

**REGISTER NUMBER: 510**

**NOTIFICATION FOR PRIOR CHECKING**

Date of submission: 03/06/2009

Case number: 2009-386

Institution: Commission

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

*(1) OJ L 8, 12.01.2001*

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

*(2) Please attach all necessary backup documents*

1/ Name and address of the controller

2) Name and First Name of the Controller: STAUSBOLL Hans

3) Title: Head of Unit

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

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

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:

3/ Name of the processing

CRIS - Follow up of performance of framework contractors and their experts for external aid

4/ Purpose or purposes of the processing

- 1) Avoiding recruitment by the Commission of inappropriate expertise based upon a check of the performance of the experts proposed for new assignments when they have been working for the Commission in the past. The records consulted cannot be in any way the basis for rejection of offers but will give rise to requests for clarifications on the part of the consulted FWC'r during the evaluation process.
- 2) Monitoring the performance of the firms retained under the FWC to check if they comply with their contractual obligations (this is a multiple FWC with on going competition).
- 3) Give the possibility to apply the penalty foreseen in the statement of availability of the experts when they are not available at the beginning of the contract, (the penalty is mentioned under point 12 above : "possible future exclusion from EU tenders/contracts").

Evaluations will be carried out through a contradictory procedure when approving the outputs of the services rendered.

The corresponding records will contain the evaluations by the contracting authority and the comments from

#### 5/ Description of the category or categories of data subjects

14) Data Subject(s) concerned:

- 1) Firms retained under the FWC
- 2) Experts working for the assignments performed under the FWC
- 3) Evaluators of the quality of performance : they are the project managers and contracting authorities.

16) Category(ies) of Data Subjects:

Experts contracted for performing FWC assignments and staff of the EC.

#### 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

See attached performance evaluation sheet

New assessment form attached on 29/05/09 with minor changes.

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

See answer to Q 17 above.

#### 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'

We will communicate to the experts the following information in their statement of availability and exclusivity which they must sign for the Framework contractor at the stage of the offer:

- the quality of the work done for the contract to be awarded will be evaluated and the evaluation made available to the Commission services for internal use when evaluating offers for other assignments of the FWC,
- the unavailability of the expert at the start of the assignment will be recorded and made available to Commission services.
- the internet address of the FWC website where information will be published about their rights in line with Regulation 45/2001.

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 performance evaluation will be sent to the FWC'r for comments by him and the experts to be provided within a period fixed in the notification not less than 14 days. The FWC'r has the obligation to communicate to each expert the part containing her/his evaluation and collect her/his comments within a minimum period of 10 days from their notification. He will forward them to the Contracting authority within the period given to him for comments. If the Contracting Authority maintains his version, he notifies the FWC'r of his decision and records his assessment together with the comments received from the FWC'r and the experts in the FWC performance database. The FWC'r will inform the experts of such a decision. If the Contracting authority modifies his assessment, he notifies his new version for comments with a new period for reaction (including

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)"

The system will record evaluation of performance of framework contractors (firms) and experts (inclusive the latter's compliance with their undertaking of availability) together with their comments to this evaluation. These records will be made available to the Commission external aid services (and the beneficiaries of external aid when they are in the evaluation committees) in order

- 1) to check the past performance of the experts proposed in the offers during the evaluation of offers for new assignments (competitive process);
- 2) to monitor the quality of performance of the framework contractors (this is a multiple FWC).
- 3) to take into account the cases of unavailability of experts (the statement of availability signed by the experts foresee that they can be excluded from future contracts if unavailable at start of the assignment).

8) Automated Processing operation(s):

No automated processing is foreseen. Only a consultation of the content of the data base can be made. Decisions resulting from this consultation will not be automatic.

It is foreseen to have the following operations: the Commission services and evaluators of offers in competitive procedures will have access to the evaluation and comments of a given expert or a given framework contractor. A search can be made upon a name of a person or of a framework contractor and the system will give a list of the operations recorded for this person or contractor. The list of results will give access to a) the evaluation form filled in + to the comments of the concerned experts or/and firms + b) to the corresponding specific contract. Instructions will be given so that no decision affecting the subjects of the evaluations can be made on the sole basis of these records.

9) Manual Processing operation(s):

The information retrieved among the records of evaluation and feed backs of evaluated experts/firms can be used by the Commission services :

- 1) to dispose of complementary information on FWC offers (and experts CV's) during their evaluation process : on this basis, confirmation of elements not indicated in the offers can be sought ;
- 2) to ask further information concerning the availability of experts in case they have been recorded as at default for past assignments under the FWC, which can lead to decide to exclude the expert.

10/ Storage media of data

Electronic storage.

11/ Legal basis and lawfulness of the processing operation

11) Legal basis of Processing:

Art 27 of the Financial regulation is the legal basis for the data base processing :

"Budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness"

The processing is necessary in order to have a good financial management of public funds by checking past experience/results that the Commission had with experts contracted through the same contractual tool (FWC). Short term expertise which is recruited through the FWC presents high risks induced by the fact that it is usually external experts (not in house) and very volatile expertise (frequent unavailability at the beginning of implementation).

Indeed, the on line consultation of past assignments evaluations might avoid contracting inappropriate expertise when examining offers for future assignments and can help improving the quality of external aid credits management.

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 experts concerned will be informed prior to the evaluation when signing their statement of availability for offers and they can give their observations to their evaluation of performance. The draft FWC to be signed by september 2009 indicates :

"The final approval of reports and documents foreseen under article 27 of the General Conditions will be made by the Contracting Authority following an evaluation of the services rendered which is sent to the Framework Contractor for comments. The Framework Contractor undertakes to communicate to the experts the part of the evaluation which concerns their performance within the indicated deadline that could be extended to two weeks upon written justified request."

The contractor will have a deadline for comments and a contractual obligation to forward the relevant extracts

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

20) Recipient(s) of the Processing:

All users of CRIS and evaluators of beneficiary countries of external aid.

CRIS users are RELEX DG's and EC Delegations in 3rd countries. Access to CRIS is strictly controlled through a unique user-id and password.

Evaluators of beneficiary countries are representatives of the beneficiary entity nominated by the latter to take part in the evaluation of offers for the award of the specific contracts. Their participation is not obligatory but an option for the beneficiary of the assignment.

Internal (IAS) and external auditors (Court of Auditors), as well as duly authorised investigation authorities are granted access when requested under the exception specified under article 2(g) of Regulation (EC) 45/2001.

21) Category(ies) of recipients:

See answer to Q 20 above.

13/ retention policy of (categories of) personal data

Records of evaluations/unavailability of experts and corresponding comments will be kept during the period that the records of the corresponding FWC must be kept : 7 years according to art 24 of the FWC General conditions.

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

The experts will dispose of two means to address a query to contest, alter, and modify their performance evaluation:

1) during the procedure of evaluation when they are notified of the evaluation of their performance by the FWC'r which has employed them for the assignment.

The experts dispose of minimum 10 days to send their comments to the latter, including any request for modification.

The Contracting authority (CA) responsible for the evaluation will receive the expert's comments from the FWC'r within the period given for comments to the FWC'r (minimum 14 days). When the request for modification is based on justified legitimate grounds, the CA will modify the evaluation of the experts' performance accordingly. When the request for modification concerns the rating of performance, the CA may modify its evaluation according to the justifications put forward. The CA takes the final decision concerning

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

NA

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.

NA

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

NA

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

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

n/a

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

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

n/a

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

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Other (general concept in Article 27.1)

n/a

17/ Comments

1) Date of submission:

10) Comments if applicable:

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 :

PLACE AND DATE:03/06/2009

DATA PROTECTION OFFICER: GEORGES Louis

INSTITUTION OR BODY:European Commission