

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1218

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 20/01/2014

CASE NUMBER: 2014-0088

INSTITUTION: INEA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

The Head of Unit of the Administrative, Finance, Legal & Financial Management Unit R02
Address: Innovation and Networks Executive Agency (INEA),
Chaussée de Wavre 910,
B-1049 Brussels
INEA-EWS@ec.europa.eu

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

Administrative, Finance, Legal & Financial Management Unit R02

3/ NAME OF THE PROCESSING

Use of the Early Warning System (EWS) and Central Exclusion Database (CED)

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing is to ensure circulation of restricted information concerning third parties (natural or legal persons), who have committed fraud, administrative errors or irregularities and about other circumstances related to them, which could represent a threat to the EU' financial interests, should the Agency enter, or if it has already entered in a contractual relationship with

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

them.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

All legal and natural persons, who at one time, have (had) contractual and/or financial dealing with INEA and /or with one of the Commission's services/related agencies that are registered in the Commission's Legal Entity File (service providers, staff, experts, beneficiaries of grants, experts participating in evaluation, etc.).

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

(including, if applicable, special categories of data (Article 10) and/or origin of data)

Identification data:

- names and addresses (including email addresses) and other contact data, telephone numbers
- function

Other data:

- type of EWS warning
- start and end date of the warning, unless the agency would specifically request the warning is lifted earlier
- service of the Agency (& contact persons) that has requested the EWS flag to be set,
- reasons for the warning request, if not confidential: this might include data relating to suspected offences, offences or criminal convictions. As regards the latter only relevant data are processed in the light of the Financial Regulation's requirements.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

An acknowledgment of receipt to the informant of the warning (except if the claim is made anonymously) should be provided for each notification/claim.

- In the context of a call for proposals, data subjects participating in call are informed that their personal data may be used by the Agency for the purposes of safeguarding the financial interests of the Union via the General Conditions which are annexed to the model decision for grant, which is published on the Agency website.
- In the context of procurement, data subjects participating to a tender are informed that their personal data may be used by the Agency solely for the purposes of the performance, management and monitoring of the contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection task in application of Union law via the General Conditions published on the Agency's website. The fact that the personal data may be registered in the EWS and/or the CED by the EC's Accounting Officer is also mentioned in the invitation to tender for the negotiated procedure.

The prior checking notification concerning public procurement has been submitted by the Agency to the EDPS on 5 November 2013 (case n° 2013-1231) together with the respective privacy statements, extracts from the model invitations to tender and general conditions of contracts.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS
(Rights of access, to rectify, to block, to erase, to object)

When the Agency requested the registration of a EWS warning :

- (a) it informs the data subject concerned of the request for activation, updating and removal of any exclusion warning directly concerning him /her and state the reasons thereof;
- (b) it responds to requests from data subjects concerned to rectify inaccurate or incomplete personal data and to any other requests or questions from those subjects."

In this case a specific privacy statement (besides the ones used on the context of call for proposals or grants: see above, section 7) is also provided by the Agency to the data subject concerned (see Annex 2).

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Automated processing: the EWS flags set centrally in the SAP24 part of ABAC, are made available automatically to the "Workflow" part of the application to which all ABAC users in the Agency could have access (i.e.: Financial Officers,..). Depending on the nature of the warning entered, de-activation of the EWS flags would be carried out by DG BUDG either automatically after a fixed period, or must be requested explicitly by the initiator of the warning.

10/ STORAGE MEDIA OF DATA

All relevant information is stored in ABAC.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

- Articles 106, 107, 108 and 109 of Regulation (EC, Euratom) N° 966/2012 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;
- Articles 141, 142 and 143 of the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012;
- Regulation (EC) n° 1653/2004 of 21 September 2004 on a standard Financial Regulation for the executive agencies pursuant to Council Regulation (EC) n° 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programme;
- Commission Decision (EC, EURATOM) 2008/969 of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies, amended by Commission Decision (2011/C/ 180/06) of 17 June 2011;
- Commission Regulation (EC, EURATOM) 1302/2008 of 17 December 2008 on the Central Exclusion Database, applicable also to the Executive Agencies;
- Commission Decision 2013/801/EU of 23 December 2013 establishing the Innovation and Networks Executive Agency and repealing Decision 2007/60/EC establishing the Trans-

European Transport Network Executive Agency as amended by Decision 2008/593/EC;

- Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes;
- Commission Decision C (2013) 9235 of 23 December 2013 delegating powers to the Innovation and Networks Executive Agency with a view to the performance of tasks linked to the implementation of Union programmes in the field of transport, energy and telecommunications infrastructure and in the field of transport and energy research and innovation comprising, in particular, implementation of appropriations entered in the general budget of the Union.

Lawfulness:

Regulation (EC) No 45/2001:

- Article 5(a) in conjunction with Recital 27: the processing is necessary for the legitimate exercise of official authority vested in the Community institution or body;
- Article 5 (b) processing is necessary for compliance with a legal obligation to which the controller is subject.

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

For the information already registered in the EWS (ABAC):

- Staff members of the Agency having access to ABAC for processing commitments, payment files, or for controlling & auditing (e.g.: Financial Officers);
- The Accounting Officer of the Agency;
- EWS Officer and Deputy Officer of the Agency.
- Commission services and other institutions (such as OLAF), Member States administrations having been granted access to the CED.

For the information not yet registered in the EWS (ABAC):

Project and/or Financial Officers and/or other Agency Staff informed of the case (Legal Team, Auditors, Evaluation Team, etc...), Heads of Unit, Heads of Department, EWS Officer of the Agency and Deputy, the Agency's Director and the Accountant of the Commission/DG BUDG (for inscription in the EWS database), OLAF (in case of fraud)

In case of proceedings:

- The European Court of Justice, as well as the lawyers and the agents of the parties in case of a legal procedure
- The Agency's internal auditor
- The Court of Auditors
- The European Ombudsman
- The European Data Protection Supervisor

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

In accordance with the Commission Common Retention List (point 4.2.3., "Management of third-party files (FEL/BAF) and EWS"), the administrative retention period applied by the Agency is 5 years after the file has been closed (EWS files are considered closed when the final financial transactions involving the data subject are completed) .

In accordance with Article 8.4 of Commission Decision 2008/969/EC: removed warnings shall be accessible for audit and investigation purposes only and shall not be visible for the users of the EWS. However, personal data contained in warnings referring to natural persons shall remain accessible to such purposes only for five years after the removal of the warning.

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)

Immediately.

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)*

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)

The Financial Regulation (FR) sets out obligations concerning the award of contracts and grants to third parties in the context of centralised management of Community funds. In particular:

- Articles 106 and 131(4) FR set out an obligation to exclude third parties from participation in a

procurement or award procedure where they are in one of the situations listed in Article 106 FR (e.g.: bankruptcy, grave professional misconduct, judgment for fraud, corruption, involvement in a criminal organisation, money laundering, etc.);

- Articles 107 and 131(4) FR forbid the award of a contract or grant to third parties in a situation of conflict of interest or misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement or award procedure.
- Articles 109 and 131(4) FR further establish the possibility for the contracting authority to impose administrative and financial penalties on third parties who are in one of the cases of exclusion from participation or award, in particular in the form of exclusion from the contracts and grants financed by the budget, for a maximum period of ten years.

In light of the above, the processing falls under Art. 27 because

- In some cases, personal data relating to suspected offences, offences and criminal convictions might be processed;
- The processing operation would intend to evaluate personal aspects relating to the data subject facing the warning, such as his or her ability and efficiency to implement a contract or a grant decision and his or her professional conduct.
- The processing operation is likely to exclude individuals from a benefit or contract: the registration of a legal or natural person in the EWS could lead notably to the exclusion from a contract, granting of an award or refusal of EU funds.

17/ COMMENTS

The Director of the Agency, as Authorising Officer has designated the Head of the External Audit to serve as Early Warning System Officer and the Head of the Legal Team as Deputy Early Warning System Officer pursuant to article 7.1 of Commission Decision 2008/969/EC on the EWS. The Agency follows the EWS procedures defined by DG BUDG.

The Agency can consult all five categories of EWS warnings (W1 to W5) and their subcategories. The Agency however can only notify warning in some of these (sub-categories (e.g.: W1 c, W1 d, W2 b, W3 b and W5 a).

Should an EWS flag be attached to the Legal Entity File in ABAC, it can be seen by the Agency financial actors when a financial transaction (commitment or payment) is created.

EWS warnings can be activated (or deactivated) by the service of the Commission's Accounting Officer only, on the basis of a request sent by a Commission service or the Agency. No warning can be activated without the standard form duly completed (see annex 1).

So far the Agency has never notified any warning and has never come across a case where an EWS warning would be flagged in the ABAC system.

Should a situation implying an EWS warning occurred, the information and standard form is processed by :

The Project Manager and/or Financial Officers and/or other Agency Staff (i.e. Legal Team, Auditors), who would be informed of a situation that warrants a warning (identification of weaknesses/suspicion of fraud,..), will report the facts to the EWS Officer and Head of Unit. The source of information could be for instance any Agency staff member during the course of his/her work but also outside sources such as the beneficiaries of TEN-T projects, contractors, the media, a claim (anonymous or not), etc... The latter shall then be verified by the Agency Staff member(s) concerned'. The EWS Officer checks also that the reported situation falls under the conditions required for the EWS and that the standard form is completed.

EWS warnings should be entered and removed centrally by DG BUDG, in the Commission's legal entity file (LEF), after receipt of a formal letter sent by the Agency's Director reporting the duly justified warning.

PLACE AND DATE: BRUSSELS, 15/01/2014

DATA PROTECTION OFFICER: CAROLINE MAION

INSTITUTION OR BODY: INNOVATION AND NETWORKS EXECUTIVE AGENCY