

*(To be filled out in the EDPS' office)*

**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 19/07/2013**

**CASE NUMBER: 2013-0884**

**INSTITUTION: EACEA**

**LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001<sup>(1)</sup>**

**INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

EDUCATION AUDIOVISUAL AND CULTURE EXECUTIVE AGENCY  
- THE DIRECTOR -  
AVENUE DU BOURGET 1, BOUR,  
BE-1140 BRUSSELS

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

- HEAD OF UNIT R2 "FINANCE, ACCOUNTING, PROGRAMMING" (MRS CORINNE MIMRAN)  
- ANTI-FRAUD COORDINATOR – UNIT R2 (MRS VERONIQUE DAUSSY)

3/ NAME OF THE PROCESSING

Anti-Fraud procedure for analysis and signalling suspicions of irregularities and/or fraud to OLAF

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The **purpose** of this processing operation is to analyse information about potential fraud and financial irregularities in order to assess whether there are grounds to transmit the information to the European Anti-Fraud Office (OLAF) in order to safeguard EU financial interest and/or prevent or tackle possible irregularities.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

External investigation:

Legal entities (beneficiaries, co-beneficiaries, partners, contractors) involved in EU funded projects and their representatives and natural persons linked to them.

Internal investigation:

Agency's former & current statutory and non-statutory staff.

Other potential data subjects: whistle-blowers, informants, witnesses, etc.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

The data processed in the context of **external cases** may include the following (see EACEA Anti-Fraud procedure, p. 11 and OLAF note template):

- name and contact details: address, e-mail, phone numbers;
- position and responsibilities within the entity;
- personal data contained in the proposal/offer, the agreement, progress, interim and final reports required by the grant agreements. These may be staff costs, time sheets, payslips etc.;
- information on the conduct of the person giving rise to possible irregularities. Document provided and used as evidence may be job descriptions, CVs etc.;
- personal data which appears in legal entity and bank account files (information available in ABAC);
- data on other grants/contracts managed by other services of the European Commission involving the entity or person concerned.

The data processed in the context of **internal cases**, on a case by case analysis, may include the following information:

- name and contact details: address, e-mail, phone numbers
- CV, job description
- information on the conduct of the person giving rise to possible irregularities

- appraisal reports and probationary reports if they provide relevant information and evidence of the past and current behaviour under scrutiny.

#### 7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

So far, no specific privacy statement relating to data processing concerning OLAF investigations was available at EACEA. However, after approval of the EDPS, a Privacy statement will be published on the Agency's Website and the Intranet site in order to ensure information of the data subjects in accordance with Articles 11 and 12 of the Regulation 45/2001.

Besides this, the following information is provided to data subjects:

Specific Privacy statements exist for grant and procurement procedures as well as for audits launched by the Agency.

The model agreement/decision/contract signed between the Agency and its counter parts contains in its General Condition a number of provisions informing its signatory(ies):

- A provision allowing the Agency and/or the Commission to carry out technical and financial checks, audits &/or evaluations in relation to the use of the grant, and an obligation for the beneficiary/contractor to provide any information requested in that respect.
- A provision allowing OLAF to carry out checks and the Court of Auditors to carry out audits.

When the Authorising Officer adopts precautionary measures as a result of a suspicion of fraud/irregularity (OLAF recommendation or AO measures), although the concerned party is not informed of the investigation itself, he/she is informed by a motivated decision of the measures taken as a result of this investigation which might affect its rights. The AO will thus communicate to the concerned party the measures taken, such as a request or mobilisation of a financial guaranty, the suspension of a payment, the termination of a grant/contract, the launching of a recovery, etc.

However, in order to protect the confidentiality of the investigation, the AO will not justify its decision on the existing suspicion but on the element having led to this state of suspicion (see point VI.A of the Anti-fraud procedure).

#### 8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

According to Regulation No 45/2001, the data subjects may exercise their rights of access and rectification and right of information. However, some limitations may apply (Article 20 – Exemptions and restrictions) in cases where the financial interests of the EU are at stake.

According to the newly adopted interim implementing measures for the Early Warning System (adopted on 2.5.2013, C(2013)2564 final) when the EC intends to signal a natural or a legal person, it must inform the entity and give it the opportunity to make observation on this intention.

OLAF informs directly the data subjects. The data subjects are informed of their rights in accordance with OLAF procedures in place..

- **Activity in the frame of which the processing is carried out**

The European Commission entrusted, through an act of delegation, the Education, Audiovisual and Culture Executive Agency (the Agency) to implement a part of a number of appropriations entered in Community budget headings and of the EDF appropriations (LLP, Media, Youth, Citizenship, etc.). To do so, the Agency awards grants and concludes public procurement procedures, and manages the ensuing agreements, decisions and contracts.

The Agency has created a guidance procedure in order to comply with the obligation to signal any suspicion of irregularities, corruption or any other illegal activity to the European Anti-Fraud Office (OLAF). The procedure is meant to provide guidance to staff who is confronted with suspicion of fraud, corruption and/or irregularities.

The Agency's Anti-Fraud procedure is published on its Intranet:

<http://intranet.eacea.cec.eu.int/services/legal/SitePages/Lutte%20anti-fraude.aspx>

The Agency has nominated an anti-fraud officer whose back-up is the Head of the Agency's legal sector. This designated staff member is responsible for analysing and transferring to OLAF and its parent DGs information related to possible cases of irregularities, corruption or any other illegal activity relating to the funds it manages. The information collected and processed relates, in most of the cases, to grants co-financing.

The Agency may process several types of information relating to a legal or a natural person(s) when it suspects fraud, corruption or any other illegal activity or it finds a conflict of interest situation in either internal or external cases (please, see a list of pertinent indices, EACEA Anti-fraud procedure p. 8, 11).

The internal cases may involve both statutory and/or non-statutory Agency staff such as temporary, contractual staff, members of the Steering Committee and/or interim agents, interns.

The external cases may involve entities linked to grants or procurement. They also may include information about third parties i.e. whistleblowers, informants or witnesses.

So far, the suspicions have related to external cases and within this category to grants (please, see a list of examples, EACEA Anti-fraud procedure p. 7).

- **Working procedure followed within the framework of this activity**

**Procedure and data processed**

When managing grants & procurements, EACEA may be informed of or encounter cases of possible financial or operational irregularities. Any suspicion is subject to internal verifications.

Once it is confirmed that the suspicion concerns the Agency, the anti-fraud coordinator will, together with the operational unit(s) concerned, analyse the data. If the potential damage is relatively important and if the fraud or irregularity suspected seems serious, the anti-fraud officer calls &

chairs a meeting gathering the Head of Unit(s) of the operational unit(s) managing the funds concerned, the agent(s) responsible for the follow-up of the project/contract, the Agency's internal auditor (IAC), the Agency's legal officer, and the Agency's Head of the ex-post sector. The conclusions of the meeting will either lead to a non-case (but which could still need to be followed as an operational issue within the operational unit(s) concerned or to the confirmation of possible irregularities or fraud.

In the case where it is decided not to transfer the case to OLAF or where it is decided that a number of additional safeguards are necessary, the AO can take a number of precautionary or urgent measures. Concrete examples of these measures can be found in section V.B.2 of the Anti-fraud procedure.

Where the Agency suspects irregularities or fraud, a follow-up action will be devised and submitted to the Director for approval. The approved action plan usually consists of a number of actions to be carried out by the operational unit(s), the legal sector, the ex-post sector &/or anti-fraud officer (see above measures as for non-cases). In external cases, the Agency may carry out verification such as desk review or ad hoc audits. At this stage, the Agency may agree to present the case to OLAF and proceed with transferring the data file to OLAF with a request for an investigation.

#### 10/ STORAGE MEDIA OF DATA

The electronic data is stored on the anti-fraud coordinator's computer and in the functional mailbox, and the corresponding paper files are kept within the office of the AF officer. This process is not supported by any particular information system. The information is processed through standard tools of office automation, such as Ms Word and Excel.

The Anti-fraud coordinator keeps a paper file in a locked cupboard.

#### 11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

(i) Council Regulation No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (Articles 6(2)(c), 9(8) & 11(3)).

(ii) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission and Regulation (EC) No 1073/1999 of 25 May 1999 of the European Parliament and of the Council concerning investigations conducted by OLAF (Article II.20.5).

(iii) Commission Decision C(2013/2488) of 02/05/2013 on the internal procedure provisions for the recovery of amounts receivable arising from direct management (DPI) (Article 4).

(iv) Commission Decision C (2009) 3355 delegating powers to the EACEA and its implementing Commission Decision C(2012)9475 of 20 December 2012 (Article 10 & 12).

- (v) General cooperation modalities of reporting & supervision between the Agency and its parent DGs of March 2012 (AE\_2012\_CD02\_D2) (Article 3.2 & 4.1).
- (vi) Staff regulation (Article 22).
- (vii) EACEA's Steering Committee decision of 9/6/2006 laying down internal rules to prevent fraud, corruption and any illegal activity detrimental to the Communities' interest (all).

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

**Inside EACEA, where necessary:**

- Director of the Agency; Head of Department;
- R2's Head of Unit;
- Head of Unit of the operational Unit managing the funds concerned;
- limited number of agents designated by the operational Head of Unit concerned
- Agency's anti-fraud officer;
- Agency's legal officer;
- ex-post Head of Sector;
- IAC Head of Sector.
- Additionally, if internal irregularity/fraud: Head of Unit HR.

**Parent DG concerned.**

- Director &/or Head of Unit of the mirror Directorate/Unit;
- Parent's Directorate's anti-fraud officer.

**OLAF:**

- Head of Unit OLAF.01 &/or Head of Unit OLAF.A3 in charge of the centralised expenditure;
- OLAF investigators designated case by case.

**National authorities** (on request of OLAF)

**Accountant of the EC** in case of signalisation of an entity in the EWS

**EXPLANATION ON TRANSFER OF PERSONAL DATA:**

Specific rules on confidentiality have been adopted (see Chapter VI of the Anti-fraud procedure).

**Inside the Agency**

According to the Agency procedure, the operational unit concerned, with the help of the Anti-fraud officer, the legal &/or the ex-post sector, is in charge of analysing the data involved with the case and composing an electronic file to be transferred to OLAF.

The file is then transferred to unit R2 to the anti-fraud coordinator, who verifies the file and submits it to the Director for approval and transmission to the parent DG concerned.

In cases of irregularities relating to staff members, the Head of Unit HR may equally be recipient of personal data.

### **External to the Agency**

Where a personal data transfer occurs to other EU institutions or bodies, a data protection safeguard clause accompanies the transfer in accordance with Article 7 of Regulation (EC) n° 45/2001 (see annex of this notification on organisational security measures).

The Agency's Director sends the electronic file for consultation to the parent DG concerned (Director of the mirror Directorate and where necessary to the Head of Unit responsible, with copy to the parent DG's anti-fraud officer). The e-mail sent is marked as "confidential". Once the parent Directorate has given its green light, the consultation process is finalised.

The Director approves the file transfer to OLAF. The paper transmission note is sent from R2's Head of Unit to OLAF.01's Head of Unit. The note contains the items listed in point IV.C of the Anti-fraud procedure and is sent to OLAF following the above mentioned confidentiality rules.

Upon specific request of OLAF the personal data might also be transferred to national authorities. However, in this case OLAF is the sole contact point of the national authorities (see section VII.A of the Anti-fraud strategy).

Besides this, it may be necessary to register a data subject in the Commission's Early Warning System (EWS). This procedure is subject to a notification itself (EACEA's DPO register n° 2011-012). Since the Agency follows the Commission's guidelines and procedures, this processing shall be covered by the Commission's notification to the EDPS.

The Agency has also an obligation of trimestral, semestrial and annual reporting to its parent DGs and to OLAF on the suspicion cases. The information included in the reporting is however summarised and no deduction can be made to identifiable data subjects.

### 13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

EACEA's files relating to projects are kept for up to 10 years after the closure of the grant agreement (see EDPS case 2011-1083). Since these files contain documentation on both the technical and financial part of the project, documents relating to the (suspected) fraud and irregularities may be contained. For example: action plan, note to the file, measures to safeguard the financial interests of the Union, follow-up of these measures. However, this file will not contain any communication with OLAF, such as the OLAF investigation final report.

Cases analysed in EACEA but not transferred to OLAF:

- In the absence of measures taken by the AO: 5 year after dismissal
- If the AO has adopted measures: 5 years after implementation of those measures

Cases dismissed by OLAF or closed without recommendations:

- In the absence of measures taken by the AO: 5 years after dismissal
- If the AO has taken parallel actions: 5 years after implementation of those measures

Cases closed with follow-up or recommendations:

- In absence of measures taken by the AO: 5 year after implementation of the actions recommended by OLAF
- If the AO has taken additional or complementary measures: 5 years after implementation of both set of actions

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

According to Article 13, paragraph 3, of EACEA's Implementing rules of Regulation 45/2001:

(1) When the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data." Thus, when receiving a request for blocking on this ground, the EACEA should immediately block the data for the period necessary for verifying the accuracy and completeness of the data.

(2) When the data subject requires the blocking of his/her data because the processing is unlawful, or when data must be blocked for purpose of proof, the EACEA will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should however been dealt with promptly in order to preserve the data subject's rights. The decision as to whether to block the data is taken by the EACEA as soon as possible and at the latest within the delay of 15 working days

*(Please, specify the time limits for every category, if applicable)*

14/ 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.*

*NOT APPLICABLE*

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

*NOT APPLICABLE*



16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING (*Please describe*):

AS FORESEEN IN:

† **Article 27.2.(a)**

*Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,*

The data processed by EACEA and eventually transferred to OLAF and the parent DGs concern alleged information on fraud and financial irregularities which may, in principle, lead to offences and criminal convictions.

† **Article 27.2.(b)**

*Processing operations intended to evaluate personal aspects relating to the data subject,*

The analysis of the information on alleged frauds and financial irregularities by EACEA implies the evaluation of personal aspects relating to the data subjects, in particular with a view to assessing whether their conduct might constitute fraud.

† **Article 27.2.(c)**

*Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,*

† **Article 27.2.(d)**

*Processing operations for the purpose of excluding individuals from a right, benefit or contract,*

† **Other (general concept in Article 27.1)**

17/ COMMENTS

PLACE AND DATE: BRUSSELS, 19<sup>TH</sup> JULY 2013

DATA PROTECTION OFFICER: HUBERT MONET, DIRK HOMANN

1133-2013-0884

INSTITUTION OR BODY: EDUCATION, AUDIOVISUAL AND CULTURE EXECUTIVE AGENCY

