

*(To be filled out in the EDPS' office)*

**REGISTER NUMBER: 1212**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 17/12/2013**

**CASE NUMBER: 2013-1408**

**INSTITUTION: EUROPEAN CENTRAL BANK**

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

**INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

European Central Bank (ECB)

Kaiserstrasse 29

60311 Frankfurt am Main

Germany

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

The Central Procurement Office in the Accounting and Procurement Division in the Directorate General Administration as well as business units leading the procurement process.

Contact Person:

Juan Prieto Fernández (Head of the Central Procurement Office)

3/ NAME OF THE PROCESSING

Public procurement

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

4/ PURPOSE OR PURPOSES OF THE PROCESSING

Management and administration of the various procurement procedures carried out by the ECB pursuant to the ECB Decision of 3 July 2007 (ECB/2007/5) laying down the Rules on Procurement and as amended by three Decisions<sup>3</sup> (see **Annex 2 to the Cover Letter**).

The scope of the present prior check is limited to the processing of personal data within the above mentioned procurement procedures and does not relate to the execution of the contracts signed with the selected tenderers.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are natural persons/individual economic operators participating in the tender procedures, (legal) representatives of tenderers, their staff and subcontractors that submit a tender/proposal.

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

The data processed by the ECB may include the following<sup>4</sup>:

**Data relating to tenderers (legal persons or natural persons/individual economic operators):**

- (a) Identification (name -first name, family name- and function) of the authorised representative;
- (b) Contact details (e-mail address, phone number, fax number, postal address and internet address), including those relating to the authorised representative;
- (c) VAT number;
- (d) Official certificate proving that the tenderer has paid its social security contributions;
- (e) Extract from the judicial record;
- (f) Evidence of the professional risk indemnity insurance and/or third party/civil liability insurance;
- (g) Data contained in the documents proving the economic/financial and technical/professional capacity of the tenderer, including the statement of the annual overall turnover during the last three years;
- (h) Documents attesting professional standing (e.g. enrolment/permit in professional registers curriculum vitae, copies of degrees and certificates);
- (i) Copy of quality assurance accreditation;
- (j) Reference contracts that the tenderer has performed during the past years proving its experience, including the identification and contact data for the reference person;
- (k) Declaration of honour that the tenderer is meeting the eligibility criteria set out in Article 24 of the Decision ECB/2007/5 (as amended);
- (l) CVs relating to a project team to be deployed if requested by the ECB;

<sup>3</sup> OJ L 184, 14.7.2007, p. 34 as amended by Decision ECB/2009/2 (OJ L 51, 24.2.2009, p. 10), Decision ECB/2010/8 (OJ L 238, 9.9.2010, p. 14) and Decision ECB/2012/10 (OJ L 178, 10.7.2012, p. 14).

<sup>4</sup> See **Appendix 1** Tender Submission Form, **Appendix 3** Call for applications template

- (m) Other data contained in the CVs (expertise, technical skills, educational background languages, professional experience including details on current and past employment).

**Data relating to staff members of tenderers participating in the procurement procedures:**

- (a) For more details see the listed items under the first indent of this section.

**Data relating to the tenderer's subcontractors and temporary groupings:**

- (a) For more details see the listed items under the first indent of this section.
- (b) Signed declaration of the subcontractor confirming that the tenderer will have at its disposal the subcontractor's resources and that the subcontractor agrees to perform parts of the Contract assigned to it should the Contract be awarded to the tenderer.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

The provision of information pursuant to Article 11 and 12 of the Data Protection Regulation (such as identity of controller, purpose, categories of the data, recipients of the data, existence of the right of access and the right to rectify the data, legal basis of the processing operation) is provided to the tenderers through various means regardless of the procurement procedure that is followed in order to award the contract..

The above information has been included in the relevant templates that are provided to the suppliers in order to ask them for a tender/proposal, as well as in the contract templates. These templates inform the data subjects that the ECB shall process personal data received in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council 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 (OJ L 8, 12.1.2001, p. 1) and with Decision ECB/2007/1 of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank (OJ L 116, 4.5.2007, p. 64). Moreover, said templates mention that the ECB shall use such personal data solely for the purpose of managing the Contract and maintaining a database of suppliers. Within these limits, the ECB may transfer the personal data to third parties supporting the ECB in the management of the Contract including external contractors, national central banks and other partner organisations, without prejudice to possible transmission to internal audit services, the Court of Auditors and/or the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the EU. The data subjects are also informed that they may request access to their personal data and request the rectification of any data that is inaccurate or incomplete. Data subjects are also informed that they can address the ECB for all queries relating to such data, and that they have the right of recourse to the European Data Protection Supervisor. See Supplementary rules for procurement procedures carried out in accordance with Article 29 of Decision ECB/2007/5 laying down the rules on procurement (**Appendix 2**), Call for Applications template (**Appendix 3**), Invitation-to-tender template (**Appendix 4**) and the ECB contractual clause on data protection (**Appendix 5**).

Given that information is provided in different sources, a detailed privacy statement explanatory document is under preparation summarising the information required. This document will be posted on the portal of the new e-procurement system (see **Appendix 6**).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

Article 9 of the ECB Decision of 17 April 2007 adopting implementing rules concerning data protection at the ECB (ECB/2007/1) applies:

*“1. Further to their right to be appropriately informed about any processing of their personal data, data subjects may approach the relevant controller to exercise their rights pursuant to Articles 13 to 19 of Regulation (EC) No 45/2001, as specified below.*

*(a) These rights may only be exercised by the data subject or their duly authorised representative. Such persons may exercise any of these rights free of charge.*

*(b) Requests to exercise these rights shall be addressed in writing to the relevant controller. The controller shall only grant the request if the requester’s identity and, if relevant, their entitlement to represent the data subject have been appropriately verified. The controller shall without delay inform the data subject in writing of whether or not the request has been accepted. If the request has been rejected, the controller shall include the grounds for the rejection.*

*(c) The controller shall, at any time within three calendar months of receipt of the request, grant access pursuant to Article 13 of Regulation (EC) No 45/2001 by enabling the data subject to consult these data on-site or to receive a copy thereof, according to the applicant’s preference.*

*(d) Data subjects may contact the DPO in the event that the controller does not respect either of the time limits in paragraphs (b) or (c). In the event of obvious abuse by a data subject in exercising their rights, the controller may refer the data subject to the DPO. If the case is referred to the DPO, the DPO will decide on the merits of the request and the appropriate follow-up. In the event of disagreement between the data subject and the controller, both parties shall have the right to consult the DPO.”*

In addition, in the new e-procurement system, tenderers will maintain their personal data directly in the system. When a procurement opportunity arises, either via a Contract Notice in the Official Journal or via a request for proposal, the tenderer will submit his/her request via the procurement system and can trace the status of his/her proposal. Should the bidders want to rectify their data, this can be done by themselves in the system, subject to some limitations to the freedom to rectify data. In particular personal data cannot be changed after the submission deadline of the procurement opportunity where this would hamper fair

competition amongst tenderers by altering the terms of the application/tender. Tenderers may request the ECB to rectify the personal data with due regard to the above-mentioned limitations.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The data is processed by both manual (such as the evaluation of the data) and automatic means. It is envisaged that from April 2014 onwards, all information and documents are processed in the new e-procurement system that supports the procurement process and in the electronic document and records management system of the ECB.

10/ STORAGE MEDIA OF DATA

Until the deployment of the new e-procurement system, envisaged for April 2014, the documents submitted by the tenderers consist of hard copies (i.e. paper files) and electronic files. The hard copies are held in a secure and lockable filing cabinet in the responsible procuring business area or at the Central Procurement Office. Documentation relating to the on-going procurement procedure is saved in the electronic document and records management system. Upon conclusion of the procedure the hard-copies are transferred to the archives and the digital procurement folder is stored in the electronic document and records management system. Both the hard-copies and electronic documents are destroyed following the end of the retention period.

Upon the deployment of the new e-procurement system, the data will be stored in the electronic document and records management system and the e-procurement system and will be deleted at the end of the applicable retention period (see Section 13).

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Article 11.6 of the Statute of the European System of Central Banks and of the European Central Bank (**Appendix 7**).

Decision of the European Central Bank laying down the Rules on Procurement, Decision ECB/2007/5 of 3 July 2007 laying down the Rules on Procurement (OJ L 184, 14.7.2007) as amended (**Annex 2 to the Cover Letter**).

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

The main individuals involved in the procurement process are:

- ECB staff participating in the procedure such as representatives from the Central Procurement Office, representatives from the Directorate General Legal Services in their supporting role and representatives from the procuring business area;

- Members of the ECB's Procurement Review Body as set out in Article 33 of the ECB Procurement Decision (ECB/2007/5);
- Members of national central banks participating in the tender;
- Natural persons, companies and their staff that support the ECB during the procurement processes (i.e. external contractors / consultants);
- Members of the public: in case the tenderer is awarded a contract by the ECB, personal data (name, address, amount of award) may be made public, in accordance with Article 28 and 30 of the Decision of the European Central Bank laying down the Rules on Procurement;
- EU institutions and bodies tasked with the control and monitoring of the application of Union law (such as EU Commission, OLAF, European Ombudsman, Union judicature);
- Any individual participating in a procurement procedure led by a Procurement Committee must sign a declaration of potential conflict of interest and compliance with anti-fraud/corruption and data protection requirements in the context of procurements (**Appendix 8**)<sup>5</sup>;
- External contractors / consultants who have access to particularly sensitive information further need to sign a solemn declaration to comply with the confidentiality and data protection obligations as well as the relevant ethical standards (**Appendices 9 to 11**). Such declaration is in addition to the confidentiality and data protection clauses already contained in the contract entered into with the ECB.
- In accordance with the ECB Procurement Framework, the ECB may also conduct procurements on behalf of international organisations. However, to date this has never happened and the likelihood that this happens in the future is narrow. Should this be the case, the ECB shall consult the EDPS in relation to data transfer in accordance with Article 9 of the Data Protection Regulation.

### 13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

To date, the ECB Retention Plan as adopted by the Executive Board applies a retention period of 10 years after the contract signature in relation to the procurement file containing personal data.

For the future, the ECB envisages to apply the following retention regime in relation to the procurement file containing personal data:

- five years for unsuccessful and successful tenderers following the completion of the procurement process (signing of the contract, award or appeal decision, whichever is later);
- one year for extracts from judicial records for procurement purposes; and

<sup>5</sup> ECB staff members are obliged to exercise their powers lawfully and expected to act in accordance with high ethical standards, in particular with regard to integrity, impartiality, confidentiality, professional secrecy, potential conflicts of interest, etc. These ethical standards are laid down in the ECB's Conditions of Employment, and all texts implementing them, the Staff Rules (under the Chapter Ethical Framework) and the Business Practice Handbook.

The above mentioned declaration is in addition to such provisions and provides for further details. Furthermore, the declaration has to be signed by any individual, i.e. including external contractors/consultants, participating in a procurement procedure led by a Procurement Committee.

- in case of a legal challenge, the above periods shall be extended until two years after completion of all relevant proceedings.

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

No specific time limits apply to the blocking or erasure of data on justified legitimate requests from the data subjects.

*(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.*

At this juncture, it is not foreseen to use data for historical purposes.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Only in cases the ECB participates in procurement procedures in collaboration with other national central banks and/or Community institutions and bodies. The data is transferred on a need to know basis<sup>6</sup>.

In accordance with the ECB Procurement Framework, the ECB may also conduct procurements on behalf of international organisations. However, to date this has never happened and the likelihood that this happens in the future is narrow. Should this be the case, the ECB shall consult the EDPS in relation to data transfer in accordance with Article 9 of the Data Protection Regulation.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING *(Please describe):*

AS FORESEEN IN:

ġ Article 27.2.(a)

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

Tenderers are requested to provide information on whether they comply with the eligibility criteria as defined in Art. 24 of the Decision laying down the Rules on Procurement as defined in (11).

ġ Article 27.2.(b)

*Processing operations intended to evaluate personal aspects relating to the data subject,*

Tenderers are requested to provide information on how they fulfil the selection and award criteria as defined in Art. 25 and 26 of the Decision laying down the Rules on Procurement as defined in (11).

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<sup>6</sup> Concerning international organisations see comments put forward in section 12.

17/ COMMENTS

PLACE AND DATE: FRANKFURT AM MAIN

DATA PROTECTION OFFICER: FREDERIK MALFRERE

INSTITUTION OR BODY: EUROPEAN CENTRAL BANK