

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1008

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 03/06/2013

CASE NUMBER: 2013-0584

INSTITUTION: EEAS

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

This model notification is made on behalf of the EEAS departments and divisions and EU Delegations concerned by the Managing Directorate for Finance and Corporate Support, EEAS MDR.A., who establishes the obligations and responsibilities of Authorising Officers by Sub-Delegations (who are the actual controllers of the specific processing operations)

At the date of the Notification: Mr Vincent Guérend, Director, EEAS MDR A (Finance and Corporate Support)

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

The controller³ responsible for the processing operation is the Head of the EEAS department/division or the Head of the EU Delegation, or his/her Deputy acting on his/her behalf, organising the procurement procedure and managing the contract.

3/ NAME OF THE PROCESSING

Procurement procedures and contract execution

Procurement procedures:

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

³ The controller is the organisational entity which determines the purpose and means of the processing of personal data.

Management, coordination and organisation of calls for tenders or calls for expression of interest, including in particular the reception of requests to participate and tenders, their opening, evaluation, negotiation, ranking, copying, distributing, using, filing, archiving and destruction, the preparation of the opening reports, the evaluation reports, the award decision and the contract, the correspondence with candidates or 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 website(s) of the EEAS. In all these procedures, personal data is processed within the duration of the particular procedure, or if applicable, up to provision of publicity of the results of that procedure.

In most cases, the tenderers or candidates must provide a declaration on their honour that they are not in a situation of exclusion as defined in Articles 106 and 107 of the Financial Regulation.

Some candidates or tenderers can be legal entities of one person directly allowing the identification of the natural person. Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement under the conditions laid down in that agreement (article 119 Rules of Application of the Financial Regulation). Therefore, some personal data contained in the above mentioned documents fall under article 27 of Regulation 45/2001 and in particular under 27.2.d.

Contract execution:

Where the contract necessitates the processing of personal data, the contractor will act as data processor as per Article 23. The categories of data, the purpose of the processing, the recipients of data, the time limits for storing the data and the means for data subjects to exercise their rights will be stipulated in the contract.

Many of the possible activities may be already covered by the following (model) notifications:

- Meetings and Events organised by the EEAS Services
- Ex-post Control in the EEAS
- Validation of Legal Entity records in the LEF (Legal Entity File) [EC Notification DPO-372.4]
- Validation of Bank Account Records in the BAF (Bank Account File) [EC Notification DPO-300.6]
- Intranet / EEASzone

4/ PURPOSE OR PURPOSES OF THE PROCESSING

- Management and administration of procurement procedures by the EEAS services (Headquarters and Delegations), including in particular the provision of evidence of the technical and professional capacity of candidates, tenderers, their staff and subcontractors. Procurement procedures include the conclusion of contracts for the purchase or rental of a building, supply contracts, works contracts and service contracts, as laid down in Title V of Regulation (EU, EURATOM) N° 966/2012 of the European Parliament and of the Council of 25 October 2012 – "Financial Regulation".
- Execution of contracts concluded between the EEAS services (Headquarters and delegations) and economic operators.
- Purpose indicated in the relevant contract and carried out by the contractor acting as data processor.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Individuals willing to participate in procurement procedures of the EEAS services:

- Candidates - natural persons
- Tenderers - natural persons
- Staff of candidates and tenderers
- Contractors – natural persons
- Subcontractors - natural persons

- Natural persons identifiable through the name of the legal entity as candidate, tenderer, contractor or subcontractor

Individuals concerned in the relevant contract.

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 candidates, tenderers, their staff or subcontractors which may include in particular:

- Name;
- Function;
- Contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, internet address);
- Certificates such as certificates for social security contributions and taxes paid, extract from judicial records, certificates related to insurances and licences / authorizations concerning the subject of the procurement;
- Bank account reference (IBAN and BIC codes), VAT number, passport number, ID number;
- Information for the evaluation of selection criteria: expertise, technical skills and languages, educational background, professional experience including details on current and past employment;
- Declaration on their honour that they are not in one of the exclusion situation referred to in articles 106 and 107 of the Financial Regulation.
- Legal Entity File (LEF) and Bank Account File (BAF)

Since the information is often provided on CV, the candidates, tenderers, staff, contractors or subcontractors may supply additional information which is not necessary for the purpose of procurement (such as gender, age, nationality).

Data processing on implementation of contract may require other types of data as specified in the relevant documents.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The Model Privacy Statement linked to this Notification contains all information provided to the Data Subject(s).

The aforementioned Privacy Statement will be available on the EEAS website. See contents of the attached file.

Communication(s) foreseen:

1. Data protection clauses for Invitations to Tender and contract notices (ANNEX I attached)
2. Privacy Statement (covering procurement procedures and contract's execution, ANNEX II attached and available in the EEAS web-site)
3. Data protection clauses for Contracts (ANNEX III attached)

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

See the relevant section of the Invitation to tender.

Data subjects have the right to access your personal data and the right to correct any inaccurate or incomplete personal data, as well as to request the removal of your personal data, which will be implemented within 5 working days after your request will have been deemed legitimate. If you have any queries concerning the processing of your personal data, you may address them to the data controller at the mailbox of the Contracting Authority (the mailbox used by EEAS Service organising the procurement procedure for communication on the tender procedure).

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Manual Processing – please see Point 3.
Mailboxes of the Contracting Authority.

10/ STORAGE MEDIA OF DATA

Personal data in paper format is stored in operational and financial services of the EEAS.

Personal data in electronic form is stored in mailboxes of the Contracting Authority and on servers of the EEAS, physically under the control of EEAS.

- All documents including personal data in the original requests to participate or tenders and copies should be kept with clear identification of the file, in a secure manner (i.e. paper documents should be stored in cupboards; electronic drivers which contain documents with personal data should be accessible only to individuals who need to have access to such data), in the Division's / Delegation's working file storage, both on paper and electronically (if applicable).
- The procedure files (including the CVs) can be accessed only by persons that manage the procedure on a need-to-know basis.
- The documents including personal data included in the original request to participate or tender should be kept with clear identification of the file, in a secure manner, in the service's storage or archives.

All copies received should be destroyed except the copy that will form an integral part of the contract;

- Documents including personal data received by electronic mail will have to be stored on a drive specific to the administrative entity in charge (Directorate, Division, Delegation...), in a folder displaying the reference of the relevant procedure and these folders will be made accessible only to staff on a "need-to-know" basis for the duration of the contract execution. Thereafter the electronic documents will be deleted.

The candidate, tenderer or contractor acting as data processor is submitted to the obligations of data processing confidentiality and security provided for in articles 21 and 22 of Regulation 45/200.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

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, "Financial Regulation", in particular Title V; 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, "Rules of Application";

For contract execution, the legal basis is the particular contract.

Lawfulness of Processing:

The data processing is considered lawful because it is necessary:

- For the performance of tasks carried out on the basis of the Financial Regulation and Rules of Application;
- To ensure compliance of the Data Controller with the legal obligations stated in the Financial Regulation and the Rules of Application,
- To take steps prior to entering into a contract with the data subject as described in points (a), (b) and (c) of article 5 of Regulation 45/2001
- To comply with Articles 21, 22 and 23 when the contractor acts as data processor.

There is no exemption or restriction under article 20 but data or operations required prior checking under article 27 of Regulation 45/2001 for the procurement and grant procedures and the call for expression of interest for the selection of experts.

Further legal reference:

Good administrative practices in the framework of the Treaty of Lisbon and the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU) available on http://www.eeas.europa.eu/background/docs/eeas_decision_en.pdf

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 the EEAS or of EU institutions participating in management procurement procedures and in contract execution as defined in Section 7 and to the bodies charged with a monitoring or inspection task in application of Union law (e.g. internal control, internal audit);
- External experts and contractors participating in the evaluation of tenders when external expertise is required, on the basis of Article 204 of the Financial Regulation;
- Staff of OLAF, IDOC, IAS (Internal Audit Services), IAC (Internal Audit Capability) of the EU, the Legal Service of the Commission as well as staff of other DGs of the European Commission (SG, budget and clearinghouse) and of other EU institutions upon request necessary in the context of official investigations or for audit purposes.
- Staff of the European Commission Directorate General for BUDGET (DG BUDG) with regard to the Legal Entity Form (LEF) and Bank Account File (BAF).
- Members of the public in accordance with the obligation to publish information on the outcome of the procurement procedure deriving from the budget of the European Union (Article 103 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(s) of the EEAS.
- Staff of the contractor who need to have access to the data strictly for performance, management and monitoring of the contract.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Files related to the procurement procedures and to implementation of contracts are kept by the EEAS and by the data processor (contractor) for up to 5 years from the date on which the European Parliament grants discharge for the budgetary year to which the data relates. Requests to participate and tenders of unsuccessful tenderers are kept for the same time.

However, documents relating to tender procedures or to the management of contracts have to be archived for at least ten years following signature of the contract or following the last payment by the EEAS, respectively; as an exception, tenders and requests to participate from unsuccessful tenderers or candidates have to be kept only for at least five years following signature of the contract.

Files could be retained until the end of a possible audit if one started before the end of the above periods.

After the periods mentioned above have elapsed, the files containing personal data are sampled and anonymised to be sent to the historical archives of the EEAS for further conservation (e.g. for 25 years or permanently).

The non-sampled files are destroyed.

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)

Legitimate requests are treated within 5 working days after the request will have been deemed legitimate.

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.

After the periods mentioned above have elapsed, the files containing personal data are sampled and anonymised to be sent to the historical archives of the EEAS for further conservation and the non-sampled files are destroyed.

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,

Some personal data contained in the above mentioned documents fall under article 27 of Regulation 45/2001 and in particular under 27.2.d., due to the fact of possible eventual exclusion of individuals from a right or contract

↑ Other (general concept in Article 27.1)

17/ COMMENTS

I.

This notification does not cover the procedures when the data processing falls under the provisions of Article 10 of Regulation 45/2001. In case any processing would fall under the provisions of Article 10 of the aforementioned regulation, it would be subject to a specific control and notification.

II.

The procurement procedure of the EEAS is elaborated on the model of the standard procurement procedure of the European Commission.

That is the reason why this notification reflects the notification items of the EC model notification on Procurement procedures, grant procedures, contract execution, grant implementation and calls for expressions of interest for the selection of experts, except for items such as 'recipients of data' specific to the EEAS.

The EEAS herewith takes note of the already provided Opinions of the EDPS in the subject matter of procurement, such as Opinions of 15th of April 2010 related to the aforementioned notification and 19th of July 2007 and has taken the recommendations and remarks of the EDPS into account as far as possible.

PLACE AND DATE: BRUSSELS, _____

DATA PROTECTION OFFICER: MS. CARINE CLAEYS, _____

INSTITUTION OR BODY: EUROPEAN EXTERNAL ACTION SERVICE (EEAS)