

*(To be filled out in the EDPS' office)*  
**REGISTER NUMBER: 928**

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### **NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 09/07/2013**

**CASE NUMBER: 2012-0981**

**INSTITUTION: REA**

**LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001<sup>(1)</sup>**

### **INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

**DATA CONTROLLER: RESEARCH EXECUTIVE AGENCY (REA)**

FOR ORGANISATIONAL REASONS, THE ROLE OF THE DATA CONTROLLER IS EXERCISED BY THE MS RITA BULTYNCK, HEAD OF UNIT REA.A.2 (FINANCE).

RITA BULTYNCK  
RESEARCH EXECUTIVE AGENCY (REA)  
UNIT REA.A.2 (FINANCE)  
COV2 15/132  
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2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

REA.A.2 (Finance)

• Processors/Co-Controllers

Personal data is also processed by other entities such as the European Commission and other executive Agencies. Thus, for this processing operation the REA is considered as a co-controller with the European Commission and other executive Agencies. In that respect, the REA act as a primary contact point (where applicable) for data subjects wishing to obtain information on the processing operation and the data processed in that context.

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

3/ NAME OF THE PROCESSING

Early Warning System (EWS) in the REA

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the Early Warning System (EWS) is to ensure within the Commission and its executive agencies [including Research Executive Agency (REA)], the circulation of restricted information concerning third parties (e.g. legal or natural person) who could represent a threat to the European Union's financial interests and reputation or to any other fund administered by the European Union.

The ones subject to a warning are included in the Early Warning System (EWS) in the following cases:

- a. Where information obtained give sufficient reason to believe that findings of fraud, serious administrative errors or other irregularities will be recorded against them;
- b. Where an entity is subject to findings of serious administrative errors or fraud;
- c. Where an entity is subject to pending legal proceedings;
- d. Where an entity is subject to recovery orders issued by the Commission/REA exceeding a certain amount and on which payment is significantly overdue;
- e. Where an entity is excluded in accordance with regulatory provisions (Financial Regulation or Council Regulation (EC) N° 881/2002 of 27 May 2002 (OJ L 139 of 29 May 2002, p. 9).

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are natural or legal persons (experts, representatives of contractors/subcontractors, representatives of beneficiaries of grants, etc.) who have (or had) contractual and/or financial affairs with one of the Commission's services or REA and are registered in the Commission's Legal Entity File (LEF). Data subjects also include authorised officers of the REA (Authorising officers, EWS correspondent) and of the European Commission.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

The categories of data that may be processed under the EWS system are the following:

• Administrative data

Name, address, telephone (REA EWS correspondent), type of EWS-warning (W1c, W1d, W2b, W3b and W5a), start/end date of the validity of the EWS active warning, contact person (EWS correspondent) of the Commission and the REA service (EWS correspondent).

• Special categories

Data related to potential or established wrongdoings, outstanding debt or insolvency.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

In accordance with the Commission Decision of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive Agencies (2008/969/EC, Euratom) and the Central Exclusion Database (CED) regulation, and upon request of the registration of a W5a warning, the REA will inform the legal entity concerned of the request for registration, modification and removal of such a warning.

However, the REA may decide that restrictions for communicating this information are applicable, as laid down in the European Data Protection Regulation (Article 20§1 of the Regulation (EC) n° 45/2001 concerning procedures related to criminal offences following OLAF investigations, important economic and financial interest of Member States or European Union, national security, public security or national defence interest).

With respect to registration other than W5a warning, a natural person can also request the Commission's Accounting Officer (DG BUDG) whether he/she is registered in the EWS. In this case, the Commission's Accounting Officer shall inform that natural person concerned in writing, after having obtained confirmation from the service concerned (REA) that no restrictions apply.

According to article 8 § 3 of the Commission Decision 2008/969, parties registered in accordance with Article 108 of the Financial Regulation can request the Commission's Accounting Officer, confirmation of their registration and communication of a contact point for further information. Subject to the decision of the service that requested the registration of the EWS warning on whether restrictions apply, the Accounting officer of the European Commission may inform the data subject about his/her registration under EWS.

In the calls for tenders and calls for proposals and, in the absence of a call, before awarding contracts or grants, data subjects shall be informed that data concerning them may be included in the EWS and of the entities to which the data may be communicated. A standard clause (Annex 9) is included for this purpose in all calls.

Information regarding the Early Warning System (EWS) and the Central Exclusion Database (CED) can be found on the Commission's public website ([http://ec.europa.eu/budget/explained/management/protecting/protect\\_en.cfm](http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm)). A specific privacy statement for the CED is also available under this entity.

A specific privacy statement relevant to Legal Entity and Bank Account Validation can be found on the Commission's public website ([http://ec.europa.eu/budget/library/contracts\\_grants/info\\_contracts/privacy\\_statement\\_en.pdf](http://ec.europa.eu/budget/library/contracts_grants/info_contracts/privacy_statement_en.pdf)).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

In accordance with the EWS Decision and CED Regulation and upon request of the registration of a W5a warning, the REA will inform the legal entity concerned of the request for registration, modification and removal of such a warning.

With respect to registration other than W5a warnings, the REA cannot provide with information about the warning. The legal or natural person concerned must request to the Commission's

Accounting Officer (DG BUDG) whether he is registered in the EWS. In this case, the Commission's Accounting Officer shall inform that legal/natural person concerned in writing, after having obtained confirmation from the service concerned (REA) that no restrictions apply.

However, the REA may decide that restrictions for communicating this information are applicable, as laid down in the European Data Protection Regulation (e.g. Article 20§1 of the Regulation (EC) n° 45/2001 concerning procedures related to criminal offences following OLAF investigations, important economic and financial interest of Member States or European Union, national security, public security or national defence interest).

The Early Warning System (EWS) is meant to be an internal tool available only to Commission services (including executive Agencies) in order to help them in safeguarding the financial interests of the Commission. In that respect, limitations may apply regarding access to information by the data subjects, according to article 4 §1 (a) of Regulation 1049/2001 regarding exceptions to public access to Community Institutions documents.

Data subjects may send their requests to the following email address: [Rita.Bultynck@ec.europa.eu](mailto:Rita.Bultynck@ec.europa.eu).

#### 9/ AUTOMATED / MANUAL PROCESSING OPERATION

Personal data collected in the context of the Early Warning System (EWS) are processed both in a manual and an automated way.

##### a. The Early Warning System (EWS) and the Central Exclusion Database (CED)

The REA is using the Early Warning System (EWS) of the Commission. The EWS is an operational tool for Commission services and executive Agencies, providing them with information on identified risks related to beneficiaries of centrally managed contracts and grants. The system is based on a system of “flags”, identifying the level of risk concerned, from “W1” (lowest level of flagging) to “W5” (highest level). The EWS is closely linked to the Central Exclusion Database (CED) which is operated by the European Commission.

The Central Exclusion Database (CED) serves to protect the EU's financial interests by gathering all the entities – companies, organisations or natural persons - which have been excluded from EU funding because they are insolvent or have been convicted of a serious professional misconduct or criminal offense detrimental to EU financial interests.

EWS warnings are entered centrally by DG BUDG in the Commission's Legal Entity File (LEF). The EWS flags are set centrally in the SAP part of ABAC (Accrual Based Accounting), managed by the Commission's Accounting Officer. These warning are automatically made available to the "Workflow" part of the application to which all ABAC users in the Commission (including executive Agencies) have consultation access. This data is also available to other local management systems [e.g. Contract and Project Management (CPM) application].

##### b. The categories of the EWS

Depending on the nature or the seriousness of the fact brought to the knowledge of the service requesting registration, the information in the EWS is divided into five categories (W1, W2, W3, W4 and W5):

- W1: where information gives sufficient reason to believe that findings of fraud or serious administrative errors are likely to be recorded or where precautionary measures should be taken following the exclusion of a legal entity pursuant to Article 107 (a) and (b) of the Financial Regulation (W1d);
  - W2: where a legal entity is subject to findings of serious administrative errors or fraud;
  - W3: where a legal entity is subject either to pending legal proceedings entailing the notification of an attachment order, or to judicial proceedings for serious administrative errors or fraud;
  - W4: where a legal entity is subject to recovery orders issued by the Commission/REA exceeding a certain amount and on which payment is significantly overdue;
  - W5: where a legal entity is excluded in accordance with the Financial Regulation or Council regulations imposing Common Foreign and Security Policy (CFSP) related financial restrictions.
- These five categories are divided in several sub-categories, according to the actors that should request the registration of a warning in the EWS to the Commission's Accounting Officer. REA can only request the activation of sub-categories W1c, W1d, W2b, W3b and W5a.

#### c. Submission of a request of registration in the EWS

Only the Director of the Agency may submit requests, using a standard form, for registration of warnings, their modification or removal. These requests shall be addressed to the Commission's Accounting Officer.

#### d. Acting procedure and effects of the EWS flags

In the ABAC-workflow application, when Authorising Officers (REA) enter or validate transactions related to these flagged entities, a warning will be issued. The Authorising Officer must then act upon these warnings as indicated in the Commission EWS Decision.

#### 10/ STORAGE MEDIA OF DATA

Data in electronic format, may be stored on the servers of the REA (limited access) and on the servers (email server, ABAC, etc.) of the European Commission.

Data in paper format is stored/archived in locked/secure cupboards.

#### 11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- Articles 106-109, 131 and 190 of the Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;
- Article 50 of the Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes;
- Commission Decision C(2004) 193/3 of 03.03.2004 as last modified by the 2006 Internal rules (SEC(2006)131);

- Commission Decision of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (2008/969/EC, Euratom);
- Commission Decision of 17 June 2011 amending the Commission Decision of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (2011/C 180/06);
- Article 4§1 (a) of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database;
- Early Warning System (EWS), REA procedure of September 2010;
- Article 5 (Lawfulness of processing) 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 institutions and bodies of the Community and on the free movement of such data.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

Data may be disclosed to the following recipients:

- The Director of the Agency in his/her capacity of Authorising Officer by Delegation (AOD);
- Authorised members of the REA staff;
- All European Commission services including services managing funds on behalf of the European Union and executive Agencies;
- EWS contacts designated by the other European Union institutions;
- EWS contacts designated by European and European Union bodies receiving grants charged to the EU budget in accordance with Article 208 of the Financial Regulation;
- EWS contacts designated by the bodies referred to under Article 58(1)c of the Financial Regulation;

#### Other potential recipients

- Member States of the European Union;
- Economic and Social Committee;
- Committee of the Regions;
- Financial Irregularities Panel;
- The Court of Justice of the European Union (Court of Justice, the General Court and the Civil Service Tribunal);
- European Court of Auditors;
- European Anti-Fraud Office (OLAF);
- European Ombudsman;
- European Data Protection Supervisor;
- Any other institution or entity with responsibility for audits or investigations.

This transmission will be restricted to the information necessary for the competent entity to carry out its task. The recipients will be reminded not to process the data received for any purpose other than the one for which they were transmitted to them, as required under Article 7(3) of the Regulation.

The restricted information contained in the EWS shall be made available, subject to Article 4 of Regulation 1049/2001 regarding exceptions to public access to EU institutions documents and to Articles 4 to 9 of the Regulation (EC) No 45/2001 on the protection of individuals with regard to the process of personal data.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The duration of the EWS activation depends on the category of the warning.

- Any W1 and W2 warnings remain active for a maximum of six months. Then they are automatically deactivated. If the alert in the EWS needs to remain and cannot be replaced with another type of warning within this period, then a new request shall be made (by the REA AOD). If the flagging is no longer applicable, a request for cancellation of the warning will be made (by the REA AOD);
- Any W3 warning remains active until a judgment having the force of "res judicata" is rendered or the case has been otherwise settled;
- Any W4 warning remains active as long as the debt is outstanding;
- Any W5 warning remains active for the duration of the penalty or for the duration referred to in the Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database.

A provisional registration of an exclusion warning W5a shall be made for a maximum period of six months (three months renewable once). However, the provisional registration of an exclusion warning based on requests from external EU Budget implementing authorities may, in exceptional cases, be renewed for an additional period of three months.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

Requests for blocking and/or erasure of the different categories of data will be evaluated on a case-by-case basis.

More specific, the REA may decide that restrictions in blocking and erasure of data are applicable, as laid down in article 20§1 of the Regulation 45/2001 (e.g. procedures related to criminal offences following OLAF investigations, important economic and financial interest of Member States or European Union, national security, public security or national defence interest). In this case, the data subject shall be informed of the principal reasons on which the application of the restriction is based on and of his/her right to have recourse to the European Data Protection Supervisor.

Any restrictions to the rights of the data subject are not set up as a rule, and remain the exception. Time limit to rule on a request: 15 working days (beginning from the reception of the request). If legitimate/applicable, the request will be transferred by the data controller to the respective entity (European Commission) responsible for the rectification of the EWS data.

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

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*):

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.(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

Related/Relevant documents

**Documents to be treated as confidential**

- a. Commission Decision on the Early Warning System (EWS)
- b. Early Warning System (EWS) - REA Procedure (including some relevant Annexes) –
  - Annex 2 - Request form for the registration/removal/modification of a warning in the exclusion database/EWS
  - Annex 5 - Duration of exclusion/warning in the Central Exclusion Database
  - Annex 7 - REA Flowchart on EWS internal procedure
  - Annex 9 - Clause concerning the EWS and CED to include in all calls for proposal and calls for tenders



PLACE AND DATE: BRUSSELS, 09 JULY 2013

DATA PROTECTION OFFICER: EVANGELOS TSAVALOPOULOS

INSTITUTION OR BODY: RESEARCH EXECUTIVE AGENCY (REA)