

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1178

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 18/10/2013

CASE NUMBER: 1178

INSTITUTION: ESMA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

VERENA ROSS,
EXECUTIVE DIRECTOR,
EUROPEAN SECURITIES AND MARKETS AUTHORITY – ESMA
103, RUE DE GRENELLE,
F-75007 PARIS, FRANCE

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

ESMA Operations Division/Procurement and Finance Team

3/ NAME OF THE PROCESSING

Calls for tender

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing is to use the various data in order to evaluate the proposals received in response to a call for tender referring to exclusion and award criteria set in the tender specifications and award the contract to the best candidate in terms of quality/price. This processing operation is subject of prior-checking (Art.27 (2) of Regulation 45/2001).

The purpose of publishing a call for tender is to open the competition, to increase the choice of potential suppliers, thereby allowing achieving a better value for money result, while at the same time developing market opportunities for companies.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are service provider (legal and natural) which submit their offers according to the requirements of the call for tender

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

Data

Name, address, telephone number, e-mail address;
Copy of the company registration;
Bank account details³;
CV's of staff proposed for the provision of the service;
Evidence of the payment of social taxes;
Copies of certificates of different nature;
Any other documents required in the tender dossier.

Special categories of data

Recent extract from the judicial record.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The tenderers who answer to a call for tender of ESMA are informed about the data protection rules in the tender specifications and in the invitation letter, where there are also the references of the legal basis (Regulation (EC) No45/2001).

“All documents provided by the tenderer become the property of the ESMA and are deemed confidential. In the general implementation of its activities and for the processing of tendering procedures in particular, ESMA observes the following EU regulations:

- *Council Regulation (EC) No. 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents; and*

³ With reference to section 4 of the EDPS “Guidelines on the processing of personal data in the context of public procurement, grants as well as selection and use of external experts”, where the request for bank account details must be justified in the case of selection of experts, please note that ESMA does not have a procedure on selection of experts and has not dealt with this so far.

- *Council Regulation (EC) No. 45/2001 of 18 December 2000 on 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 tender process will involve the recording and processing of personal data (such as a tenderer's name, address and CV). Such data will be processed pursuant to Regulation (EC) No. 45/2001.
Unless indicated otherwise, tenderer's replies to questions and any personal data requested by ESMA in the tender specifications and for the purpose of the tender, will be processed solely for that purpose by ESMA. A tenderer is entitled to obtain access to their personal data on request and to rectify any such data that is inaccurate or incomplete."*

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

ESMA's Implementing Rules on Data Protection relating to the Regulation (EC) No 45/2001 with regards to the processing of personal data lay down the detailed rules pursuant to which a data subject may exercise his/her rights, the procedure for notifying a processing operation and the procedure for obtaining access to the register of processing operations kept by the Data Protection Officer.

In the invitation letter, the candidates are informed about their rights and they are fully informed about the details of processing their personal data with the reference to the privacy statement of the Commission:
"Details concerning the processing of your personal data are available on the privacy statement at:
http://www.esma.europa.eu/system/files/2013-llc-039_esma_specific_privacy_notice_-_public_procurement.pdf."

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing is fully manual.

The answers to call for tender are sent by the tenderers who provide the full documentations that include the data details indicated in the point 6 above.

The documentation received is stored in a locked cupboard.

The electronic documents are stored in a secured folder and the correspondence in Outlook. It is accessible only by the Procurement staff.

Some documents are shared with the evaluation committee for evaluation purposes. The evaluation committee is bound, in any case, to respecting the confidentiality of the information through the signature of the declaration of confidentiality and absence of conflict of interest.

10/ STORAGE MEDIA OF DATA

Documents received from the tenderers are saved in Outlook-folders with access rights limited to the Procurement-staff and the documentation received is stored in a locked cupboard accessible only o Procurement staff.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing ESMA, amended by the Decision No 716/2009/EC;

- 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}.

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

To the members of the Evaluation Committee and to the Procurement and Financial staff.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Article 4(1)(e) of Regulation 45/2001 states that personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

Data are kept for at least 5 years following the discharge for the budget year in question. In accordance to Article 81 FR, the duration is justified and necessary for the management of contract and for the finalisation of all relevant payments incl. recovery where relevant.

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

Data blocking

Art 12 ESMA's Implementing Rules states that:

- (1) The data subject shall have the right to obtain from the data controller the blocking of data where:
 - (a) their accuracy is contested by the data subject, for a period enabling the data controller to verify the accuracy, including the completeness, of the data, or
 - (b) the data controller no longer needs them for the accomplishment of his or her tasks but they must be maintained for purposes of proof, or
 - (c) the processing is unlawful and the data subject opposes their erasure and demands their blocking instead.
- (2) Requests for blocking shall specify the data to be blocked. A data subject who has requested and obtained the blocking of data shall be informed thereof by the data controller. He or she shall also be informed of the fact that data are to be unblocked at least 15 working days before they are unblocked.
- (3) The data controller shall take a decision within 15 working days of receiving a request for data to be blocked. If the request is accepted, it shall be acted upon within 30 working days and the data subject notified thereof. Should the request for blocking be rejected, the data controller shall have 15 working days within which to inform the data subject by means of a letter stating the grounds for the rejection.
- (4) In automated filing systems, blocking shall be ensured by technical means. The fact that personal data are blocked shall be indicated in the system in such a way as to make it clear that the data may not be used.
- (5) Personal data blocked pursuant to this Article shall, with the exception of their storage, only be processed for purposes of proof, or with the consent of the data subject or for the purpose of protecting the rights of third parties.

Data erasure

Art 13 ESMA's Implementing Rules states that:

The data subject shall have the right to obtain from the data controller the erasure of data if the processing thereof is unlawful.

- (2) Requests for erasure shall specify the data to be erased.
- (3) Where the data controller disputes that the processing is unlawful, he or she shall provide proof that it is lawful.
- (4) The data controller shall reply within 15 working days of receiving a request for erasure. If the request is accepted, it shall be acted upon immediately. If the data controller deems the request unjustified, he or she

shall have 15 working days within which to inform the data subject by means of a letter stating the grounds for the decision.

(5) Erasure entails the physical disappearance of the data without its being necessary to replace them by a code or by the creation of an alternative file containing the data erased. If erasure proves impossible for technical reasons, the data controller shall block the data immediately. The data subject shall be duly informed of this procedure.

(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):*

The procedure for a call for tender is a processing operation that:

- relates to suspected offences, offences, criminal convictions or security measures, and, therefore falls under Article 27.2(a) of the Regulation;
- intends to evaluate personal aspects relating to the data subject, and, therefore falls under Article 27.2(b) of the Regulation;
- processes data Processing operations for the purpose of excluding individuals from a right, benefit or contract, and, therefore falls under Article 27.2(d) of the Regulation.

17/ COMMENTS

PLACE AND DATE: PARIS, 18.10.2013

DATA PROTECTION OFFICER: STEPHAN KARAS

INSTITUTION OR BODY: ESMA