

REGISTER NUMBER: 836

NOTIFICATION FOR PRIOR CHECKING

Date of submission: **14/02/2012**

Case number: **2012-0149**

Institution: Executive Agency for Health and Consumers

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

(1) OJ L 8, 12.01.2001

Ares number/ 169750

INFORMATION TO BE GIVEN(2)

(2) Please attach all necessary backup documents

1/ Name and adress of the controller

Robert GEERAERTS, Head of unit, Administration Unit *
Executive Agency for Health and Consumers

*Together with the relevant Head of the Unit (Directorate, Health Unit, Consumers and Food Safety Unit) where the data subject works, and with the Director who acts as Appointing Authority.

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

Human Resources Cell

3/ Name of the processing

Reclassification of Contract and Temporary Agents of the EAHC

4/ Purpose or purposes of the processing

1. Contract Agents:

To assess, on a comparative basis, the competences of the members of the Contract staff belonging to the same function group (FG) on the basis of the appreciation(s) included within their Career Development Reports.

2. Temporary Agents

To assess, on a comparative basis, the competences of the members of the Temporary staff on the basis of the appreciation included within their last Career Development Reports, the merits acquired within the period following the last Career Development Review exercise and the starting of the yearly Reclassification Exercise, the use of languages as well as their degree of responsibility during the execution of their tasks.

Description of the data processing operation:

Preliminary Remark: The Reclassification Exercise in EAHC is organised as an ad hoc annual exercise on the basis of implementing rules adopted by the EAHC Steering Committee on a yearly basis.

1. Reclassification Contract Agents

In line with the provisions of the CEOS and the applicable Implementing Rules the reclassification of contract staff is carried out as described below:

- The 'steering committee for reclassification' (*comite de direction*) composed by the EAHC Director as well as all the Heads of Units of EAHC establishes a list per grade of contractual agents that are eligible for reclassification.
- The list is communicated to the joint committee for reclassification (*comite paritaire de reclassement*) by the steering committee.
- The EAHC Appointing Authority (AA, the EAHC Director) takes a preliminary decision and establishes a list with the members of the contract staff to be reclassified.
- The preliminary decision is communicated to all members of the contract staff that were included in the initial list established by the steering committee (*comite de direction*). The preliminary decision includes the forename and surname as well as the grade and function group of the contract agents to be reclassified.
- Each member of the contract staff may appeal to the Joint Committee for Reclassification within five days following the communication of the Appointing Authority's preliminary decision.
- After examining the opinion of the Joint Committee (in case of appeal), the EAHC AA issues the final decision regarding the contract agents to be reclassified. The final decision is communicated to all the members of the contract staff that were eligible for reclassification. A relevant note including the surname, forename as well as function group of the reclassified staff is also published in EAHC's Intranet.

2. Reclassification Temporary Agents.

In line with the provisions of the CEOS and the applicable Implementing Rules the reclassification of temporary staff is carried out as described below:

- Each EAHC Head of Unit disposes a quota of reclassification points to attribute to the Temporary Agents of his/hers Unit. He/she makes an initial proposal concerning the number of points to be attributed to the steering committee for reclassification (*comite de direction*).
- The EAHC reclassification steering committee (*comite de direction*) composed by the EAHC Director (acting as president without voting right with the exception of the case of equality of votes cast) as well as all the Heads of Units of EAHC makes a proposal on the number of points to be attributed to the temporary agent (s) who are eligible for reclassification (scale between 0 and 4).
- The reclassification points represent the temporary agent's performance for the period between the finalisation of the previous and the start of the current reclassification exercise.

- EAHC Human Resources informs the concerned temporary agents on the preliminary decision as well as his/hers total of reclassification points (accumulated during the previous reclassification exercises). At the same time, the temporary agent is informed about the available means of appeal (remedy in front of the joint committee for reclassification within 10 days following the communication of the proposal to the TA as well as the appeal provided for in art. 90 par 2 of the Staff Regulations).
- After taking into consideration the opinion of the steering committee as well as joint committee (in case of appeal), the EAHC AA decides on the final number of reclassification points to be attributed to each temporary agent. This decision is communicated to the concerned member of the EAHC temporary staff individually.
- On the basis of the above mentioned attribution the capital of points of each temporary agent is compared to the pre defined indicative threshold established per grade and function group (as provided within art. 7 of the relevant Implementing Decision).
- The list of reclassified temporary agents is signed by the EAHC Appointing Authority and published on EAHC's Intranet.

5/ Description of category or categories of data subjects

All EAHC contract agents.

All EAHC temporary agents with grade lower than AD 14 and AST 11.

6/ Description of the data or categories of data (including, if applicable, special categories of data- art 10- and/or origin of data.

The following data are being processed:

1. Personal information (first name(s), surname(s), office address(es), telephone(s) and fax(es), personnel number), probation supervisor personal number.
2. Category and grade, periods subject to evaluation;
3. Career history of grade, job description, assessment of the reporting period, self-assessment of the Jobholder.

In addition to the list above, depending also on the objectives set for the given year, the Jobholder can provide additional information in his/her self assessment, such as:

- a) language competencies,
- b) social skills and competences, organisational skills and competences, technical and computer skills and competences, other skills and competences,
- c) analysing problems and applying solutions,
- d) awareness of working environment,
- e) people management,
- f) team work,
- g) service culture,
- h) commitment to the job,
- i) personal development in the context of work.

7/ Information to be given to data subjects

In order to provide the data subject with the information requested in Article 11 and 12 of the Regulation (EC) No 45/2001, an 'internal privacy statement' was posted on the data protection section of the EAHC Intranet (last update January 2012). Amongst others, this refers to the fact that personal data are processed solely for the purposes of the assessment and follow-up of the development of the career of the Jobholder (contract or temporary agent). The Jobholder shall have the right of access to his/her personal data. Should the Jobholder have any queries concerning the processing of his/her personal data, (s)he shall address them to the data controller.

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

In accordance with the provisions of the Staff Regulations (applicable by analogy to contract and temporary agents according to article 11 of the CEOS), staff members have access to their personal files. They may consult the file in hard copy in the office of the HR Cell and request copies.

During the reclassification exercise, the data subject is informed about the preliminary decision of the reclassification and is given the possibility to challenge it (by launching an appeal in front of the joint committee as well as appointing authority in case of TA). Because of the direct link of the reclassification exercise with the outcome of the Career Development Review exercise (as explained it is mainly based on the assessment included in the previous CDR reports) the concerned staff member has the possibility to raise his/her comments at several occasions in the CDR procedure (this procedure has been notified by EAHC to the EDPS with a separate notification).

Moreover, the necessary information to the data subject about his/her rights is provided in the 'internal privacy statement'.

9/ Automated/Manual processing operation

The procedure is carried out manually.

10/ Storage media of data

The personnel file of the staff member concerned includes all the CDR reports that include the personal data that are used for the reclassification exercise. These files are kept in a safe accessible to Head of EAHC HR cell. The reports are also kept in electronic format in a restricted part of the EAHC's common drive. Each of the above mentioned means of storage is only accessible to staff dealing with HR matters (HR Cell, Head of Administration as well as EAHC Director).

11/ Legal basis and lawfulness of the processing operation

Legal basis:

1. Regarding/ Reclassification of Contract Staff:

-Article 87 paragraph 3 of the Conditions of Employment of Other Servants of European Communities;
-Decision of the Steering Committee of the Executive Agency for Health and Consumers of 14.10.2011 setting general provisions concerning the implementation of article 87 paragraph 3 of the Conditions of Employments of Other Servants of European Communities.

2. Regrading/ Reclassification of Temporary Staff:

-Article 15 paragraph 2 and article 10 of the Conditions of Employment of Other Servants of European Communities;
-Decision of the Steering Committee of the Executive Agency for Health and Consumers of 14.10.2011 relative to the career of Temporary Agents and their assignment to a post carrying a higher grade than that at which they were engaged.

Grounds for lawfulness:

1. Article 5 (a) of the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data provides that personal data are processed lawfully if: *“the processing is necessary for the legitimate exercise of official authority vested in the Community institution or body and/or the processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties or other instruments adopted on the basis thereof.”* **The procedure leading to regrading/reclassification of contract and temporary staff is part of the Human Resources policy of the Executive Agency; the later is a key element for its functioning and sound implementation of its mission.**

2. Article 5 (d) of the up- mentioned Regulation provides that personal data are processed lawfully if: *“the data subject has unambiguously given his or her consent”*. To that end, the privacy statement that is uploaded in the Human Resources/ Data Protection section of the EAHC Intranet informs the data subjects accordingly (**Annex III**).

The personal data processed within the context of the reclassification exercise for both temporary and contract agents falls within the scope of article 27 (b) of Regulation 45/2001 given that the processing operations intend to evaluate personal aspects relating to the data subject, including his or her own ability efficiency and conduct.

There are no exemptions or restrictions provided for in article 20 of Regulation 45/2001.

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

1) EU institutions or bodies:

1) Internal transfer within EAHC: HR Cell, Head of Administration Unit, Director, EAHC staff members concerned;

2) The members of the Steering Committee and Joint Evaluation Committee;

3) Disciplinary Board members, (once such a body will be established), DG HR IDOC (if the executive agencies will be given access to it);

4) HR Departments of other European Union institutions in case of an inter-institutional transfer of the staff member on their official request.

5) Possible transfers of data to other EU institutions and bodies: Court of Auditors, OLAF, IAS, European Ombudsman, Court of Justice of European Union, General Court of European Union, Civil Service Tribunal, EDPS.

2) Third parties subject to national law adopted for the implementation of Directive (EC) 95/46: no

3) Third parties not subject to Directive (EC) 95/46: no

13/ retention policy of (categories of) personal data

The retention period of the CDR reports that are used as basis for the reclassification exercise of contract and temporary agents is 5 years following the termination of the employment or the issue of the last pension payment slip of the staff member concerned. The personal data (comprising the name and surname as well as function group of the concerned staff member(s)) included within the reclassification decisions are stored for the same time.

The lists of the reclassified contract or temporary agents that are published in the EAHC Intranet are stored for the same time.

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)

The data subject's request is handled in 30 days after receiving 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,

Not applicable.

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

Not applicable.

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

The data processed during the procedures of selection and recruitment falls under the scope of Article 27(2)(a)(b)(d) of Regulation (EC) 45/2001.

AS FORESEEN IN:

Article 27.2.(a)

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

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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, including his or her ability, efficiency and conduct,

□ 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

Annexes to the notification:

- Decision of the Steering Committee of the Executive Agency for Health and Consumers of 14.10.2011 setting general provisions concerning the implementation of article 87 paragraph 3 of the Conditions of Employments of Other Servants of European Communities (Annex I).
- Decision of the Steering Committee of the Executive Agency for Health and Consumers of 14.10.2011 relative to the career of Temporary Agents and their assignment to a post carrying a higher grade than that at which they were engaged (Annex II).
- Internal Privacy Statement (Annex III).

PLACE AND DATE: Luxembourg, 14/02/2012

deputy DATA PROTECTION OFFICER: Despoina Leivadinou

INSTITUTION OR BODY: Executive Agency for Health and Consumers

To be filled out in the EDPS' office

Follow up *(in case of acting measures to be taken)*