

REGISTER NUMBER: 603

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 18/06/2010

Case number: 2010-0465

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 adress 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 experts availability in FWC assignments

4/ Purpose or purposes of the processing

<p>The objective of recording the unavailability of the experts is to avoid selecting experts who have repetitively failed to respect their commitment and prevent further prejudice to projects implementation.</p> <p>As indicated in the statement of availability, the penalty can be the exclusion from other tender procedures and contracts funded by the EC. The penalty will be limited in time according to the principle of proportionality.</p> <p>It will be decided by the contracting authority of the Framework contract (and not of each individual specific contract/individual assignment) on the basis of the number of assignments where the expert did not respect his commitment .</p>
5/ Description of the category or categories of data subjects
<p>14) Data Subject(s) concerned:</p> <p>Experts recruited for FWC assignments (FWC BENEf 2009, future FWC COM 2011 and their successors)</p>
<p>16) Category(ies) of Data Subjects:</p> <p>Natural persons: experts for FWC assignments.</p>
6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)(<i>including, if applicable, special categories of data (article 10) and/or origin of data</i>)
<p>17) Data field(s) of Data Subjects:</p> <p>Attention: Please indicate and describe in the answer to this question also data fields which fall under article 10</p> <p>The data fields are:</p> <ul style="list-style-type: none"> - name and forename of the expert - the date of his birth - his participation or no participation to the assignment
<p>18) Category(ies) of data fields of Data Subjects:</p> <p>Attention: Please indicate and describe in the answer to this question also categories of data fields which fall under article 10</p> <p>See answer under n° 17.</p> <p>There is no data falling under art 10.</p>
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'

The model of statement of exclusivity and availability together with the privacy statement indicate clearly the information required under art. 12 of Regulation 45/2001. The models of the statement of exclusivity and availability as well as the privacy statement are annexed.

The participation or not of the expert to the assignment is a factual element which cannot give rise to comments and there is no procedure set up for giving possibility to data subjects to comment.

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 experts can check anytime with AidCo F4 through the mail box indicated in the privacy statement under item 5 whether they are recorded in the database and the data recorded. They can rectify the information recorded for them.

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)"

Short term services for external aid are contracted via a multiple Framework contract (FWC) with on going competition. For each specific assignment, the Framework contractors (FWC'rs) in competition send an offer which includes CV of experts together with a statement of exclusivity and availability for each expert. In this statement, the expert commits himself to be available at the start date of his services for the period of execution foreseen.

The processing envisaged will record the availability or unavailability of the experts foreseen for the assignment.

The names & date of birth of the experts of the winning offer are encoded in CRIS (Common Relex Information System) when the offers are evaluated. The list of experts for a given assignment appears at the level of the specific contract in CRIS.

It indicates whether the experts have participated or not to the execution of the assignment.

The project manager can update this list during and after the implementation of the assignment.

This information can be consulted by the CRIS users for each individual specific contract but only F4 can search it for a given expert.

The FWC is mostly used for short but key services, e.g. identification, pre-feasibility, mid term evaluation. The experts are usually external experts and very volatile.

It is envisaged to apply administrative penalty to experts who have not respected their commitment such as exclusion of participation to the FWc assignments for a given period of time.

The statement of exclusivity and availability signed by the expert will refer to a privacy statement which will be published on the EuropeAid website, in the FWC pages.

8) Automated Processing operation(s):

No automated processing is foreseen.

A search tool will be put at the disposal of the unit in charge of managing the FWC, namely AidCo F4, to retrieve the experts who have not respected their statement of availability (search by names).

Data related to the unavailability of experts will be subject to storage in CRIS but without any impact on other operations. Only a consultation of the content of the data base can be made.

Decisions resulting from the consultation will not be automatic nor recorded in the data base.

9) Manual Processing operation(s):

The availability of the experts is recorded at the level of the specific contract but CRIS. CRIS users cannot operate a direct research by experts' names. If the user who is consulting the database searches for the specific contract number in CRIS, he will be able to consult the availability of the experts who have been working for the assignment as any other information recorded for the specific contract (amount, payments modalities, subject etc.).

Only AidCo F4 will have access to the global information of a given expert for all the FWC assignments. This information will be used to assess penalties in conformity with the statements signed by the expert.

The identification of the experts is recorded at the level of the selection of the offer of the FWC'r and may be updated when signing the contract, during or after its implementation. During or at the end of the assignment, the project manager can record whether the expert has or not participated to the assignment.

The FWC contracting authority may use this information in case of repeated unavailability of the experts in breach of the commitments they signed in their statements of availability and exclusivity.

10/ Storage media of data

Electronic storage.

The data for experts will be stored at the level of the FWC specific contract in CRIS and also in the CRIS data warehouse. The data warehouse is a sub-system of CRIS exploiting the CRIS data and is not accessible to users without special permission.

11/ Legal basis and lawfulness of the processing operation

11) Legal basis of Processing:

The legal basis is sound financial management of the budget of the EC as per Art. 27 of the Financial regulation. FWC operations are mainly financed out of external aid instruments and EDF and are subject to sound financial management since

- the Financial regulation of 10th EDF (European Development Fund) refers to it expressively,
- the instruments regulations, except ICI (Instrument for cooperation with industrialised and other high-income countries and territories), indicate that its financial envelope "constitutes the prime reference amount for the budgetary authority according to point 37 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management" (recital 19 of the preamble of the ENPI regulation for example).

Processing the unavailability of experts can help improving the quality of external aid credits management. FWC experts presents high risks of unavailability. It is in the interest of the projects to have reliable experts for starting the assignments.

References :

- ENPI regulation can be found at :

http://ec.europa.eu/europeaid/work/procedures/legislation/legal_bases/index_en.htm

- Interinstitutional agreement is at :

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:139:0003:0003:EN:PDF>

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)"

Art 5 a) & d) of the Regulation 45/2001 can apply since

a) the processing will improve the management of external aid credits for sound financial management ,

d) experts signs a statement of exclusivity and availability whereby they committ themselves to be available
Art 27 2. d) is applicable for the processing of the unavailability of experts and for the penalisation in case of repeated breach of their committment.

Art 20 is not applicable.

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

20) Recipient(s) of the Processing:

The FWC users encode in CRIS the participation of experts at the level of each specific contract. FWC users who have access to CRIS are RELEX DG's (+ DG with sub-delegated external aid credits) and EC Delegations in 3rd countries. The FWC users are exclusively the CRIS users already notified (cf. Notification DPO-752). All CRIS users have access to the data of each specific contract.

For the experts availability overview and search tool by name, the list of recipients is further limited to the unit in charge of this module, namely AIDCO F4 (cf. questions 7, 8 and 9 above).

There are no modifications or updates as regards the recipients globally indicated in the CRIS notification.

<p>21) Category(ies) of recipients:</p> <p>All CRIS users will have access to the record of availability of experts for a given assignment. Only AidCo F4 staff will have access to all records with a search tool for the unavailability of the experts. 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.</p>
<p>13/ retention policy of (categories of) personal data</p> <p>Records will be kept during 7 years which is the time frame set in the FWC General conditions (art 25) for verification by EC bodies.</p> <p>art 25</p> <p>1. The Framework contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents by means of on-the-spot checks of original documents, the implementation of the contract and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to 7 years after the final payment. Furthermore, the Beneficiary will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities.</p> <p>2. To this end, the Framework contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination. The Framework contractor must inform the Contracting Authority of their precise location, in principle at the Headquarters of the Framework contractor (in case of consortium, the lead firm).</p>
<p>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)</p>
<p>22 b) Time limit to block/erase data on justified legitimate request from the data subjects</p> <p>15 days.</p>
<p>14/ Historical, statistical or scientific purposes</p> <p><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>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</p> <p>NA</p>

15/ Proposed transfers of data to third countries or international organisations
<p>27) Legal foundation of transfer:</p> <p>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.</p> <p>NA</p>
<p>28) Category(ies) of Personal Data or Personal Data to be transferred:</p> <p>NA</p>
<p>16/ The processing operation presents specific risk which justifies prior checking (please describe): <i>(please describe)</i>:</p>
<p>7) Description of Processing:</p> <p>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)"</p> <p>Short term services for external aid are contracted via a multiple Framework contract (FWC) with on going competition. For each specific assignment, the Framework contractors (FWC'rs) in competition send an offer which includes CV of experts together with a statement of exclusivity and availability for each expert. In this statement, the expert commits himself to be available at the start date of his services for the period of execution foreseen.</p> <p>The processing envisaged will record the availability or unavailability of the experts foreseen for the assignment.</p> <p>The names & date of birth of the experts of the winning offer are encoded in CRIS (Common Relex Information System) when the offers are evaluated. The list of experts for a given assignment appears at the level of the specific contract in CRIS.</p> <p>It indicates whether the experts have participated or not to the execution of the assignment.</p> <p>The project manager can update this list during and after the implementation of the assignment.</p> <p>This information can be consulted by the CRIS users for each individual specific contract but only F4 can search it for a given expert.</p> <p>The FWC is mostly used for short but key services, e.g. identification, pre-feasibility, mid term evaluation.</p> <p>The experts are usually external experts and very volatile.</p> <p>It is envisaged to apply administrative penalty to experts who have not respected their commitment such as exclusion of participation to the FWc assignments for a given period of time.</p> <p>The statement of exclusivity and availability signed by the expert will refer to a privacy statement which will be published on the EuropeAid website, in the FWC pages.</p>

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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Art 27 2. d) is applicable for the processing of the unavailability of experts and for the penalisation in case of repeated breach of their committment.

Art 20 is not applicable.

☐ 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:

<p>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.</p> <p>no</p>
<p>37) Complementary information to the different questions if applicable, including attachments to this notification which should not be public :</p>
<p>PLACE AND DATE:18/06/2010</p> <p>DATA PROTECTION OFFICER: RENAUDIERE Philippe</p> <p>INSTITUTION OR BODY:European Commission</p>