by the EDPS as of article 27 of Regulation (EC) 45/2001.

This processing has to be evaluated against article 20, b) of Regulation (EC) 45/2001, in order to safeguard "an important economic or financial interest of ... the European Communities".

12/ The recipients or categories of recipient to whom the data might be disclosed

20) Recipient(s) of the Processing:

See Notification N° 372.

Recipients of the processing are all users of the Commission's accounting system ABAC. Access to the accounting system is strictly controlled though, through a unique user-id and password.

EWS warnings of category 5a) (see point 14) are transmitted, once a month, via a secured protocol, to the bodies listed in Article 21 of the EWS Decision (annexed)

<p>21) Category(ies) of recipients:</p> <p>See Notification N° 372.</p> <p>Recipients of EWS warnings of category W5a are : designated representatives of the bodies mentioned in Article 21 b) of the EWS Decision : EU Institutions, Agencies, and on request of the respective Authorising Officers by Delegation the other bodies mentioned in the same Article 21 b).</p> <p>Communication of W5a warnings is made according to the modalities laid down also in Article 21.</p>
<p>13/ retention policy of (categories of) personal data</p> <p>Depending on the category of warning a time limit can be applied to the EWS warning. In such cases, the EWS flag is deactivated as soon as the fixed time period has elapsed. (see Articles 3, 4 and 7 of the EWS Decision)</p> <p>In other cases, as soon as it is no longer justified, the EWS flag is deactivated by demand of the service that had initiated the original request to flag. (see Articles 5 and 6 of the EWS Decision). Deactivated warnings remain available for consultation pursuant to Article 20 of the EWS Decision.</p>
<p>13 a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject) (Please, specify the time limits for every category, if applicable) (on justified legitimate request from the data subject) <i>(Please, specify the time limits for every category, if applicable)</i></p> <p>22 b) Time limit to block/erase data on justified legitimate request from the data subjects</p> <p>This processing has to be evaluated against article 20, b) of Regulation (EC) 45/2001, in order to safeguard "an important economic or financial interest of ... the European Communities".</p> <p>Time limit should be evaluated for every individual request.</p>
<p>14/ Historical, statistical or scientific purposes <i>If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,</i></p> <p>22 c) Historical, statistical or scientific purposes - If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification</p> <p>Not applicable</p>
<p>15/ Proposed transfers of data to third countries or international organisations</p> <p>27) Legal foundation of transfer:</p> <p>Only transfers to third party countries not subject to Directive 95/46/EC (Article 9) should be considered for this question. Please treat transfers to other community institutions and bodies and to member states under question 20.</p> <p>Article 167 FR and Articles 77, 88(2) of 9th EDF FR.</p> <p>28) Category(ies) of Personal Data or Personal Data to be transferred:</p> <p>See reply to item 18).</p>

16/ The processing operation presents specific risk which justifies prior checking (please describe): (*please describe*):

7) Description of Processing:

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12) Lawfulness of Processing:

Answering this question please also verify and indicate if your processing has to comply with articles 20 "Exemptions and restrictions" and 27 "Prior checking (by the EDPS)"

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This processing is subject to be prior-checked by the EDPS as of article 27 of Regulation (EC) 45/2001.

This processing has to be evaluated against article 20, b) of Regulation (EC) 45/2001, in order to safeguard "an important economic or financial interest of ... the European Communities".

Article 27.2.(a) Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

The processing operations on personal data related to the Early Warning System are potentially also submitted under this § but mainly under article 27.2.(d).

Article 27.2.(b) Processing operations intended to evaluate personal aspects relating to the data subject,

The processing operations on personal data related to the Early Warning System are potentially also submitted under this § but mainly under article 27.2.(d).

Article 27.2.(c) Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

None

Article 27.2.(d) Processing operations for the purpose of excluding individuals from a right, benefit or contract,

The processing operations on personal data related to the Early Warning System are mainly submitted under this §.

Other (general concept in Article 27.1)

None

17/ Comments

1) Date of submission:

10) Comments if applicable:

The secured protocol mentioned in point 9 consists in the transmission, by electronic mail, of an encrypted file to designated recipients. After having received the file, these recipients have to request a password that is then sent to them individually and that allows them to open the file and view the report contained in it. Passwords are changed on every new transmission of these files.

36) Do you publish / distribute / give access to one or more printed and/or electronic directories?

Personal Data contained in printed and/or electronic directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory.

If Yes, please explain what is applicable.

no

37) Complementary information to the different questions if applicable, including attachments to this notification which should not be public :

The EWS system is grafted on the Commission's Legal Entity File. The "Validation of Legal Entity Records in the LEF" processing has been notified to the Data Protection Officer, under N° 372.

Main processing rules are thus described in Notification N° 372, and are not repeated here. Processing rules that are additional, and specific to EWS flaggings set on LEF records, are mentioned in the present Notification.

PLACE AND DATE:03/05/2006

DATA PROTECTION OFFICER: RENAUDIERE Philippe

INSTITUTION OR BODY:European Commission