

REGISTER NUMBER: 818

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 03/01/2012

Case number: 2012-0008

Institution: EACEA

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

Education, Audiovisual and Culture Executive Agency, Avenue du Bourget 1, BOUR, BE-1140 Brussels

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

The Director, BOUR 04/60

3/ Name of the processing

Monitoring of external experts' work

4/ Purpose or purposes of the processing

The purpose of the processing is the management and administration of the selection procedure for external experts on a basis of calls for expression of interest in line with Article 179a of the Financial Regulation, read together with Article 265a of its Implementing Rules, for tasks involving assistance in evaluating proposals and grant applications or tenders for procurement procedures, and for providing technical assistance in the follow-up, as well as the final evaluation of projects financed by the budget.

The monitoring of the performance of the experts is necessary to ensure the quality requirements established in the contract.

5/ Description of the category or categories of data subjects

Selected experts.

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

Data relating to the evaluation of personal aspects of the data subject (such as his or her ability, efficiency and conduct): monitoring of experts' work.

7/ Information to be given to data subjects

In the database, before filling in their data, applicants have to click on a button which brings them to the screen with the Privacy Statement. They have to confirm that they read and accept the Privacy Statement.

In addition, applicants are informed about the possibility to withdraw or delete their application by the Privacy statement and the "Application instructions" published on EACEA's website.

A data protection clause is included in the contract with the expert.

Experts are informed individually if their work is considered to be of a significant lower quality than the average performance. This letter informs them of their right to lodge comments on the (by nature subjective) assessment.

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

The data subjects may exercise their rights as described in the above mentioned privacy statement.

In case experts wish to verify which personal data is stored, have it modified or corrected, they may do this online. The password they set during registration will allow them to log in to the system and update their personal information contained in your account. If they want to update their information contained in a specific application or to withdraw their application(s), they may contact the EACEA External Helpdesk.

If the work of an expert has been judged as underperforming and the expert has been accordingly informed by EACEA: In order to keep trace of the underperformance, the letters of EACEA to the expert, as well as his reply with potential comments, are stored in the experts' profile in the database and in his paper file.

In addition, experts can contact the Controller or EACEA's Data Protection Officer at any time.

9/ Automated / Manual processing operation

• **Activity in the frame of which the processing is carried out**

In the framework of the management of the European programmes in the fields of education, audiovisual, culture, youth and citizenship, the EACEA selects experts to assist in the performance of evaluating proposals received in response to calls for proposals, evaluating and monitoring projects and for specific studies and analyses relating to fields of activity.

The selection and management procedure of experts, including the monitoring of the experts work, is detailed in the "Manuel pour la selection et la contractualisation des experts".

This manual includes several instructions to staff and reminders with regard to the protection of personal data (cf. in particular page 4, section 2.A). In particular, instructions are given to staff members concerning:

- data supplied by the experts which are irrelevant or excessive to what is requested for the purpose of the procedure shall not be processed by staff members,
- intra and inter-institutional recipients of data relating to the procedure are reminded that the data should not be processed for other purposes than the selection and management of experts. A model clause for the transfer of personal data to other EU institutions and bodies has been included in the Manual,
- the manual gives specific instructions for the monitoring of experts, including the fact that experts may lodge comments if their performance has been evaluated as underperforming. Examples of letters are annexed to the manual in this respect.

• **Working procedure followed within the framework of this activity**

As mentioned in the Manuel, the operational Units of EACEA are in charge to monitor the quality of the work carried out by external experts during or after these have carried out their work (Manuel Section 6 under C (2) and (3), p. 19).

This monitoring means that EACEA staff verifies the quality of the experts comments, the coherence, the form and the linguistic quality of the experts evaluation. There is, however, no standard assessment sheet, nor is the evaluation undertaken in a systematic paper based monitoring procedure in which each expert's evaluation would be checked against pre-defined criteria. Consequently, no storage and recording of this monitoring is kept by EACEA.

However, in exceptional cases, it may appear during the work of an expert or after the termination of a contract with an expert that the work of an expert is of a significant lower quality than the average performance.

This underperformance may lead, in conformity with the contract between EACEA and the expert concerned, to a reduced payment, no payment at all or to the termination of the contract with the expert. In this case, the expert shall be informed in writing by the responsible Head of Unit of his underperformance. This letter explains the reasons why the EACEA considers the expert as underperforming and what the intentions of the EACEA are (reduced payment, non-payment and/or termination of the contract). This letter stresses that the expert concerned has the right to lodge comments on the assessment made and the intention of the EACEA within a delay of 30 calendar days. Having passed this time limit, the Head of Unit sends another letter to the expert, informing him about the final decision. If the expert has submitted comments, the Head of Unit takes these comments into account for his decision and informs accordingly the expert about his decision, giving a specific reasoning in reply to the comments lodged.

As laid down in the "Manual", only significant cases of underperformance fall under the scope of this procedure. In particular, the following criteria may be taken into account to assess whether the work is of a sig

- Manifest errors in the analysis of the projects and expert's comments,
- Important or repeated delays in the analysis of the projects, including fewer numbers of projects analysed the
- Insufficient professional conduct (e.g. lack of cooperation, simple "copy and paste" of reports/report excerpts),
- Expertise and competencies significantly below the knowledge declared during application.

In order to keep trace of the underperformance, the letters of EACEA to the expert, as well as his reply with potential comments, are stored in the experts' profile in the database. Access to this evaluation is therefore limited to staff members on a need to know basis.

In order to ensure a harmonised practice among EACEA and to guarantee the rights of the experts, two model letters are attached to the Manuel: "Formal notice before termination of the contract and partial payment" and "Formal notice of the termination of the contract and the reduction of the expert payment".

10/ Storage media of data

Medium/media used for the processing operation

The profiles of the experts are managed by a database (see notification selection and management of experts). The process is mainly online. A paper file of the expert selection is kept, in which the correspondence with the experts are stored, cf. section 8 of the experts' manual (including relating to their potential underperformance).

11/ Legal basis and lawfulness of the processing operation

Legal basis

Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as last amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006: Article 179a.

Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended: Article 265a.

Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies, as amended by Commission Regulation (EC) No 651/2008 of 9 July 2008: Article 20.

Commission Decision C (2009) 3355 final of 6 May 2009 (delegating powers to EACEA): Article 4.

Call for expressions of interest EACEA/07 for the establishment of a list of experts to assist the Education, Audiovisual and Culture Executive Agency in the framework of the management of the Community programmes in the fields of education, audiovisual, culture, youth and citizenship (2008/C 67/09); OJ C 67 of 1

Grounds for lawfulness

Regulation (EC) No 45/2001, Article 5, point (a) read together with its recital 27: The processing is necessary for the performance of a task carried out in the public interest. The selection, management and evaluation of external experts assisting the Agency in the performance of certain tasks for which specific and independent expertise is necessary for the performance of EACEA's mandate. The monitoring of the performance of the experts is necessary to ensure the quality requirements established in the contract.

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

Data relating to the evaluation of personal aspects of the data subject

- Administrator of the database
- Service provider for technical assistance
- Designated staff members of the Unit
- Head of Unit
- Head of Department, Director
- Selection Committee members

Name, first name and the Community programme(s) for which the Contractor has worked, year of engagement

In case of control or dispute, the supervisory instances of EACEA (i.e. European Commission, European Court of Auditors, OLAF etc.) and the judicial authorities (i.e. EU Courts, Ombudsman etc.).

13/ retention policy of (categories of) personal data

Data relating to the evaluation of personal aspects of the data subject

If the work of an expert has been evaluated as underperforming (concerning only experts engaged by EACEA): Files relating to the selection procedure of experts, including personal data, are to be retained in the Unit in charge of the procedure until it is finalised, and in the archives for a period of 10 years following the signature of the contract . In addition, limited personal data relating to the expert may be included in the files relating to grants in which the expert has been involved. These grant files are to be retained in the Unit in charge of the procedure until it is finalised, and in the archives for a period of 10 years after the closure of the project . However, documents relating to unsuccessful grant applications have to be kept only for 3 years following adoption of the award decision.

Name, first name and the Community programme(s) for which the Contractor has worked, year of engagement are published on the Agency's website for the two following years of the engagement (n+2).

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)

BLOCKING

According to Article 13, paragraph 3, of EACEA's Implementing rules of Regulation 45/2001.

(1) When the data subject contests the accuracy of his/her data, the data should be blocked "for a period enabling the controller to verify the accuracy, including the completeness of the data." Thus, when receiving a request for blocking on this ground, the EACEA should immediately block the data for the period necessary for verifying the accuracy and completeness of the data.

(2) When the data subject requires the blocking of his/her data because the processing is unlawful, or when data must be blocked for purpose of proof, the EACEA will need some time to make this assessment before deciding to block the data. In such cases, even though the request for blocking may not take place immediately, it should however been dealt with promptly in order to preserve the data subject's rights. The decision as to whether to block the data is taken by the EACEA as soon as possible and at the latest within the delay of 15 working days.

ERASURE

Max. 15 Working days after the reception of the request.

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,

N.A.

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

N.A.

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):
The monitoring of experts' work consists in an evaluation of the quality of their work results.

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

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)

17/ Comments

Please see our cover letter.

18/ Measures to ensure security of processing (3)

Please check all points of Article 22 of Regulation (EC) 45/2001.

(3) Not to be published in the EDPS' Register (article 27.5 of Regulation (EC) 45/2001)

PLACE AND DATE: Brussels, 22.12.2011

DATA PROTECTION OFFICER: Hubert Monet

INSTITUTION OR BODY: Education, Audiovisual and Culture Executive Agency (EACEA)

To be filled out in the EDPS' office