

REGISTER NUMBER: 1452

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 03/04/2017

Case number: 2017-0376

Institution: ERA

Legal basis: article 27-5 of the regulation CE 45/2001(1)

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and address of the controller

European Union Agency for Railways, 120 Rue Marc Lefrancq, 59300 Valenciennes, France -

2/ Organisational parts of the institution or body entrusted with the processing of personal data

Mats ANDERSSON, Chairman of the Management Board of the European Union Agency for Railways

3/ Name of the processing

Key Performance Indicators (KPIs) for the assessment of the results achieved by the Executive Director of the European Union Agency for Railways

4/ Purpose or purposes of the processing

KPIs are a set of performance-related indicators which would allow for an effective assessment of results achieved against objectives and would feed into the work of the European Parliament and the Council for the purpose of the discharge to the Agency. They could be considered as the common reference to measure the performance of the Executive Director in achieving operational objectives (as reflected in the Agency's Programming Document) and in managing the financial and human resources allocated for this purpose.

KPIs should be explicitly stated in the Agency's Programming Document (art. 52 par. 5 of Regulation (EU) 2016/796¹) and reported in its consolidated Annual Activity Report (AAR) to

¹ . Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004, hereinafter referred to as the "new Agency Regulation".

indicate the actual performance achieved. The assessment of the AAR by the Agency's Management Board should make reference to them.

In line with Point 15 of the Common Approach on EU decentralised agencies², endorsed by the European Parliament, the Council and the Commission in July 2012, the Commission announced, in its Roadmap on the follow-up to this Common Approach³, that it would, "on the basis of agencies' contribution", "develop guidelines on tailored performance indicators to assess the results achieved by Directors" (cf. action n. 89).

Since Point 15 of the Common Approach in the section is dedicated to the Director (as opposed to the more general sections dedicated to the evaluation of the Agency as a whole), the Key Performance Indicators (KPIs) focus on the Director and limited to the areas where s(he) has effective control. In other terms, the Key Performance Indicators at stake aim at assessing the Executive Director's results and not those of the Agency (whose performance is affected not only by the Executive Director but also by the Management Board and by external factors or stakeholders).

The Executive Director is subject to an annual appraisal exercise, like other official or agents of the Union. The annual appraisal of the Executive Director is the framework to fit the purpose of improving his/her performance; the KPIs could be developed taken into consideration in the context of the Executive Director's appraisal exercise.

More specifically, the value of KPIs is to assist in the assessment of the results achieved by the Executive Director of the Agency. However, the objective of KPIs is not to compare the Executive Director of the European Union Agency for Railways with other Directors / Heads of Agencies; KPIs are not designed for this purpose and, therefore, cannot be used for that purpose.

KPIs should, nevertheless, make it possible, on the one hand, to give elements of objectivity in the assessment of results (appraisal) and to assess trends over time (e.g. a steady improvement or deterioration from the moment where the Executive Director took up duties in the Agency).

5/ Description of the category or categories of data subjects

The Executive Director of the Agency

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

The value of KPIs is to assist in the appraisal and not to replace this procedure or to become the most important element of the appraisal. The data collected in the appraisal report include name, surname, personnel number, unit/sector, function, appraisal period (i.e. from ... to...), interruptions of the appraisal period, previous appraisal results, job description, agreed work objectives, expected conduct and competencies for the post and personal development tasks of the jobholder, as well as name, surname, function of the "reporting" and "countersigning" officers, key performance indicators and targets.

². Point 15 of the Common Approach on decentralized agencies indicates that, while agencies' Directors are accountable to the European Parliament and the Council for the use of the EU contribution, the discharge procedure focuses on accountability and regulatory compliance rather than on the performance per se. This is due, inter alia, to the lack of performance indicators. Agencies' Directors should therefore be more clearly accountable for performance. To this end, tailored performance indicators should be introduced for allowing effective assessment of the results achieved in terms of objectives. The full text of the Common Approach may be found here: https://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf.

³. The full text of the Roadmap may be found here: https://europa.eu/european-union/sites/europaeu/files/docs/body/2012-12-18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf.

The objectives and training courses agreed and planned for the forthcoming appraisal period are also included.

The data regarding the Key Performance Indicators (KPIs) cover two (2) domains:

1) KPIs in relation to Operational Objectives:

In order to evaluate whether the Annual Work Programme of the Agency is fully implemented throughout the year and, more specifically, whether such implementation is reflected in the Annual Report for such a year, the following performance indicators, i.e. a subset of the KPIs listed in the Annual Work Programme 2016, could be used:

- 90% achievement of all outputs using financial and human resource planning 2015
- 95% timely delivery of issuing reports, advice and opinions (EUAR)
- Successful implementation of the initial activities after entry-into-force of the 4th railway package, delivery of the first mock-up version of the Information and Communication System implementing the One-Stop-Shop (EUAR)

2) KPIs in relation to Management of Financial and Human Resources

The evaluation of whether the Agency has made swift, timely and full use of the financial resources allocated by the budgetary authorities, i.e. whether the Agency works in full budgetary and financial discipline, in line with the applicable financial regulation may be based upon the following performance indicators:

- rate (%) of payments executed within the legal/contractual deadlines

The evaluation of whether there have been timely improvements in the adequacy and effectiveness of the internal control system of the Agency, i.e. how is the timely improvement in the adequacy and effectiveness of the Agency's internal measurement and analysis system demonstrated in various audit reports and whether the Agency gives an appropriate follow-up to the audit reports' recommendations, may be based upon the following performance indicator:

- rate (%) of external and accepted internal measurement and analysis recommendations implemented within agreed deadlines (excluding "desirable").

The evaluation of whether there has been a swift and timely fulfilment of the Agency's establishment plan, i.e. whether the resources, which have been made available to the Agency, are sufficiently used and, most importantly, the assessment of the evidence of the level of staff wellbeing, namely whether the staff is supervised, guided and motivated, may be based upon the following performance indicator:

- aggregated staff satisfaction/engagement indicators, in case the Executive Director organises, upon request from the Management Board, on a regular basis, satisfaction/engagement surveys within the Agency.

It should be noted that, for all indicators, the baseline shall be set by the achieved level in the year prior to the year to be measured and that the targets for each indicators shall be set in agreement between the Chairperson of the Management Board/ Executive Board and the Executive Director.

The KPIs are explicitly stated in an Agency's Programming document.

The KPIs and targets as well as their assessment, as an excerpt of the appraisal report, are published in the Annual Report of the Agency.

7/ Information to be given to data subjects

A specific privacy statement, which sets out the whole procedure and contains all the information listed in art. 11-12 of the Regulation (EC) 45/2001, is made available to the data subject concerned.

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

The data subject may exercise the rights of access, verification and rectification of its data by contacting the person responsible for handling the processing operation, i.e. the Chairman of the Management Board (email: ManagementBoard@era.europa.eu). In case the data subject concerned has any further questions and/or concerns, he/she is given notice, through the privacy statement, of the following persons that may be contacted in relation to personal data protection issues:

- the Agency's Data Protection Officer (DPO): dataprotectionofficer@era.europa.eu.
- In the event of a dispute, complaints may be addressed to the European Data Protection Supervisor: edps@edps.europa.eu.

9/ Automated / Manual processing operation

Manual.

10/ Storage media of data

Paper versions stored in designated fire proof code protected safes and copies of the files are scanned onto a specially designated memory stick and stored in one of the HR offices to which only designated HR staff have access.

11/ Legal basis and lawfulness of the processing operation

- Regulation (EC) No. 45/2001, Article 5 (a) and (b)
- Regulation (EU) 2016/796 (the Agency Regulation)
- ERA AB Decision n°116, 16-06-2015 on ERA management standards
- Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies and Common Approach (Point 15) (19.7.2012)
- European Commission's Roadmap on the follow-up to the Common Approach on EU decentralised agencies (Action No. 89) (18.12.2012)
- European Commission Staff Working Document "Guidelines on key performance indicators (KPI) for directors of EU decentralized agencies", Brussels, 13.3.2015, SWD(2015) 62 final
- Key principles: Key Performance Indicators (KPIs) for the EU Agencies' Executive Directors – Application to the European Union Agency for Railways, 20.11.2015.

<p>12/ The recipients or categories of recipients to whom the data might be disclosed</p> <p>For the purposes described in detail above, access to personal data involved in the processing shall be granted only to the Agency staff members as well as the Management Board members, in addition to the staff of the Agency external supervising authorities (European Court of Auditors, Internal Audit Service, OLAF etc.), if necessary.</p> <p>No transfer to other recipients is foreseen.</p>
<p>13/ retention policy of (categories of) personal data</p> <p>Ten (10) years from the termination of employment or from the last pension payment, whatever applicable.</p>
<p>13a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject) <i>(Please, specify the time limits for every category, if applicable)</i></p> <p>1 month</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>N/A</p>
<p>15/ Proposed transfers of data to third countries or international organisations</p> <p>N/A</p>
<p>16/ The processing operation presents specific risk which justifies prior checking (<i>please describe</i>):</p> <p>Article 27.2.(b) Processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct, since the purpose with the processing of the personal information is intended to evaluate the Executive Director's personal aspects (i.e. ability and efficiency).</p> <p>17/ Comments</p> <p>N/A</p>

PLACE AND DATE:30/03/2017

DATA PROTECTION OFFICER: Zografia Pyloridou

INSTITUTION OR BODY: European Union Agency for Railways