

(To be filled out in the EDPS' office)
REGISTER NUMBER: 939

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 21/12/2012

CASE NUMBER: 2013-0010

INSTITUTION: EUROPEAN CHEMICALS AGENCY

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Chemicals Agency, Annankatu 18, 00120 Helsinki, Finland

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

The central procurement team within the Finance Unit of ECHA has a coordinating and advisory role for the procurement and contract management processes of the Agency. However, all processing of personal data during the procurement procedure or the management of the contract concluded as a consequence thereof takes place under the responsibility of the authorising officer or authorising officer by delegation that is initiating the procurement procedure or managing the contract.

3/ NAME OF THE PROCESSING

Procurement and contract management

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing of personal data is to enable the procurement of services and supplies needed for the operation of the Agency and for the management of any such contracts established.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects include representatives or staff of tenderers and contractors whose personal data are included in the tender and/or contract, and of economic operators selected for the list of candidates following a call for expression of interest.

Additionally, there may be processing of personal data of Agency staff members who perform tasks in procurement procedures or act as contract managers.

Finally, ECHA contractors may in the performance of the contract handle personal data of third parties.

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

Personal data of tenderers, contractors and candidates, of their staff or subcontractors, which may include in particular:

- Name and contact details;
- Nationality, gender, place and date of birth, title, function, company and department;
- Bank account reference, VAT number, national insurance number, passport number, ID number and personnel number;
- Other personal data contained in CVs (expertise, technical skills and languages, professional experience and career related information);
- Time sheets and leave requests of consultants (both elements will form part of another prior checking notification by the Agency on leave and flexitime management);
- A declaration on their honour that they are not in one of the exclusion situations referred to in Article 74 of the ECHA Financial Regulation and Articles 93 and 94 of the Financial Regulation;
- Certificates of payment of social security contributions and taxes, extracts from trade registers and judicial records;

Some tenderers can be legal entities of one person (translators, experts, ...) directly allowing the identification of the natural person.

Concerning ECHA staff members: declaration of absence of conflict of interest.

Concerning third parties: personal data regarding selection or health issues of applicants and Agency staff are processed by contractors in the implementation of ECHA contracts for selection assistance or medical services (covered by ECHA's prior checking notifications 2010-0109 and 2010-0319 respectively).

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

ECHA has made a specific privacy statement available (to be published on its website) to inform potential tenderers about the processing of their personal data. A Data Protection notice is included in the invitation to tender to make sure that, before sending their offers, tenderers are made aware of

the fact that their personal data will be processed by ECHA, while Data Protection clauses are introduced in the model contract.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

The data subjects are informed of their rights and of the procedure to exercise them (through direct contact with the responsible controller) via the specific privacy statement, to be made available on the ECHA website, the Data Protection notice in the invitation to tender, and the relevant contract clause. To exercise their rights during the procurement procedure they can contact the procurement team in the Finance Unit, while at contract management stage they can directly contact the operational unit responsible for the management of the contract.

The right to rectify the information already provided can only apply to the factual data processed within the concerned procurement procedure. This right can only be exercised up to the closing date for submission of tenders. However, inaccurate identification data may be rectified at any time during and after the procurement procedure. Special attention is drawn to the consequences of a request for deletion, as this may lead to an alteration of the terms of the tender and lead to exclusion as stated in Article 148 of the Implementing Rules of the Financial Regulation, applicable to the Agency via Article 74 of the ECHA Financial Regulation.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

I. Processing of Personal Data in ECHA procurement procedures

All tender documents are sent to the Agency in paper format and in electronic format on a CD-ROM (normal procedure) or by e-mail (low value contracts). These documents are thus also processed both manually and electronically by the Agency.

Procurement procedures involve management, coordination and organisation of calls for tenders, including in particular the reception of tenders and requests to participate (both referred to as "tenders"), their opening, evaluation, negotiation, ranking, copying, distributing, using, filing, archiving and destruction, the preparation of the opening report, the evaluation report, the award decision and the contract, the correspondence with tenderers or candidates (both referred to as "tenderers"), the generation of mailing labels and the publication of the results of the relevant procedure in the Official Journal of the European Union and / or the ECHA website. In all these procedures, personal data are processed within the duration of the particular procedure, or if applicable, up to provision of publicity of the results of that procedure.

Generally the tenderers are requested to provide the documents in 2-3 copies. The originals are kept by the central procurement team, while a copy of both the paper files and the electronic files are handed over to the evaluation committee.

The ECHA staff evaluating the tenders shall apply the greatest care when processing the personal data in the tender dossiers. This includes applying among other the following principles:

- The personal data are used solely for the purpose for which it was provided, namely the evaluation of the tender.

- The files containing personal data are stored safely in a locked cupboard or in electronic files with controlled access.
- The number of staff having access rights to the personal data is kept to a minimum.
- The files containing personal data are deleted or archived at the end of the retention period.

II. Processing of Personal Data in ECHA contract management

Contract managers, and any other ECHA staff member concerned, may deal with personal data provided by the contractor. This data can include for instance the details of a contact person of the contractor, CVs provided for the selection of the consultant(s), personal data of recruited consultants or of any other external staff (security guards, medical advisor, etc.).

The timesheets of consultants are used for billing purposes. Leave requests of consultants also contain personal data. Both elements will form part of another prior checking notification by the Agency on leave and flexitime management.

ECHA shall not process medical data of consultants. During the course of the contract, the consultant shall of course notify ECHA of his/her absence due to illness, but no sickness certificate shall be demanded as there is no direct relationship between the Agency and the consultant.

III. Processing of Personal Data by ECHA contractors

Where the implementation of the contract requires that the contractor processes personal data of third parties, the contractor will act as data processor as per Article 23 of Regulation 45/2001. The categories of data, the purpose of the processing, the recipients of data and the means for data subjects to exercise their rights are stipulated in the contract.

The contractor is bound by certain Data Protection obligations vis-à-vis the personal data that is handled by him in the performance of the contract. He will be bound by the national law adopted to implement Data Protection Directive 95/46/EC, while a specific Data Protection article in the ECHA contracts also makes this a contractual obligation.

The personal data involved can be for instance:

- the details of an ECHA contact person
- personal data regarding recruitment or health issues of applicants and staff (in the case of contractors for selection services or medical services, for instance).

10/ STORAGE MEDIA OF DATA

All paper versions of tender documents and contracts are stored in a secure location (locked cupboard for current files and locked archive room for the rest). All electronic documents are stored in an electronic tool with restricted access.

The contractor acting as data processor is bound by the obligations of data protection, confidentiality and security as foreseen in the national data protection laws of their Member State and as foreseen in the model contract used by the Agency.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The processing of personal data is necessary for the performance of tasks carried out in the public interest (see Article 5(a) of Regulation (EC) No 45/2001).

Its legal basis can be found in:

- ECHA Management Board decision on ECHA's Financial Regulation (MB/53/2008 final), in particular Article 74 "the ECHA Financial Regulation".
- Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities "the Financial Regulation";
- Commission Regulation (EC, Euratom) N° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) N°1605/2002 on the Financial Regulation applicable to the general budget of the European Communities "the Implementing Rules".

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

All recipients are on a "need to know" basis.

- Staff of operational and finance units of ECHA participating in procurement procedures and the bodies charged with a monitoring or inspection task in application of Union law (e.g. internal control, internal audit);
- Staff of OLAF, ECA, IAS (Internal Audit Services), upon request necessary in the context of official investigations or for audit purposes.
- European Commission and EU agencies in the context of the implementation of European Commission's Decision of 16 December 2008 on the Early Warning System for the use of the authorising officers of the Commission and the executive agencies (2008/969/EC).
- Members of the public in accordance with the ECHA's obligation to publish information on the outcome of the procurement procedure (Article 74 of ECHA Financial Regulation and Article 90 of the Financial Regulation). The information concerns in particular name and address, the amount awarded and the name of the project. It will be published in supplement S of the Official Journal of the European Union and/or on the website of ECHA.
- Staff of the contractor who need to have access to the data strictly for performance, management and monitoring of the contract.

For electronic information: only designated staff has the possibility to access the data kept for the purpose of administrative or financial process.

Data processed may be transferred within the context of the evaluation of offers received in response to an open call for tenders, following the appointment of external members to the Evaluation Committee (Article 146 of the Implementing Rules of the Financial Regulation via Article 74 of ECHA Financial Regulation).

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

- For successful tenderers: files relating to tender procedures are to be retained in the service in charge of the procedure until the procedure is finalised. Tender files are retained in the archives for at least five years from the date on which the European Parliament grants discharge for the budgetary year in which the contract terminates;
- For unsuccessful tenderers: files relating to tender procedures are to be retained in the service in charge of the procedure until the procedure is finalised. Tender files are retained in the archives for at least five years from the date on which the European Parliament grants discharge for the budgetary year in which the contract is signed;

Files relating to a call for expression of interest will be retained in the service in charge of the call concerned until the end of the procedure for which it is submitted, and in the archives for at least five years from the date on which the European Parliament grants discharge for the budgetary year of the closure of the call for expression of interest. Files relating to unsuccessful applicants will be retained in the service in charge of the call for expression of interest concerned until the end of the procedure for which it is submitted, and in the archives for 2 years following the closing of the Call for expression of interest.

The above limits can be extended until the end of a possible audit if one started before the end of the above period.

After the end of the original retention period only original contracts which include specifications of the call for tenders and winning tenders shall be kept and the rest shall be destroyed. All those documents are at that point transferred to the historical archives.

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

All requests are handled without undue delay, in line with ECHA's Code of Good Administrative Behaviour in relations to the public (replies within 15 working days).

However, a request for deletion may lead to an alteration of the terms of the tender and lead to exclusion as stated in Article 148 of the Implementing Rules of the Financial Regulation via Article 74 of the ECHA Financial Regulation.

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

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*):

Personal data (e.g. CVs) are provided in a tender to allow ECHA to evaluate the offer, which makes the processing operation subject to prior checking according to Article 27.2(b) of Regulation (EC) No 45/2001. Additionally, Article 27.2(a) may come into play, as extracts of judicial records are collected, even though the judicial record most often relates to the company in question and not to individuals.

17/ COMMENTS

PLACE AND DATE: 21 December 2012

DATA PROTECTION OFFICER: Bo Balduyck

INSTITUTION OR BODY: European Chemicals Agency (ECHA)