

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1287

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 01/12/2014

CASE NUMBER: 2014-1110

INSTITUTION: EUROPEAN INVESTMENT BANK

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

The Fraud Investigations Division (IG/IN), which is part of the Inspectorate General (IG) of the EIB
BANQUE EUROPÉENNE D'INVESTISSEMENT
100 BOULEVARD KONRAD ADENAUER
L-2950 LUXEMBOURG

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

For the decision-making process (Exclusion proceeding or negotiated settlement):

1. The Fraud Investigations Division (IG/IN)
2. The Inspector General of the EIB
3. The Exclusion Committee of the EIB, which is the committee having the task of making recommendations to the EIB's Management Committee in respect of the subject's culpability and, where culpability is established, exclusion decisions. The Exclusion Committee will consist of five members including a senior member of the EIB who will preside over the deliberations of the members. Two of the other four members of the Exclusion Committee will be EIB employees and two will be external members.
4. The Management Committee of the EIB.

For the implementation of the exclusion decisions:

Authorised EIB staff members who need access to the data for the proper exercise of their task (including but not limited to loan officers, engineers, procurement officers etc...).

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

3/ NAME OF THE PROCESSING

EIB's Exclusion Procedures

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The main purpose of the process is to protect the financial interests and the reputation of EIB (and, consequently, of the EU) by:

- (i) managing a decision-making process on an exclusion proceeding by the EIB of organisations, firms, individuals or other entities which have been found to have engaged in Prohibited Conduct (fraud, corruption etc.) as defined in EIB's Exclusion Procedures. It is foreseen that EIB's exclusion proceeding will generally target entities and only a small proportion may involve individuals found to have engaged in Prohibited Conduct. This process may be replaced by negotiation with the party(ies) involved in order to reach a Settlement Agreement (refer to section 26. of the attached Exclusion Procedures);
- (ii) implementing the exclusion decisions or settlement arising from the above-mentioned process. Exclusion means that excluded entity (which may in limited cases include data subjects) is declared ineligible for a stated period to be awarded a contract under any EIB project or to enter into any relationship with the Bank (see attached Exclusion Procedures and the related internal implementing guidelines). For this purpose, the exclusion decisions will be stored in the Commission's Central Exclusion Database (The processing of data in the context of the Central Exclusion Database has been notified by the European Commission on 21/10/2009 – Ref. 2009-681).

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

For the decision-making process:

- Individuals (e.g. consultant, agent) designated as a party in an EIB exclusion proceeding or negotiated settlement (but as described in 4/ above, most of the cases are foreseen only to involve corporate entities);
- Individuals who manage or control an entity (e.g. promoter, borrower, beneficiaries, contractor, supplier, consultant, tenderers for EIB projects) designated as a party in an EIB exclusion proceeding or negotiated settlement;

For implementation of the exclusion decisions:

- Individuals excluded in accordance with the applicable provisions (attached Exclusion Procedures) and registered in the Commission's Central Exclusion Database

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

(including, if applicable, special categories of data (Article 10) and/or origin of data)

Regarding the decision making process:

- Identification data of the subject (generally provided by EIB projects' promoters, borrowers and other interested parties themselves);
- Allegations, summary of facts and evidence related to the prohibited conduct(s) involving the subject – Please note that such information and evidence are collected by IG/IN's in accordance with EDPS opinion of 14 October 2010 on procedures related to fraud investigation in the EIB Group (Ref. C 2009-0459);
- Recommendation of the EIB Exclusion Committee;

- Conditions and terms of a settlement agreement in case of negotiation; and
- Decision of the EIB's Management Committee in connection with an exclusion proceeding.

Regarding implementation of the exclusion decisions:

- Name and address of the individual;
- Ground of exclusion (pursuant to Schedule 1 of the Exclusion Procedures, also art. 106 1(c) and (e) of the Financial Regulation No 966/2012 (Financial Regulation));
- End date of the exclusion ;
- Person of contact at EIB.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

1. Prior information given to borrowers, contractors and other interested parties on the EIB's Exclusion Procedures, the EIB's Anti-Fraud Policy, the EIB's Guide to Procurement and the privacy statement for the Exclusion Procedures on the EIB's website;
2. In accordance with the provisions of the EIB's Exclusion Procedures, the subject of an exclusion proceeding shall be:
 - (i) notified of the beginning of an exclusion proceeding by the EIB;
 - (ii) advised that it may contest the allegations and/or the recommended exclusion;
 - (iii) stated the procedure by which it may respond to the allegation and/or recommended exclusion;
 - (iv) invited to a hearing, should the Exclusion Committee decide to hold a hearing;
 - (v) provided with copies of all written submissions and evidence, records of any related proceedings and any other materials received or issued by the Exclusion Committee relating to the proceedings;
 - (vi) notified of the exclusion decision of the EIB.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

For the decision-making process:

The data subject involved in an exclusion proceeding shall have access to their own data, and the right to rectify it without delay or blocking or erasure it, under the terms of articles 13, 14 15, 16 and 17 of regulation 45/2001, as interpreted by the EDPS's Guidelines on the Rights of Individuals with regard to the Processing of Personal Data of 25/02/2014. Notably data subject can have access to the relevant information (refer to section 7. above) and will have the possibility to submit to the Exclusion Committee written responses and material evidence to contest the allegations and recommended exclusion decision, in accordance with the relevant provisions of the attached Exclusion Procedures.

For the implementation of exclusion decision:

Access rights in accordance with the rules applicable to the Central Exclusion Database (notification 2009-681).

Restrictions on these rights shall respect article 20 of Regulation 45/2001: the application of articles 13 to 17 can be restricted provided some conditions are met and information to data subject can be deferred as long as it would deprive the restriction of its effect.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

For the decision-making process:

The information and data relevant for an exclusion proceeding or negotiated settlement are processed on the basis of standard forms, i.e. Notice of Early Temporary Suspension, Notice of Exclusion Proceedings, Notice of Recommendation of the Exclusion Committee, the Notice of Decision of the Management Committee or Settlement Agreement, as the case may be. Refer to the attached Exclusion Procedures for more information on the content of these standard documents. These documents will be stored electronically in the EIB's documents management system (GED) in a secured section and will only be accessed by the dedicated team of the Fraud Investigations Division and the Legal Service of the EIB, the Exclusion Committee and the Management Committee. Circulation of paper files will be made in closed envelope marked as confidential to duly authorised officers only. Paper files are afterwards archived in specific locked archives.

Similar protection of data as for IG/IN investigations will apply - Refer to notification C2009-0459 regarding IG/IN investigations.

For the implementation of exclusion decision:

Manual access to the Central Exclusion Database and automated checks of the Bank's databases.

10/ STORAGE MEDIA OF DATA

Regarding the decision-making process:

Electronic files will be stored in a restricted section of GED as explained under point 9/. Paper files are stored in specific locked archives.

Regarding the implementation of exclusion decisions:

EIB's exclusion decisions will be registered in the Central Exclusion Database (notification 2009-681).

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Regarding the decision-making process:

1. Article 325 TFEU
2. Article 18 of the EIB Statute
3. Adoption by the EIB Management Committee of the EIB's Exclusion Procedures in April 2011 and adoption by Board of Directors of the related Guiding Principles in September 2011 (both attached to this notification)
4. Adoption by Board of Directors of the EIB's Anti-Fraud Policy in September 2013 (<http://www.eib.org/about/publications/anti-fraud-policy.htm>)
5. EIB's Guide to Procurement (<http://www.eib.org/projects/publications/guide-to-procurement.htm>)

These Regulations have been elaborated under the umbrella of the Bank's Statute (<http://www.eib.org/about/publications/statute.htm>) and are subject to approval by the EIB competent management bodies.

Regarding the implementation of exclusion decisions:

- See above

- Registration in the Central Exclusion Database pursuant to Articles 106(1)(c) and 108(3) of the Financial Regulation

Being responsible for the proper functioning of the CED, the Commission has agreed in a written exchange with EIB that Arts 106 and 108 of the Financial Regulation provide a minimum standard and that EIB can feed the CED with all its exclusion decision. This would expand the range of cases using EU funds to all EIB cases, including cases involving EIB own resources. As such, it fully complies with the spirit and the stated objective of the Financial Regulation and Regulation No 1302/2008 on the Central Exclusion Database, to ensure sound and effective protection of the Union's financial interests which also include EIB's own resources (cf. recital 36 of the FR). In particular, as regards Article 106(1)(c), non-inclusion of all EIB exclusions into the CED could undermine the efficient application of this provision which requires the exclusion of candidates and tenderers on grounds of grave professional misconduct, proven *i.a.* on the basis of decisions of the EIB.

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

The application of the EIB's Exclusion Procedures is done with strict confidentiality and limited circulation.

For the decision-making process:

- (i) the Inspector General and the staff of the Fraud Investigations Division which operate in accordance with EDPS opinion of 14 October 2010 on procedures related to fraud investigation in the EIB Group (Ref. C 2009-0459) ;
- (ii) the members and secretariat of the Exclusion Committee;
- (iii) the members and secretariat of the Management Committee; and
- (iv) the Legal Service and on a "need-to-know" basis, senior management and officers whose project(s) are concerned by an exclusion proceeding or decision.

For the implementation of exclusion decisions:

IG/IN is the EIB's liaison point for access to the Central Exclusion Database. Access to the Central Exclusion Database will only be given for consultation to authorised staff members of EIB, who need access to the data for the proper exercise of their task, and in accordance with the rules of the Central Exclusion Database. In addition, it is reminded that only the liaison point has access to the full list of exclusion warnings in the CED, other authorised users only have the possibility to run blind checks.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

For the decision-making process:

Paper and electronic files pertaining to an exclusion proceeding or negotiated settlement will be destroyed / deleted 10 years after the close of an exclusion case, which corresponds to:

- (i) the end of an exclusion period and consequently the compliance of the data subject with the Bank's conditions, if any ; or
- (ii) the compliance of the individual/entity with the terms and conditions of the agreement in case of negotiated settlement.

Note that this retention policy is consistent with and based on the retention rules applicable for EIB's fraud investigations - EDPS opinion of 14 October 2010 on procedures related to fraud investigation in the EIB Group (Ref. C 2009-0459). It is also consistent with the period of retention currently used by OLAF.

For the implementation of exclusion decisions:

Retention policy applicable to the Central Exclusion Database will apply (notification 2009-681).

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)

For the decision-making process:

15 days

For the implementation of exclusion decisions:

Time limits applicable to the Central Exclusion Database will apply.

15 days

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)

For the decision-making process:

n.a.

For the implementation of exclusion decisions:

Procedures applicable to the Central Exclusion Database (notification 2009-681) will apply.

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

Regarding the decision-making process:

As envisaged in the Anti-Fraud Policy, the EIB may, in full respect of Regulation N°45/2001 and EDPS Guidelines on transfer to countries or organizations not submit to Directive 96/45, refer a case to (i) the appropriate national and/or EU authorities for further investigation and/or criminal prosecution where criminal conduct is suspected, (ii) another concerned international or multinational organisation or body, including another development bank who may have an interest in the project, or (iii) an agency of a State. – Refer to Section “X. Disclosure” of the attached Exclusion Procedures.

For the implementation of exclusion decisions:

Rules applicable to the Central Exclusion Database will apply (notification 2009-681).

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)

Other (general concept in Article 27.1)

17/ COMMENTS

Annexed documents include:

1. EIB's Exclusion Procedures and Guiding Principles which explain the decision-making process leading to an exclusion decision or a negotiated settlement; and
2. Draft Implementing Guidelines for EIB's Exclusion Procedures: it explains the impact of future exclusion decisions on EIB's activities and ways to implement those decisions across the portfolios of EIB projects and contracts through the Central Exclusion Database.
3. Privacy Statement for the EIB's Exclusion Procedures (to be published on the EIB's website).

PLACE AND DATE: LUXEMBOURG, 01/12/2014

DATA PROTECTION OFFICER: ALBERTO SOUTO DE MIRANDA

INSTITUTION OR BODY: EUROPEAN INVESTMENT BANK