

REGISTER NUMBER: 94

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 21/04/2006

Case number: 2006-192

Institution: European Commission

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

2) Name and First Name of the Controller: MORAN James

3) Title: Head of Unit

4) Directorate, Unit or Service to which the Controller is attached: H.02

5) Directorate General to which the Controller is attached: RELEX

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

26) External Company or Directorate General to which the Processor is attached:

25) External Company or Directorate, Unit or Service to which the Processor is attached:

RELEX. Not Applicable. Not Applicable

3/ Name of the processing

EU-China Tourism Agreement ? Approved Destination Status (ADS)

4/ Purpose or purposes of the processing

The protected CIRCA website is to facilitate the real-time exchange of up-to-date information among the European Commission and consular posts of European countries, including third countries Norway, Iceland, and Switzerland, that participate in the ADS tourism agreement with China. The objective is to ensure an effective and correct implementation of the ADS Memorandum of Understanding, notably by providing up-to-date lists of travel agencies/couriers which are authorised to deal with ADS visa applications to EU consulates.

5/ Description of the category or categories of data subjects

14) Data Subject(s) concerned:

The website will contain inter alia lists of couriers, i.e. physical persons who are (in the process of being) authorised to act on behalf of accredited travel agencies (example attached). Contact data of the users (name, first name, office address, telephone number, job function, fax number, e-mail) who have access to the CIRCA website will also be stored on the website and made available to all users.

16) Category(ies) of Data Subjects:

- List of accredited travel agencies including possible sanctions imposed for failure to comply with ADS rules.
- List of couriers that are authorised to act on behalf of accredited travel agencies.
- Sanction proposals submitted by European ADS Partners against particular travel agencies that are presumed to have violated ADS rules.
- Contact data + job function for authorised CIRCA protected website users from European ADS Partner countries.

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

As indicated before (cf. file attached under question 7), the following type of information will be stored on the protected CIRCA website and made available via secure electronic access to the registered users of the website.

- Name of travel agency, office address, telephone + fax number, e-mail, business licence no.
- Name, first name and identification number of authorised couriers, badge application status for couriers, issuing Member State and expiry date
- Sanctions imposed against certain travel agencies, consular post that has authorised couriers and a travel agency, and/or sanctioned a travel agency

Furthermore, users of the ADS CIRCA protected website are required to provide their contact details and official function when registering as a Member of the ADS CIRCA website/interest group (see attached file). This information is made available to all Members of the ADS interest group in order to facilitate contacts and

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

Art. 10 is not applicable ? no such information is registered and processed.

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'

Within the process of accreditation as ADS travel agencies, consular officers inform travel agencies and their authorised couriers about their rights and duties according to current EU legislation, inter alia their right to access their data and request for correction, erasure, blocking (Art 11 and 13-19 of Regulation). It is envisaged to organise regular trainings for all accredited travel agencies and couriers. Badges for couriers are valid for a limited duration and can be cancelled at any moment if the agency/courier is found not to respect the ADS rules. The courier/agency is informed about any sanction imposed on it and the respective reasons. More detailed information can be provided on request. A 'Service Specific Privacy Statement' for users of the protected ADS CIRCA website is on the website (see attachment).

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' :

The identification of couriers is done jointly by the travel agencies and respective consular staff of European ADS Partners. Any sanctions or their expiry are communicated immediately to the concerned travel agency. Current procedure as agreed between European Heads of Mission is the following (references to annexes refer to attached file under question 7):

When a travel agency applies for the first time for the accreditation certificate in one of the Member States? Visa Sections, each Chinese Designated Travel Agency shall exhibit its business licence. Upon accreditation of the agency the concerned Member State updates accordingly the travel agency's position in the EU ADS list, in order to inform other Member States that an accreditation certificate has been issued for that business license. Considering the fact that only one Member State should issue accreditation certificates and courier

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)"

A protected CIRCA website is being designed to facilitate the exchange of information among the European Commission and consular posts of European countries that participate in the ADS tourism agreement with China (?European ADS Partners?). The objective is to ensure an effective and correct implementation of the ADS Memorandum of Understanding (MoU ? see attached file under question 11). The website is open only to registered users from European ADS Partners for official use. The website will contain inter alia Excel lists of designated travel agencies, couriers and sanctions against travel agencies that have not respected the ADS rules. Member States and other authorised European ADS Partners (Norway, Iceland, and Switzerland) will be able to upload sanction proposals against travel agencies and thus ask for the approval of partners.

8) Automated Processing operation(s):

none

9) Manual Processing operation(s):

- upload latest version of Excel sheets containing authorised/sanctioned travel agencies and their respective couriers
- upload sanction proposals submitted by consulates of Member States against travel agencies
- discussion and information about ADS implementation inter alia via the "Newsgroup" functionality
- users must provide/share their contact data / job function in order to be given access by the EC Delegation in Beijing

10/ Storage media of data

Data is stored on a secure CIRCA-server operated by Data Centre of the European Commission - see: <http://forum.europa.eu.int>

This is a secured Extranet widely used for information exchange between European Institutions and EU Member States. The European Commission will administrate the ADS Circa protected website. The daily operation of the website will be ensured by designated staff in the EC Delegation in Beijing. This staff will be duly authorised and informed in writing by the Deputy Head of the EC Delegation.

11/ Legal basis and lawfulness of the processing operation

11) Legal basis of Processing:

? Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China (ADS), OJ L83/14 of 20/03/2004 (see attachment)

? Commission Recommendation on the implementation by the consular offices of the Member States of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and related issues concerning tourist groups from the People's Republic of China (ADS), OJ L296/23 of 21/09/2004 (see attachment)

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)"

The processing operations on personal data related to the implementation of the ADS MoU and the facilitating of local consular cooperation falls within the scope of EC competences and is necessary and lawful under article 5(b) of Regulation (EC) 45/2001. The information about sanctioned travel agencies or sanction proposals against travel agencies is sensitive and as further a transfer of personal data under article 9 is operated (access to the protected CIRCA web site of third countries Norway, Iceland, and Switzerland) article 27 - "Prior checking" of Regulation (EC) 45/2001 appears to be applicable.

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

20) Recipient(s) of the Processing:

Authorised personnel from European ADS Partners, i.e. consular officers in local embassies, possibly officials from European ministries headquarters who are in charge of ADS, Commission staff in DGs RELEX, JLS (and possibly DGs TRADE, MARKT and ENTR) who are in charge of ADS. Currently the 25 EU Member States + Iceland + Norway + Switzerland participate in local consular cooperation related to ADS in China and are called "European ADS Partners" for the purpose of this notification.

21) Category(ies) of recipients:

In order to implement the ADS MoU (correct issuing of ADS tourist visa and limiting migration risk) European consular posts in China need to exchange the information as provided by the ADS CIRCA protected website. Commission officials in charge of the ADS file need to have access as part of their daily work in policy implementation and development. Officials in European national administrations in charge of the ADS file need to have access for the same reasons as their respective Commission counterparts. Access to the ADS CIRCA protected website is granted ad personam (personal login + password) by the CIRCA "leader"/administrator (=designated Commission staff).

13/ retention policy of (categories of) personal data

Information on travel agencies / couriers and authorised users will be updated in real-time whenever new information becomes available. Information on couriers will be deleted once their personal badges have expired and/or have been returned to the issuing consular post. Expired information on travel agencies / couriers and authorised users may be stored in a separate secure place for up to 5 years in order to enable the tracing back of previously authorised travel agencies, couriers or users for any potential legal claim or other possible problems, e. g. the undue leakage of information by one of the (previously authorised) user, the reappearance of a travel agency that had been definitely excluded from the ADS scheme. In certain cases personal data might be deducted from information on travel agencies, e. g. personal e-mails given as a company contact address or one-person companies.

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

22 b) Time limit to block/erase data on justified legitimate request from the data subjects

Corrections will be made immediately to ensure that the info is always up-to-date and fulfilling the purpose of the ADS CIRCA website. If travel agencies/couriers no longer wish to participate in ADS group travel, they need to return their accreditation and badges - subsequently, information relating to them will be deleted from the ADS CIRCA website. This will take no longer than 10 working days.

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,

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

Anonymised statistical data will be stored to ensure monitoring of the overall impact of the ADS MoU.

Expired sanctions against travel agencies (not couriers) will be stored for up to 5 years in order to enable a better judgement of any future sanction proposals. The name and identifier of the concerned travel agency in general do not represent personal data according to regulation 45/2001. However, in certain cases personal data might be deducted from information on travel agencies, e. g. personal e-mails given as a company contact address or one-person companies.

15/ Proposed transfers of data to third countries or international organisations

27) Legal foundation of transfer:

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.

No transfer of personal data from the ADS CIRCA protected website to third countries foreseen ? with the exception of Switzerland, Norway and Iceland where data protection standards are comparable to the EU.

====> Extract from : "Commission decisions on the adequacy of the protection of personal data in third countries" ====>

The effect of such a decision is that personal data can flow from the 25 EU member states and three EEA member countries (Norway, Liechtenstein and Iceland) to that third country without any further safeguard being necessary. The Commission has so far recognized Switzerland, Canada, Argentina, Guernsey, Isle of Man, the US Department of Commerce's Safe harbor Privacy Principles, and the transfer of Air Passenger

28) Category(ies) of Personal Data or Personal Data to be transferred:

European ADS Partners, including Switzerland, Norway and Iceland, shall have full access to all data (as described above) stored on the ADS Circa protected website compliant the ?Commission decisions on the adequacy of the protection of personal data in third countries? and the usage of the ?new standard clauses for data transfers to non-EU countries? where applicable.

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

7) Description of Processing:

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

None

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

None

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,

None

Other (general concept in Article 27.1)

None

17/ Comments

1) Date of submission:

10) Comments if applicable:

This notification no longer takes account of a possible transfer of personal data under article 9 of Regulation (EC) 45/2001 to Chinese authorities. This processing operations on personal data will be notified in a separate notification.

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.

yes

The user directory of the ADS CIRCA protected website will be accessible to all authorised users from European ADS Partners in order to facilitate contacts and cooperation.

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

PLACE AND DATE:10/03/2006

DATA PROTECTION OFFICER: HILBERT Nico

INSTITUTION OR BODY:European Commission