

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1157

(ONLY IN CASE OF PRIOR CHECKING BY EDPS: To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 17/09/2013

CASE NUMBER: 2013-1018

INSTITUTION: FUSION FOR ENERGY

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Controller: Hans Jahreiss, Head of Administration Department

The European Joint Undertaking for ITER and the Development of Fusion Energy

c/ Josep Pla no. 2

Torres Diagonal Litoral

Edificio B3

08019 Barcelona

Spain

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

Administration Department,
Contracts and Procurement Unit (CPU)

3/ NAME OF THE PROCESSING

Evaluation of the eligibility of economic operators to participate in the procurement/grant procedures in accordance with exclusion and selection criteria, and/or evaluation of the content of tenders/proposals against the award criteria; as well as processing during implementation of procurement contracts/grant agreements.

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The data are collected and processed with the purpose to evaluate the eligibility of economic operators to participate in the procurement/grant procedure in accordance with exclusion and selection criteria, and/or to evaluate the content of tenders/proposals submitted during the procurement/grant procedure against the award criteria with the view to award the contract/grant agreement; some processing may also be necessary during implementation of procurement contracts/grant agreements.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are natural persons associated with the candidate/tenderer/applicant entities (including their staff and subcontractors), whose details are submitted in tender/proposal and related documents in view of participating in procurement/grant procedures; as well as during implementation of procurement contracts/grant agreements.

The data are collected from the tender/application or supporting documents submitted in the view of participating in procurement/grant procedure and, if applicable, during the implementation procurement contracts/grant agreements.

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

The following data categories may be processed within procurement/grant award procedures and during implementation of the contracts/grant agreements at F4E:

- Name, date of birth, gender, nationality, function, contact details (company and department, postal address, country of residence, business telephone number, mobile telephone number, fax number, e-mail address and internet address) and signature;
- Certificates for social security contributions and taxes paid;
- Extracts from judicial records;
- Bank account references (account number, name of the account holder, address of the bank, IBAN and BIC codes);
- Passport/ID number; VAT number; membership in a trade or professional organisation;
- Professional and education information: CV's – work experience/employment history, education, training and academic background, personal skills and competences (language, technical skills);
- Declaration of honour that the tenderer/applicant is not in one of the exclusion situation referred to in Articles 83 and 94 of F4E Financial Regulation (in relation with Art. 128 F4E Implementing Rules);
- Other personal data contained in the tender/application (credentials).

Thus, only relevant and necessary data for the implementation of the F4E Financial Regulation and its Implementing Rules may be collected and further processed during a procurement / grant procedure and implementation of the procurement contract/grant agreement.

Since the information is not provided on standard forms, the candidates/tenderers/applicants, their staff and subcontractors, may supply information which might not be necessary for the purpose of selection or the award of grant or contract, for instance gender, age and nationality.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information to data subjects is provided at different stages of the respective procurement/grant procedure in the following documents:

- Call for tenders (administrative procurement) and general tender conditions (operational procurement) contain a standard clause on data protection (ANNEXES II and III);
- Contractual provisions on data protection contained in the standard administrative and operational procurement contracts, grant agreements and framework partnership agreements (ANNEXES IV-VII);

Each administrative call for tender provides information that in its procurement activities Fusion for Energy observes Regulation (EC) 45/2001 (ANNEX II, Section 6.2).

General tender conditions for operational procurementⁱ (ANNEX III, Section 7.5) provide information about:

- purpose of the processing;
- certain categories of data processed;
- certain data recipients;
- existence of rights of access and rectification and the procedure to follow;
- existence of a right to have a recourse to the DPO or EDPS.

The general conditions of model *administrative procurement contract* (ANNEX IV, Article II.6) contains the provisions on the personal data protection, which specify that personal data included in or related to the contract/grant agreement/framework partnership agreement shall be processed pursuant to Regulation (EC) 45/2001 and solely for the purposes of the performance/implementation, management and follow-up of the contract/grant agreement/framework partnership agreement without prejudice to possible transmission to the bodies charged with a monitoring or inspection tasks in conformity with Union law. Information on the right to access and rectify personal data and the right to have recourse to the F4E Personal Data Controller and the European Data Protection Supervisor is also provided.

Model general terms and conditions for administrative procurement contracts are published on F4E website: <http://www.fusionforenergy.europa.eu/procurementsgrants/keyreference.aspx>

The *operational procurement contracts* (ANNEX V, Article I.12)ⁱⁱ, *grant agreements* (ANNEX VI, Article II.12) and *framework partnership agreements* (ANNEX VII, Article 7), as well contain provisions on the personal data protection.

Model grant agreements are published on F4E website:

<http://www.fusionforenergy.europa.eu/procurementsgrants/keyreference.aspx>

In addition, a Specific Privacy Notice (Annex I) is published on F4E website: <http://www.fusionforenergy.europa.eu/procurementsgrants/keyreference.aspx>

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

Right of access: according to Article 13 of Regulation (EC) 45/2001 of the European Parliament and of the Council of 18th December 2000 concerning the protection of individuals with regard to the processing of personal data by the Community institutions and bodies, and on the free movement of such data (the Regulation (EC) 45/2001), the data subjects have the right of access to their data being processed by contacting the Fusion for Energy Data Controller.

In order to protect the rights and freedoms of data subjects and others, in line with Article 20 of Regulation 45/2001 (mentioned above), the access to the aggregated evaluation results or to opinions of individual members of the evaluation committee may be restricted.

Right of rectification: according to Article 14 of Regulation 45/2001, the data subjects have also a right to rectify their data that are inaccurate or incomplete by contacting the Data Controller at any time during the procurement/grant procedure.

In order to ensure equal treatment and transparency, in line with Article 20 of Regulation 45/2001 (mentioned below), the right to rectify information already provided can only apply to the factual data processed within the concerned procurement/grant procedure. The right to rectify can only be exercised up to the closing date for submission of tenders/applications. However, inaccurate identification data may be rectified at any time during and after the procurement/grant procedure.

Right of blocking: according to Article 15 of Regulation 45/2001, the data subjects have also the right to obtain from Data Controller blocking of their data when:

- They contest the accuracy of the data;
- The controller no longer needs them but they need to be maintained for purposes of proof;
- The processing is unlawful and the data subject requests blocking instead of erasure.

Personal data blocked shall only be processed for the purpose of proof (with the consent of the data subject) or for the protection of the rights of a third party.

Right of erasure: according to Article 16 of Regulation 45/2001, the data subjects can request the cancellation of their personal data if they consider that they are subject to an unlawful processing.

Right to object: according to Article 18 of Regulation 45/2001 the data subjects can object the processing of their personal data unless the processing is needed for the purposes of Article 5b) and d) of Regulation 45/2001:

- On legitimate grounds relating to their particular situation;
- Before their personal data are disclosed to third parties.

Limitations:

Article 20(1) of Regulation 45/2001 states that the data controller may restrict access to the information/documents to safeguard:

- (a) the prevention, investigation, detection and prosecution of criminal offences;
- (b) any important financial or economic interest of the Member States or the Union;

- (c) the protection of the data subject or the rights of freedoms of others;
- (d) the national security, public security or defence of the Member States;
- (e) the monitoring, inspection or regulatory task connected with the exercise of official authority in cases referred to in (a) and (b).

Common steps for the exercise of any of the above mentioned rights: any request from a data subject concerning the rights above described should be addressed to F4E Personal Data Controller through the following contact e-mail address: Resources-Controller@f4e.europa.eu.

The Controller shall provide an answer to the data subject concerning his/her request on the exercise of his/her rights, as defined above, within 10 working days. Any contestation by the data subject to the Controller's reply shall be submitted within 10 working days of the response received and the Controller shall have another 10 working days to provide a replica revising his previous decision or confirming it.

All data subjects have, taking into account Article 20 (3) of Regulation 45/2001, also the right of recourse at any time to the European Data Protection Supervisor: EDPS@edps.europa.eu. The EDPS receives complaints from EU staff members as well as from other persons who feel that their personal data have been mishandled by a European institution or body. If a complaint is admissible, the EDPS usually carries out an inquiry. The findings are communicated to the complainant, and necessary measures are adopted.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing operations concern the management, coordination and organisation of tender/grant procedures as well as the implementation of procurement contracts/grant agreements, including in particular:

receipt of proposals/applications; opening, distributing, evaluation, ranking, filing, archiving and elimination; evaluation on the basis of exclusion, selection and award criteria; evaluation report; award decision; correspondence with tenderers/applicants; financial management, contract/grant agreement/framework partnership agreement execution; monitoring (intermediate and final reports, controls); transferring financial transactions to and from the Commission's accounting system for further validation and processing; publication of the results of the relevant procedure in Official Journal; statistics and reporting; requests for replacement of personnel during the implementation of the procurement contract/grant agreement.

All of the above implies that personal data provided by the tenderers/applicants is processed both: manually and by electronic means.

10/ STORAGE MEDIA OF DATA

The documents received/produced during the actions listed in section 9 above involve both - paper and electronic files.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- (i) Legal basis (i.e. Staff Regulations):

- Regulation (EC, Euratom) No 966/2012 of 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; in particular Articles 110, 131 and 204 thereof;
- Commission Delegated Regulation (EC, Euratom) No 1268/2012 of 9 October 2012 on the rules of application of Regulation (EC, 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 in particular Articles 146-148, 201-202 and 287;
- Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it - 2007/198/Euratom, in particular Article 1 thereof;
- The Statutes annexed to the Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it - 2007/198/Euratom, in particular Article 2 thereof;
- Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the Framework Financial Regulation for bodies referred to in Article 208 of the general Financial Regulation applicable to the general budget of the Union.
- Governing Board Decision of 22 October 2007 adopting the Financial Regulation of the European Joint Undertaking for ITER and the Development of Fusion Energy (last amended in 2011) and its Implementing Rules (last amended in 2012), in particular Titles VI and VII. These documents can be found on F4E website at the following address: <http://www.fusionforenergy.europa.eu/procurementsgrants/keyreference.aspx>

(ii) Lawfulness Personal data may be processed only if:

Processing is necessary for the performance of F4E tasks on the basis of the F4E founding instrument or other legal instrument adopted on the basis thereof or in the legitimate exercise of official authority vested in F4E or in a third party to whom the data are disclosed (Regulation (EC) 45/2001, Article 5(a)), or

Processing is necessary for compliance with a legal obligation to which the controller is subject (Regulation (EC) 45/2001, Article 5(b)), or

Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract (Regulation 45/2001, Article 5(c)), or

The data subject has unambiguously given his or her consent (Regulation 45/2001, Article 5(d)), or

Processing is necessary in order to protect the vital interests of the data subject (Regulation 45/2001, Article 5(e)).

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

- F4E Staff from the operational, procurement, financial and/or legal groups participating in the management of the selection of candidates/contractors/beneficiaries and following up the implementation of the procurement contracts/grant agreements; and Staff from the units entrusted with a monitoring or inspection task in application of European Union law (e.g. internal audit);
- External experts and contractors participating in the evaluation of tenders/applications when external expertise is required;
- The members of the F4E Internal Review Panel (established by Decision of the Director, 15 July 2011 F4E_D_243Y8N, amended 28 May 2013, F4E_26CQ2NV) to review the correctness of contracts and grants procedural aspects within a set threshold), namely: Head of Admin Department, Head of Contracts and Procurement Unit, Head of Budget and Finance Unit, Head of Legal Unit, Head of Project Office.
- Members of the Governing Board, consisting of representatives from all the members of F4E is responsible for taking a number of important decisions and supervising its activities, including approval of the award of the contracts and grants above to certain threshold;
- Members of Executive Committee consisting of 13 external experts involved in, among other tasks, for approval of the award of the contracts and grants up to certain threshold.
- F4E IT staff, providing technical support;
- European Union bodies tasked with control and monitoring of the application of Union law (e.g. respective services of the European Commission, incl. Internal Audit Service and OLAF, Court of Auditors, EU Courts etc.).

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

For procurement as well as grant procedures, the following applies:

- Files of successful tenderers relating to procurement procedures including personal data are to be retained in the CPU until respective procedure is completed, and in the archives for a period of 7 years following the signature of the contract/cancellation of the procedure. Exception is made for extracts from the judicial records, that can be kept only for 2 years after accomplishment of the particular procedure.
- Tenders from unsuccessful tenderers shall only be kept for a period of 5 years after the end of the particular procedure;
- Files might be retained until the end of a possible audit if one started before the end of the above periods.

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

The Controller shall execute any request for blocking or erasure as soon as possible and in any case not later than within 10 working days from the day the data subject's request reached F4E. He/she will notify this circumstance to the data subject by the same means of communications that the data subject chose to address him.

In the case the data subject contests the accuracy of his/her data, the relevant data are blocked for a period necessary for verifying the accuracy and completeness of the data.

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

- Staff of the ITER (International Thermonuclear Experimental Reactor) organisation (F4E is ITER's European domestic agency), in the framework of their participation in the Evaluation Committee's as external experts.

16/ THE PROCESSING OPERATION IS LIKELY TO PRESENT A SPECIFIC RISK TO THE RIGHTS AND FREEDOMS OF THE DATA SUBJECTS, WHICH JUSTIFIES PRIOR CHECKING BY THE EDPS

AS FORESEEN IN:

í Article 27.2.(a)

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

í Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct;

í Article 27.2.(c)

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

í Article 27.2.(d)

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

í Other

(general concept of Article 27.1, i.e. if the processing operation is likely to present a specific risk to the rights and freedoms of the data subject by virtue of their nature, their scope or their purposes)

17/ COMMENTS

PLACE AND DATE: BARCELONA,
DATA PROTECTION OFFICER: ANGELA BARDENHEWER
INSTITUTION OR BODY: FUSION FOR ENERGY

ANNEXES:

- ANNEX I – Specific Privacy Notice;
- ANNEX II – Extract from Exemplary Call for tender (administrative procurement): Article 6.2;
- ANNEX III – Extract from General tender conditions (operational procurement): Section I.5.;
- ANNEX IV – Extract from General conditions of administrative procurement contract Extract: Article. II.6;
- ANNEX V - Extract from Model operational procurement contract: Article I.12.;
- ANNEX VI - Extract from Model grant agreement: Article II.12;
- ANNEX VII - Extract from Model framework partnership agreement: Article 7;
- ANNEX VIII – Model declaration of absence of conflict of interest and of confidentiality for members of evaluation committee (administrative procurement);
- ANNEX IX - Model declaration of absence of conflict of interest and of confidentiality for members of the evaluation committee (operational procurement);
- ANNEX X – Model declaration of absence of conflict of interest and of confidentiality for F4E staff members not being members of the evaluation committee (operational procurement);
- ANNEX XI – Model declaration of absence of conflict of interest and of confidentiality for external experts (operational procurement).

ⁱ Standard tender conditions are under preparation.
ⁱⁱ Model supply contract (operational procurement) will soon be adopted.