

REGISTER NUMBER: 536

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 21/10/2009

Case number: 2009-681

Institution: 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:HOEBEECK Willy

3) Title:Head of Unit

4) Directorate, Unit or Service to which the Controller is attached:C.1

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

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:

BUDG.R.4

3/ Name of the processing

Registration of a Data Subject in the Central Exclusion Database.

4/ Purpose or purposes of the processing

Protection of the Communities? financial interest

Data contained in the central exclusion database are processed and may only be used for the purposes of excluding from any procurement or grant procedures funded with Community Funds or EDF Funds, entities which represent a threat to the Communities? financial interests (e.g. entities which are personally under an exclusion situation within the meaning of Articles 93 to 96 and 114 of the Financial Regulation n° 1605/2002 (general budget) and Articles 96 to 99 and 110 of Regulation n° 215/2008 (10th EDF)).

5/ Description of the category or categories of data subjects

14) Data Subject(s) concerned:

As excluded entities, all individuals who are excluded in accordance with regulatory provisions (reminded under point 13 above) (including natural persons managing legal entities as far as these natural persons are personally under an exclusion decision).

Are also registered (without being subject of a query) the name of natural persons who are managing an excluded entity (in order to identify the person that can legally requests information, modification or removal of registered data).

16) Category(ies) of Data Subjects:

1. candidates, applicants and tenderers for Community funding (or EDF funding);
2. recipients of community funds (or EDF funds) : contractors and subcontractors

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 entity subject of an exclusion decision:

- name and address of the individual
- ground of exclusion (some of the grounds of exclusion are related to res judicata criminal judgements mentioned in Article 93 of the Financial Regulation : these data are covered by Article 10(5) ?special categories of data? of Regulation (EC) 45/2001).
- end date of the active warning
- references of the authority that requested the warning

As legal representative of an entity subject of an exclusion decision: name of the individual

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

Not included in the scope of Article 10 of Regulation (EC) 45/2001 except for data registered under the field 'ground of exclusion': some of them are related to res judicata criminal judgements mentioned in Article 93 of the Financial Regulation: these data are covered by Article 10(5) 'special categories of data' of Regulation (EC) 45/2001).

The processing of such data is authorised by a legal instrument adopted on the basis of the Treaties establishing the European Communities (Council Regulation (EC, Euratom) n° 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities).

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'

- Privacy statements accessible on line on the Internet website of the Commission:

1. Privacy statement for the central exclusion database (attached)
2. Modified privacy statement for the Legal Entity File (LEF) of the accounting system of the Commission (attached)

- Prior information of candidates, tenderers and grant applicants (Article 13 of Commission Regulation (EC, Euratom) N° 1302/2008 of 17 December 2008 on the central exclusion database (see draft clause to be inserted into Call for proposals and call for tenders)(attached).

- Information given at the beginning of the contradictory procedure before an eventual exclusion decision (see draft letter opening the contradictory procedure) (attached);

- Information given with the notification of the registration of the exclusion warning (see draft letter for the activation of a definitive warning) (attached).

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' :

- in accordance with Article 13(4) of the Commission Regulation (EC, Euratom) n° 1302/2008 a duly empowered representative of an entity, may request information on whether that entity is registered in the CED to the Accounting Officer of the Commission who shall respond and, should the entity be registered, he shall provide the registered information and inform the institution that initiated the warning.

- In accordance with Article 13(2) of the same Regulation the institution requesting the registration shall be responsible for the relations with the natural or legal person whose data are introduced into the CED.

- The rights of the data subjects enshrined in Articles 13 to 19 of the Regulation (EC) 45/2001 are confirmed by the CED Regulation (Whereas n° 22) and they are reminded to the data subject or its legal representative when the registration of an exclusion warning is notified (see draft notification letter for the activation of a definitive warning, attached).

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 Commission Regulation n° 1302/2008 of 17 December 2008 exclusion warnings are entered centrally by the Commission (DG BUDGET) in a Central Exclusion Database (hereafter CED) to be implemented as from the 1st of January 2009:

- When? after receipt of a formal letter sent to the Accounting Officer of the Commission
- Who request the registration (initiator of a warning)? Commission departments, other Community Institutions within the meaning of Article 2.1 of Commission Regulation n° 1302/2008, or liaison points from Member States, International Organisations and third Countries.
- Who registers the exclusion warning? only staff under the control of the Accounting Officer can register data in the CED.
- Content of the exclusion warning? identification data of the excluded entity, the ground of exclusion as laid down in the Financial Regulation (Articles 93, 94, 96 and 114 FR) and the duration of the registration of the warning in the CED;
- How to access to registered data? this information concerning excluded entities is accessible to authorised users from the Commission and other Community Institutions, or from Member States, International Organisations and third Countries.

Access to the exclusion data are only for consultation (no data entry) and is made through queries and update transactions initiated by authorised users.

- Warnings are activated upon registration and deactivated automatically at the end of the duration of the warning if, in the meanwhile, they have not been manually removed on the basis of a duly justified request by the Data Subject.
- This processing is subject to prior-checking by the EDPS (Article 27(2)(d) of Regulation (EC) 45/2001).

8) Automated Processing operation(s):

- Gathering the relevant information on excluded entities: in the accounting system of the Commission, the concerned entity is flagged in the Legal Entity File (LEF) .

- Exclusion warning are made available automatically to all authorised users :

i. from the Commission and the Executive Agencies through ABAC, the accounting system of the Commission, by a standard interface.

ii. The same information is retrieved on a daily basis and mirrored in a new database to make it available to ?external? authorised users from other Community Institutions, or from Member States and ? subject to conditions - from International Organisations and third Countries. Where a secured internet access is not available / accurate (?), the information is extracted from the database in a listing to be sent by secured mail to registered liaison points.

- Automatic deactivation of exclusion warnings: the warning is automatically deactivated at the end of the registration period if the deactivation has not been requested in the meanwhile by the initiator of the warning.

9) Manual Processing operation(s):

Registration of exclusion warnings are made by staff reporting to the Accounting Officer of the Commission (manual data entry) on the basis of standard forms included in the Commission Regulation n° 1302/2008 and filled and signed by the initiators of a warning.

These forms are 'RESTREINT UE' documents addressed to the Accounting Officer of the Commission. Circulation of these forms is made in a single closed envelope which is archived afterwards in a secured safe.

10/ Storage media of data

The exclusion warnings are stored in the Commission ABAC accounting system.

Bruno, la base elle-même ne fait pas partie de ABAC ...Ajouter : and mirrored in an online database accessible to authorised users. ?

The request forms for registration are archived, after processing, in a secured safe.

11/ Legal basis and lawfulness of the processing operation

11) Legal basis of Processing:

- For the General Budget : Article 95 of Council Regulation (EC, Euratom) n° 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities as revised by Council Regulation n°1995/2006 of 13 December 2006 :

1. 'A central database shall be set up and operated by the Commission in compliance with Community Rules on the protection of personal data. The database shall contain details of candidates and tenderers which are in one of the situations referred to in Articles 93,94,96(1)(b) and (2)(a). It shall be common to the institutions, executive agencies and the bodies referred to in Article 185.

2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93(1)(e), where the conduct of the operator concerned was detrimental to the Communities' financial interests. The authorising officer shall receive this information and request the Accounting Officer to enter it into the database.

The authorities and bodies mentioned in the first subparagraph shall have access to the information contained in the database and may take it into account, as appropriate and on their own responsibility for the award of contracts associated with the implementation of the budget. (??)

See also for grants Article 114(3) of the Financial Regulation.

- For the European Development Fund : Article 98 of Council Regulation n° 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund.

- Commission Regulation (EC, Euratom) N° 1302/2008 of 17 December 2008 on the central exclusion database

(OJ L 344, 20.12.2008, p.12) (attached)

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 Central Exclusion Database is lawful under Articles 5(a) and 5(b) of Regulation (EC) 45/2001. Under Article 95 of Council Regulation (EC, Euratom) N° 1605/2002 on the Financial Regulation, the Commission and specifically its Accounting Officer - as controller - has the legal obligation to set up the central exclusion database and process the required information to make it available through:

- transfers within or between Community institutions or bodies, within the meaning of Article 7 of Regulation (EC) 45/2001;

- transfers to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC, within the meaning of Article 8 of Regulation (EC) 45/2001;

- and, subject to conditions and after further consultation with the EDPS, transfers to recipients other than Community institutions and bodies, which are not subject to Directive 95/46/EC.

This processing is subject to be prior-checked by the EDPS as required by Article 27(2)(d) of Regulation (EC) 45/2001.

This processing has to be evaluated account being taken of Article 20(b) of Regulation (EC) 45/2001 in order to safeguard an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters?.

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

20) Recipient(s) of the Processing:

Only authorised users of the various categories of recipients detailed under point 21 below.

An authorised user is defined by Articles 6 and 7 of the CED Regulation as: staff members of the institutions [or of the implementing authorities and bodies] for whom access to that database is indispensable for the proper exercise of their tasks?.

Authorised users are registered: the register of these authorised users shall be constantly updated, kept and accessible to the Commission upon request.

21) Category(ies) of recipients:

Authorised users from:

- Community institutions or bodies, within the meaning of Article 7 of Regulation (EC) 45/2001 (Commission departments, Executive Agencies, bodies referred to in Article 185 and other Community institutions such as the Court of auditors, the European Parliament?);
- recipients, other than Community institutions and bodies, subject to Directive 95/46/EC, within the meaning of Article 8 of Regulation (EC) 45/2001 (Authorities and bodies of Member States participating in the implementation of the budget in accordance with Articles 53 and 54 of the Financial Regulation);
- and, subject to conditions and after further consultation with the EDPS, recipients other than Community institutions and bodies, which are not subject to Directive 95/46/EC (Authorities and bodies of third countries and international organisations participating in the implementation of the budget in accordance with Articles 53 and 54 of the Financial Regulation).

13/ retention policy of (categories of) personal data

A time limit is set in the database for each type of exclusion warning (see attached table under point 17). In such cases, the warning is deactivated as soon as the time period has elapsed if the initiator of the warning has not requested its removal before the end of the time limit.

Removed warnings are then not visible for the users of the database (removal of the warning, Article 13(5) of the CED Regulation).

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 time to process and assess the legitimacy of the request should be evaluated for every request made by the data subject.

Time limit after the approval of the request of the data subject: 15 days in normal circumstances and no more than 30 days in any case.

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

Under Article 13(5) of the CED Regulation removed warnings shall be accessible for audit and investigation purpose only and shall not be visible for the users of the database.

Personal data contained in exclusion warning are erased 5 years after the removal of the warning (see Article 13(5) of CED Regulation).

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.

- Article 95(2) of the Financial Regulation stipulates:

?The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93(1)(e), where the conduct of the operator concerned was detrimental to the Communities' financial interests. The authorising officer shall receive this information and request the Accounting Officer to enter it into the database.

The authorities and bodies mentioned in the first subparagraph shall have access to the information contained
28) Category(ies) of Personal Data or Personal Data to be transferred:

Same as detailed in points 17) and 18) above.

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

7) Description of Processing:

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- This processing is subject to prior-checking by the EDPS (Article 27(2)(d) of Regulation (EC) 45/2001).

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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- transfers within or between Community institutions or bodies, within the meaning of Article 7 of Regulation (EC) 45/2001;
- transfers to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC, within the meaning of Article 8 of Regulation (EC) 45/2001;
- and, subject to conditions and after further consultation with the EDPS, transfers to recipients other than Community institutions and bodies, which are not subject to Directive 95/46/EC.

This processing is subject to be prior-checked by the EDPS as required by Article 27(2)(d) of Regulation (EC)

This processing has to be evaluated account being taken of Article 20(b) of Regulation (EC) 45/2001 in order to

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,

n/a

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,

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)

n/a

17/ Comments

1) Date of submission:

10) Comments if applicable:

In accordance with Article 7(5) of the Commission Regulation n° 1302/2008, the list of excluded entities contained in the CED may be made available, via a secured protocol, to the liaison points of authorities and bodies mentioned in this same Article 7.

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.

yes

In accordance with Article 7(5) of the Commission Regulation N° 1302/2008, the list of excluded entities contained in the CED may be made available, via a secured protocol, to the liaison points of authorities and bodies mentioned in this same Article 7.

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Passwords are changed on every new transmission of these files.

Note that this alternative procedure is currently suspended for third countries and international organisations

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

Even though the central exclusion database follows the same type of processing as the Early Warning System (EWS) of the Commission, the extended scope concerning the recipients of the exclusion data leads the Commission to register a separate DPO notification for the CED.

A vademecum has been drafted to explain and detail the different implementing procedures for the management of the central exclusion database. It is communicated as such with the present notification. (Relevant annexes have been attached to the present notification, other annexes are available upon request of the EDPS. They will be sent to the EDPS with the definitive version).

As described in this draft vademecum, the Commission has decided to suspend all transfers of data to third country recipients and international organisations until a procedure as been agreed in concert with the EDPS on the concrete means to ascertain the correct level of personal data protection of these recipients. Once this

PLACE AND DATE:21/10/2009

DATA PROTECTION OFFICER: GEORGES Louis

INSTITUTION OR BODY:European Commission