

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1160

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 17/09/2013

CASE NUMBER: 2013-1032

INSTITUTION: EAHC

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Jacques Remade, Head of Health Unit

Salvatore Magazzu, Head of Consumers and Food Safety Unit

Executive Agency for Health and Consumers (EAHC)
12, rue Guillaume Kroll, Luxembourg
Drosbach building A3

**Remark:* The EAHC expert database and the CEI/AMI list may be also used by the European Commission for the same purpose: in this case it is the Commission who is responsible for the processing operation carried out by it:

- the data controller shall be the head of the responsible organisational entity in the Commission;
- the persons having access to the personal data of the experts shall be only those Commission staff members responsible for the selection of the experts and for the administration concerning the signature of the contract and its implementation.

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Contact persons:

Ingrid Keller, Programme Coordinator (Health Programme)

Yolanda Arevalo Torres, Programme Coordinator (Consumers Programme)

Zoran Kovac, Coordinator (Better Training for Safer Food Initiative)

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

3/ NAME OF THE PROCESSING

Call for expressions of interest for the selection of experts

4/ PURPOSE OR PURPOSES OF THE PROCESSING

EAHC selects independent experts and assigns them specific evaluation and /or review tasks.

The processing concerns the management and administration of the selection procedure (call for expressions of interest, 'CEI'³) for establishing a list of external experts for activities involving the evaluation of proposals submitted under annual calls for proposals, monitoring or evaluating funded projects and other tasks related to the implementation of one or more EU Programme(s). Therefore the purpose of the procedure is to select natural persons remunerated on the basis of a fixed amount announced in advance in the call for expressions of interest. The experts are chosen on the basis of selection criteria respecting the principles of non-discrimination, equal treatment and absence of conflict of interest (Article 179a of the old Financial Regulation and Article 265a of the old Implementing rules⁴).

The information requested within the frame of the calls is necessary:

- to carry out the call for expression of interest procedures - in particular to assess the experts' capacities, evaluate the experts, and
- to conclude and implement the expert contracts.

**** Remark:**

- The present **notification concerns primarily the 'Call for expressions of Interest EAHC/2011 for the establishment of a list of experts to assist the Health Programme in the framework of the management of Community programmes in the field of Health', as published in the OJ N S65 02/04/2011.** As this call will end at the end of 2013 and a new call for expressions of interest will be published in 2014, the present **notification also concerns new calls for expressions of interest that will launched under the new Health Programme (2014-2020).**
- The present notification is a prior check notification concerning **future expert selection procedures under the Consumers Programme and/or the Better Training for Safer Food Initiative**, or any other programme that EAHC is/will be mandated by the European Commission.
- Finally, the present notification concerns the cases **when EAHC uses the CEI/AMI lists of the Commission.**

DESCRIPTION OF THE DATA PROCESSING OPERATIONS

With reference to Article 2(b) of Regulation 45/2001, data processing operations include the collection, recording, organisation, storage, use, disclosure by transmission, erasure and destruction of personal data.

Under the 2011 Call for health experts, the interested experts register their data in the experts' database on the EAHC website (<http://ec.europa.eu/eahc/news/news64.html>)⁵, their data is evaluated,

³ In French: appel á manifestations d'intérêt (AMI)

⁴ Replaced by Article 204 of the new Financial Regulation and Article 287 of the new Rules of Application.

⁵ In case of future calls, the link may be different.

stored and eventually (after the closure of the call) destroyed. The data provided by the expert (especially the data provided in their CVs) is used for the preparation, conclusion and implementation of the expert contracts.

Finally, in line with Article 20 of the Standard Financial Regulation, the list of external experts who collaborated with EAHC in a given year shall be published annually on the EAHC website in alphabetical order.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are all those natural persons applying and registering in EAHC's expert database. Depending on the needs of EAHC, some of these experts are selected to sign a contract with EAHC, but some are never chosen.

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

Application phase***

- Personal and contact information: name, official address, telephone, fax, email address, nationality, date of birth.
- Education, professional experience and other related information (e.g. list of publications), interests with regard to the task in order to reveal a potential conflict of interest. The experts are also requested to upload their CV (in Europass format). The experts shall add keywords and are classified according to them. This helps to identify the most competent experts in the field of the proposals to be evaluated.
- The Declaration of honour is provided within the database by way of confirming that the expert is in none of the exclusion criteria situations. No judicial record is requested from the experts.

****General remark of the controller:*

In addition to the data requested in the application form, experts are requested to upload their CVs: data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual orientation may be received only in as much as this data appears spontaneously in the CV provided by the data subjects. That data is not processed during the management of the call or the implementation of the agreement, since it is not pertinent.

Selection and contract signature phase: Selected applicants shall provide

- Expert's full bank account number including codes, name and address of the bank, exact designation of account holder,
- VAT number (where applicable), and
- Legal Entity Form that will be stored in the financial database of the Commission (ABAC)

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Within of the 2011 Call for health experts, information to the data subjects on the processing of personal data according to Regulation (EC) 45/2001 is provided in the following ways:

- Call text published in the Official Journal:

<http://ted.europa.eu/udI?uri=TED:NOTICE:104653-2011:TEXT:EN:HTML&src=0>

- Call's page on the EAHC website: <http://ec.europa.eu/eahc/news/news64.html>,

- Privacy statement included in the Call's page and in the application form as well: see Annex I of the notification,

- Model contract for external experts (Article 20): see Annex II of the notification

The privacy statement and the model contract for the 2011 Call can be also found here:

<http://ec.europa.eu/eahc/ami/>

Legal entity form: A specific privacy statement⁶ is included by DG BUDGET in the legal entity forms to be filled in only by the main tenderer.

In the case of a **new call for expressions of interest** launched by EAHC, the data subjects will be provided with the same documents.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

As a general rule, the **applicant experts in the database** have the right to *information* and the right to *access* their personal data; in addition, they have the right to *rectification* and the right to *erasure* of their inaccurate or incomplete factual personal data. The applicants are responsible for the completeness of their application: they should update their profiles if changes occur. The online account can be accessed, modified or deleted via the website of the Agency anytime until the call is closed.

Experts awarded a contract have access to their data as they get a copy of the contract. They may by written request, *rectify* any personal data (in particular identification data) that is inaccurate or incomplete, as long as it does not call into question the decision awarding the contract and result in unequal treatment. These rights cannot be exercised in way that is contrary or harmful to the aim of the procedure nor to its confidentiality.

In the case of any queries concerning the processing of personal data, the data subjects may send their written requests to the e-mail address of the responsible Unit in EAHC. Such requests for access, rectification, erasure and blocking etc. are handled within 30 days of the request.

The data subjects have the right of recourse at any time to the Data Protection Officer of the Executive Agency EAHC-DATA-PROTECTION@ec.europa.eu and to the European Data Protection Supervisor EDPS@edps.europa.eu for matters relating to the processing of their personal data. More information concerning the contact details can be found on the website of the Executive Agency.

⁶ http://ec.europa.eu/budget/library/execution/privacv_statement_en.pdf

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Application and selection phase: Data processing is automated and the expert database is managed by the IT staff of EAHC. The submitting of applications and their storage is performed online. The selection of the experts is carried out by the EAHC Health Unit staff by using search functions built into the database.

Contract signature and implementation phase: Data processing is carried out manually by the staff of EAHC.

10/ STORAGE MEDIA OF DATA

All the information received from the experts is stored in the EAHC database.

The appointment letters, expert contracts and other documents received and processed on paper are stored in ARES, on the responsible unit's common drive and in the archives.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

1) General 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 (OJ L 248, 16.9.2002, p. 1) (old Financial Regulation)⁷, in particular Article 179a,

(Replaced from 01/01/2013 by 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 (new Financial Regulation)⁸, in particular Article 204).

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 (OJ L 357, 31.12.2002, p. 1) (old Implementing Rules)⁹, in particular Article 265a,

(Replaced from 01/01/2013 by Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (new Rules of Application)¹⁰, in particular Article 287).

⁷ As amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 390 of 30.12.2006, p. 1) and by Council Regulation (EC, Euratom) No 1525/2007 of 17 December 2007 amending Regulation no 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 343 of 30.12.2006, p. 9)

⁸ Official Journal L 298, 26.10.2012., p. 1

⁹ As amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 (OJ L 201, 02.8.2005, p. 3), Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006 (OJ L 227, 19.8.2006, p. 3), Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ L 111 of 28.4.2007, p. 13)

¹⁰ Official Journal L 362, 31.12.2012., p. 1

Commission Regulation (EC) No 1653/2004 of 21 September 2004 on the standard financial regulation for executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statutes for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 297, 22.9.2004, p. 6) (Standard Financial Regulation)¹¹, in particular Article 20.

2) Legal basis specific for the area of public health:

Decision No. 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 establishing a second programme of Community action in the field of health (2008-13) (Health Programme)¹²

Commission Decision of 22 February 2011 (2011/C 69/01) in the framework of the second programme of Community action in the field of health (2008-2013), the selection, award and other criteria for financial contributions to the actions of this programme (annual work plan 2011)

Commission Implementing Decision of 28 November 2012 (2012/C 378/07) concerning the adoption of the 2013 work plan in the framework of the second programme of Community action in the field of health (2008-2013), the selection, award and other criteria for financial contributions to the actions of this programme and the EU payment to the WHO Framework Convention on Tobacco Control, serving as financing decision (annual work plan 2013) and its subsequent annual work plans

3) Legal basis specific for the Consumer protection area:

Decision no 1926/2006/EC of the European Parliament and of the Council of 18 December 2006 establishing a programme of Community action in the field of consumer policy (2007-2013) (Consumer Programme)¹³ and the subsequent Consumer Programmes

Commission Implementing Decision C(2012)8729 of 4 December of 2012 concerning the adoption of the annual work programme in the area of consumer policy for 2013 - Financing Decision (annual work programme 2013) and the subsequent annual work programmes

4) Legal basis specific for the Better Training for Safer Food (BTSF) Initiative:

Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules¹⁴ - Article 51 and 66

Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community¹⁵ - Article 2

Commission Implementing Decision of 10 June 2013 on financing the 2013 work programme on training in the field of food and feed safety, animal, health, animal welfare and plant health in the

¹¹ OJ L 297, 22.9.2004, p. 6, As amended by Commission Regulation (EC) No 1821/2005 of 8 November 2005 (OJ L 293, 9.11.2005, p. 10) and by Commission Regulation (EC) No 651/2008 of 9 July 2008 (OJ L 181, 10.7.2008)

¹² The Health Programme (2008-2013) will be replaced by the new Health Programme (2014-2020).

¹³ OJ L 404 of 30.12.2006, p. 39

¹⁴ OJ L 165 of 30.4.2004, p. 1 and the corrigenda to it (OJ L 191, 28.5.2004, p. 1 and OJ L 204, 4.8.2007, p. 29)

¹⁵ OJ L 169 of 10.7.2000, p. 1. and the corrigenda to it (OJ L 2, 7.1.2003, p. 40; OJ L 137, 31.5.2005, p. 48 and OJ L 20, 24.1.2008, p. 35)

framework of the "Better training for safer food" programme (Financing decision 2013)¹⁶ and the subsequent financing decisions

LAWFULNESS

Data processing is considered lawful because it meets the conditions described in Article 5 (a), and (d) on a subsidiary basis:

"Article 5

Personal data may be processed only if:

(a) **processing is necessary** for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or **in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data is disclosed;**

(d) the data subject has unambiguously given his or her **consent**.

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

Within EAHC/Commission:

- Within the responsible unit data is processed by the Programme Coordinator and the relevant Project Officers and Project Assistants involved in the selection of the expert. In addition, data is disclosed to the Secretary and Head of Unit.
- Outside the unit, data is disclosed to the relevant Financial Officers, Internal Controller, Ex-Ante Verifying Officer, Authorising Officer (EAHC Director), and it may be disclosed to the Legal Advisor, Internal Audit Control (IAC), Ex-Post Controller.
- To the Commission, only the name of the selected expert may be disclosed (e.g. when the report of the expert on a specific project is sent to the Commission).

EU institution or body:

For the purpose of safeguarding the financial interests of the European Union

- Data may be disclosed to the internal audit services of the Commission (IAS), the Court of Auditors, the European Anti-Fraud Office (OLAF) and the Commission's Legal Service upon request and only if necessary in the context of official investigations or for audit purposes.

For the purpose of handling complaints

- Data may be disclosed to the European Ombudsman, the Legal Service of the Commission, the General Court and the European Court of Justice upon request and only if necessary in the context of handling the complaint.

For the purpose of verifying data protection

- Data may be disclosed to the European Data Protection Supervisor upon request and only if necessary in the context of handling the complaint.

Third parties subject to national law adopted for the implementation of Directive (EC) 95/46:

Data is not disclosed to any third party.

¹⁶ OJ C 170,15.6.2013, p. 38

Third parties not subject to Directive (EC) 95/46:

Data is not disclosed to any third party.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The EAHC expert database is closed for the registration of new applicants 3 months before the end of the call, following the rules of the Financial Regulation. This means that in this period no new expert registration is allowed.

1) In the case of the experts in the database:

- If the applicant deletes his/her account in the database, no copy of the data will be kept by EAHC.
- All personal data submitted in the online application form or related to the selection of experts are retained for *6 months* after the duration of the call.

2) In the case of experts who are awarded an expert contract: The personal data in the application and the data relating to the implementation of the contract (e.g. the performance of the work and the payment made) are kept by EAHC for *7 years* after the date of payment to the expert.

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

(Please, specify the time limits for every category, if applicable)

Requests are handled within 30 calendar days of the reception of the blocking or erasure 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 personal data processed falls under the scope of Article 27(2)(a) and (b) of Regulation (EC) No 45/2001

X Article 27.2.(a)

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

X Article 27.2.(b)

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

X Article 27.2.(c)

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

X Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

X Other (general concept in Article 27.1)

17/ COMMENTS

Since the processing operations have already been established since April 2011, the present notification concerns an ex-post prior check concerning the Call 2011 for the selection of health experts.

For any future call for selection of experts, the present document is a prior check notification.

PLACE AND DATE: Luxembourg, 13/09/2013

DATA PROTECTION OFFICER: Beáta Gy ri-Hartwig

INSTITUTION OR BODY: Executive Agency for Health and consumers (EAHC)