



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

# EDPS SUPERVISORY OPINION ON RETENTION PERIODS OF PERSONAL DATA REGARDING MARIE SKŁODOWSKA-CURIE ACTIONS CANDIDATES AND FUNDED RESEARCHERS

## (Case 2023-0096)

### 1. INTRODUCTION

1. This Supervisory Opinion relates to the retention periods of personal data put in place by the European Research Executive Agency (REA), regarding Marie Skłodowska-Curie Actions (MSCA) candidates/ funded researchers, for historical and scientific research and statistical purposes, as well as for the purposes of detection of plagiarism and any other scientific misconduct.
2. The European Data Protection Supervisor ('EDPS') issues this Supervisory Opinion in accordance with Article 58(3)(c) of Regulation (EU) 2018/1725<sup>1</sup> ('the Regulation').

### 2. FACTS

#### 2.1. Personal data collected by REA under MSCA

3. According to REA's consultation, in the context of the management of the MSCA calls for proposals and grant implementation, REA processes significant amounts of data, including the personal data of individual researchers and their supervisors, host

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ, L 295, 21.11.2018, pp. 39-98.

institution (applicant legal entity) representatives, and of independent experts involved in the evaluation of the research proposals.

4. According to the documentation provided by REA<sup>2</sup>, the following personal data is processed concerning research fellows, recruited researchers and seconded staff members within the scope of MSCA calls for proposals:
  - Identification and contact data: family name, birth family name, first name, title, gender, location of origin, date of birth, nationality, address(es), phone number(s), e-mail, fax number(s);
  - Data relating to education: university degree and date of award, doctorate expected before the deadline and expected date of award, doctorate and date of award, full time postgraduate research experience and number of months, other academic qualifications and date of award, data concerning employment period within the funded project (start and end dates);
  - Other personal data: places of residence during the previous five years;
  - Eligibility related data for Marie Skłodowska-Curie integration actions;
  - Picture/photo (not mandatory, if provided by the fellow).
  - Further health-related documentation, when needed in the context of MSCA Special Needs Lump Sum.

## 2.2. Current state of play of data retention periods concerning MSCA

5. According to the information provided, the initial purpose for which REA processes the above personal data is to manage the funded projects and the evaluation of proposals submitted for funding under MSCA.
6. In a request for additional information, the EDPS asked REA to clarify which retention periods it currently applies. REA explained that it applies the retention periods defined by the European Commission for the research grants<sup>3</sup>, as described

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<sup>2</sup> [Privacy Statement](#) 'Grant management and registration/validation of participants', page 4.

<sup>3</sup> Commission Common Retention List at lines 7.1.3 on Management of operational grant agreements/decisions and contracts and 7.1.2 on Operational grant and procurement procedures.

in REA's Privacy Statement on 'Grant management and registration/validation of participants'<sup>4</sup> ('Privacy Statement'), as follows:

- For **beneficiaries receiving EU funding**, personal data is retained for **10 years after the end of the year following closure of the action**.<sup>5</sup> Pursuant to Article 4(1)(e) of the Regulation, and subject to the implementation of appropriate safeguards in accordance with Article 13 of the Regulation, REA may retain limited categories of personal data of beneficiaries **for scientific research and/or statistical purposes for up to 25 years**, unless they exercise their right to object under Article 23 of the Regulation;
- For **unsuccessful applicants**, personal data are retained for up to **5 years after the closure of the call for which the data have been collected or updated**. For calls with multiple cut-off dates, personal data are retained for up to 5 years after the date of the cut-off following the submission of the proposal. Pursuant to Article 4(1)(e) of the Regulation, and subject to the implementation of appropriate safeguards in accordance with Article 13, REA may retain limited categories of personal data of unsuccessful applicants **for scientific research and/or statistical purposes for up to 25 years**, unless data subjects exercise their right to object under Article 23 of the Regulation.

### 2.3. Personal data of the MSCA researchers that REA wishes to store for longer periods

7. Based on the information provided by REA<sup>6</sup>, the EDPS understands that REA's request concerns the personal data of researchers, including the fellow candidates/funded researchers and their scientific supervisors involved in the project/action ('the MSCA researchers').
8. Based also on the information provided<sup>7</sup>, the EDPS understands that REA wishes to store the following personal data of the MSCA researchers for longer periods than those defined in the Common Retention List, as follows:
  - For **statistical and scientific** research purposes and for **historical** research purposes: **identification data** which includes family name, birth family name, first

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<sup>4</sup> [Privacy Statement](#) 'Grant management and registration/validation of participants', page 5-6.

<sup>5</sup> According to information provided by REA in response to an EDPS request for additional information, 'closure of the action is referring to the closure of the action in the IT grant management system (a central IT tool used to manage and store all the data).

<sup>6</sup> Follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 1.

<sup>7</sup> *Ibid*, page 3.

name, title, gender, location of origin, date of birth, nationality, as well as **data relating to education** which includes university degree and date of award, doctorate expected before the deadline and expected date of award, doctorate and date of award, full time postgraduate research experience and number of months, other academic qualifications and date of award, data concerning employment period within the funded project (e.g. start and end dates);

– For the purposes of **detection of plagiarism** and other scientific misconduct: the allegations<sup>8</sup>, the identity of the researcher allegedly involved in possible scientific misconduct, as well as additional data, such as their professional path, publications, the entire proposal or other data related to the allegations.

9. In the case of the above-mentioned personal data, REA instead wishes to apply the following retention periods<sup>9</sup> (with the **starting dates**<sup>10</sup> specified in its Privacy Statement<sup>11</sup>):

– For **historical research purposes: indefinitely.**

– For **statistical and scientific research purposes: 35 years in total.**

– For **detection of plagiarism and other scientific misconduct: 15 years in total.**

## 3. LEGAL ANALYSIS AND RECOMMENDATIONS

### 3.1. Applicability of the Regulation

10. According to Article 2(1), the Regulation applies to the processing of personal data by all Union institutions and bodies, including REA.

11. According to Article 3(1) of the Regulation, ‘personal data’ means any information relating to an identified or identifiable natural person. As such, the data listed above in paragraph 8 of this Opinion, constitute personal data, within the meaning of Article 3(1) of the Regulation.

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<sup>8</sup> According to section 4.4. of REA’s consultation request, the allegation itself is treated as personal data in its entirety.

<sup>9</sup> REA consultation request to the EDPS, pp. 7-8.

<sup>10</sup> See paragraph 6 of the present Opinion.

<sup>11</sup> Follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 6.

12. According to Article 3(3) of the Regulation, ‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. REA’s operation of storing the above mentioned personal data constitutes processing within the meaning of Article 3(1) of the Regulation, in respect of which REA is the controller, within the meaning of Article 3(8) of the Regulation.

## **3.2. Further processing for the purpose of detecting plagiarism and any other scientific misconduct**

### **3.2.1. Processing for another compatible purpose - Article 6 of the Regulation**

13. According to Recital 25 of the Regulation, the processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. Said otherwise, the use of the collected data for compatible purposes is allowed on the grounds of the initial legal basis.

14. According to Article 6 of the Regulation, where processing for a purpose other than that for which the personal data have been collected is not based on the data subject’s consent or Union law, the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which personal data are initially collected, take into account, inter alia:

(a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;

(b) the context in which the personal data have been collected, in particular regarding the relationship between the data subjects and the controller;

(c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 10, or whether personal data related to a criminal convictions and offences are processed, pursuant to Article 11;

(d) the possible consequences of the intended further processing for data subjects;

(e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

15. According to Opinion 203 of the Working Party 29 (WP29)<sup>12</sup>, the nature of the assessment to be carried out by the data controller is decisive. In brief terms, it can take two forms. The compatibility test could be formal or substantive:

-A 'formal assessment' will compare the purposes that were initially provided, usually in writing, by the data controller with any further uses to find out whether these use cases were covered (explicitly or implicitly).

-A 'substantive assessment' will go beyond formal statements to identify both the new and the original purpose, taking into account the way they are (or should be) understood, depending on the context and other factors.

16. REA has carried out a 'substantive assessment', in which it has provided an analysis of each purpose, including an assessment of the impact on the data subjects. Based on its analysis, REA concludes that the purpose of this specific further processing seems compatible with the initial purpose of evaluation of proposals and grant management, as it aims at eliminating potential forms of plagiarism and other scientific misconduct in view of ensuring the quality of proposals financed by REA and ultimately protecting the public interest.<sup>13</sup> Moreover, in relation to the impact on the data subject, REA considers that 'the parties involved in the possible scientific misconduct shall not suffer any prejudicial effect or damage, especially if the allegation turns out not to be true. There would be an assessment among a restricted number of authorised agents and adequate secure treatment of any information provided. Any actions which would undermine the privacy and integrity of the individual (e.g. professional reputation and reliability) are therefore to be avoided. Moreover, data subjects are to be informed about a case that related to them and regularly updated on the important steps in the proceedings.'<sup>14</sup>

### 3.2.2. Appropriate safeguards - Article 6 (e) of the Regulation

17. Article 6 (e) of the Regulation states that the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data was initially collected, also take into account, the existence of **appropriate safeguards**.

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<sup>12</sup> Article 29 Working Party, Opinion 03/2013 on purpose limitation, p.21.

<sup>13</sup> REA's consultation request, Section 4.4.

<sup>14</sup> *Ibid*, Section 5.

18. According to REA, data related to the detection of plagiarism and other scientific misconduct will not be processed for scientific/historical research purposes.<sup>15</sup> Moreover, safeguards will be developed and implemented by REA in liaison with the European Research Council Executive Agency (ERCEA) and the European Commission's Directorate-General for Digital Services (DG DIGIT). For the detection of plagiarism or other scientific misconducts, there will be appropriate specific access rights and controls following the 'need to know' principle. Data will be recorded in REA's advanced records system (ARES) with the appropriate confidentiality level ('sensitive non-classified') and with the relevant security marking ('sensitive'), depicted by the case number only and with restricted access to the REA staff members dealing with the allegations. Indeed, the security marking restricts the visibility of the document and is also recognizable by the yellow-colored banners on top of the document itself. The security marking can be used on its own or combined with additional features to define the audience that can access the documents. When used on its own, 'sensitive' is very restrictive as it gives only access to the document stakeholders (i.e. creator, sender(s), recipient(s) and the workflow actors which include those assigned and the e-Signatory). When combined with a distribution marking, it gives only access to the marking group members or with one or several service(s).<sup>16</sup>
19. According to the information provided by REA<sup>17</sup>, in light of the above and taking into account the purposes of the processing, REA considers that the requested extension of the retention period for the purposes of detection of plagiarism and other scientific misconduct is not likely to result in a high risk to the rights and freedoms of natural persons. For this reason, REA explained that it has not carried out a data protection impact assessment ('DPIA') under Article 39 of the Regulation, but that depending on the development of the technologies and the scale of the data processed, a DPIA will be conducted if deemed necessary.<sup>18</sup>
20. In light of the above, REA considers that the purpose of the further processing for the purposes of detection of plagiarism and other scientific misconduct seems **compatible** with the initial purpose of proposal evaluation and grant management.

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<sup>15</sup> REA's consultation request to the EDPS, p. 8.

<sup>16</sup> Follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 10.

<sup>17</sup>Ibid, page 11.

<sup>18</sup> Ibid.

### 3.2.3. Assessment of proposed retention period

21. According to REA's consultation, for the purposes of detection of plagiarism and other scientific misconduct, it wishes to extend the retention period to 15 years in total<sup>19</sup>, with the same starting dates applicable as those in the Common Retention List.<sup>20</sup>
22. In order to attain the proper follow up on allegations of scientific misconduct, a longer retention period is needed compared to those applicable to proposal evaluation and grant management information. Indeed, according to the information provided by REA<sup>21</sup>, a period of 15 years for processing personal data for all (funded and non-funded) applications is considered necessary in order for REA to be able to verify the originality of the documents (primarily PhD certificates for MSCA Individual Fellowships and MSCA Postdoctoral Fellowships) provided as part of the eligibility conditions for the MSCA grants. Another reason to keep this personal data (the proposals) for 15 years is to be able to carry out relevant verifications and checks for the detection of all cases of plagiarism and other scientific misconduct.
23. According to the information provided by REA, given that the information concerning a scientific field included in a proposal can be used and reused years later by other researchers, in a potential case of plagiarism, it is essential to check the identity of the researchers involved, to verify whether they are indeed the inventors/authors of the intellectual property, as they would claim. In these cases, REA would need to link the intellectual property rights owned/generated by the researcher with the content of other submitted proposals. Such intellectual property rights might have been generated prior to the project/action (pre-existing know how) or during the implementation of the project (results).
24. REA's overall aim with the extension of the retention period is to avoid that scientific misconduct jeopardizes the value of science and the reputation of scientists, as well as the bodies funding and hosting these researchers. Ultimately, the further processing of the personal data aims at protecting the public interest.<sup>22</sup> For these reasons, REA considers that 15 years is the most limited period it should apply for retaining personal data for the purposes of detection of plagiarism and other scientific misconduct.

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<sup>19</sup> Follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 7.

<sup>20</sup> See Section 2.3 of this Opinion and follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 6.

<sup>21</sup> REA's consultation request, p.7.

<sup>22</sup> REA's consultation request, page 7.



25. In view of the above elements, the **EDPS finds the proposed retention period of personal data for the purposes of detection of plagiarism and other scientific misconduct justified.**

### 3.3. Further processing for the purposes of scientific, historical research and statistical analysis

#### 3.3.1. Safeguards relating to further processing - Article 13 of the Regulation

26. Article 13 of the Regulation provides that processing for scientific or historical research purposes or statistical purposes, shall be subject to **appropriate safeguards** for the rights and freedoms of the data subject.
27. Those safeguards shall ensure that **technical and organizational measures** are in place in particular in order to ensure respect for the **principle of data minimization**, according to which personal data shall be limited to what is adequate, relevant and **necessary** in relation to the purposes for which they are processed. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

##### 3.3.1.1. Safeguards relating to further processing for statistical purposes

28. The Court of Justice of the European Union has ruled in its *Huber*<sup>23</sup> judgement that '[t]he storage and processing of personal data containing individualized personal information in a register [...] for statistical purposes cannot, on any basis, be considered to be necessary [...]'. As such, the EDPS welcomes the fact that REA will apply data minimization for statistical purposes.
29. Concerning the further processing of personal data for **statistical purposes**, REA has stated that it will apply data minimization by using standard IT tools in place at the European Commission's Directorate-General for Research and Innovation ('DG RTD'). The EDPS requested additional information from REA regarding the standard IT tools in place at DG RTD and, in particular, whether these tools allow for anonymisation. REA responded that they are in consultation with the European Commission's Directorate-General for Digital Services ('DG DIGIT') to align their

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<sup>23</sup> See CJUE judgment *Heinz Huber v. Bundesrepublik Deutschland*, C-524/06, ECLI:EU:C:2008:724, para. 68.

methods with IT tools in place at DG RTD.<sup>24</sup> In addition, REA has stated that it will promote **data minimization through pseudonymisation or using aggregate data, whenever possible without compromising its ability to provide statistical analysis.**<sup>25</sup>

30. The EDPS reminds REA that, in accordance with Article 13 of the Regulation, processing for statistical purposes shall be subject to appropriate safeguards. As such, where REA's statistical purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner. Fully anonymised personal data does not fall into the scope of the Regulation and is not subject to requirements under the Regulation. As such, the **EDPS recommends that REA apply anonymization where its statistical purposes can be achieved in this manner (Recommendation 1).** In this regard, the EDPS Guidelines on anonymisation<sup>26</sup> should be taken into consideration by REA.

### 3.3.1.2. Safeguards relating to further processing for historical and scientific research purposes

31. Concerning further processing for the **purposes of historical and scientific research**, REA has stated that it considers that detaching the person (individual researcher) from the rest of the information (the proposal, the evaluation reports) would impair its capacity to fulfil the historical and scientific research purposes and might make the rest of the data meaningless. However, REA has explained that it is nevertheless willing to **explore the possibility to apply pseudonymisation.**<sup>27</sup>

32. The EDPS understands the need to keep the data in their integrity and to identify the research subjects for the purposes of historical and scientific research; however, the EDPS reminds REA that, in accordance with Article 13 of the Regulation, processing for historical and scientific research purposes shall be subject to appropriate safeguards. Those safeguards should ensure that technical and organisational measures are in place to ensure the principle of data minimisation is respected. Those measures may include pseudonymisation provided that REA's historical and scientific purposes can be fulfilled in that manner. As such, **the EDPS recommends that REA indeed explore the possibility to apply pseudonymisation, where it's historical and scientific research purposes can be achieved in that manner (Recommendation 2).**

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<sup>24</sup> See Section 2.3 of this Opinion and follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 6.

<sup>25</sup> REA's consultation request, p.8.

<sup>26</sup> EDPS Guidelines on Anonymisation.

<sup>27</sup> REA's consultation request to the EDPS, p. 8.

### 3.3.2. Safeguards common to all of REA's further processing purposes

#### 3.3.1.3. Lawfulness, fairness and transparency - Article 4(1)(a) of the Regulation

33. According to the principle of lawfulness, fairness and transparency under Article 4(1)(a) of the Regulation, personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.
34. In this regard, the EDPS welcomes the fact that REA will clearly identify in the data protection notice the rights of the data subjects with regard to the use of their personal information for further processing for historical, statistical/scientific purposes or to detect plagiarism and scientific misconduct.<sup>28</sup> **The EDPS recommends that REA also include this information in the relevant records of processing activities, in accordance with Article 31 of the Regulation (Recommendation 3).**

#### 3.3.1.4. Purpose limitation - Article 4(1)(b) of the Regulation

35. According to the purpose limitation principle under Article 4(1)(b) of the Regulation, personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with the initial purposes for collection. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall in accordance with Article 13 of the Regulation not be considered to be incompatible with the initial purposes.
36. However, this presumption is not a general authorisation to further process data in all cases for historical, statistical or scientific purposes. Each case must be considered to on its own merits and circumstances.
37. In this regard, the EDPS welcomes the fact that REA has confirmed that each case will be considered on its own merit and that there will be no general authorisation to further process data in all cases for historical, statistical or scientific purposes. In addition, the EDPS welcomes the fact that REA intends to process the personal data exclusively for historical and statistical/scientific purposes and that no further decisions will be taken regarding any data subject using this data.

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<sup>28</sup> *Ibid.*

### 3.3.1.5. Data minimisation, integrity and confidentiality - Articles 4(1)(c) and (f) of the Regulation

38. According to the data minimisation principle under Article 4(1)(c) of the Regulation, personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.
39. Additionally, in accordance with the principle of integrity and confidentiality under Article 4(1)(f) of the Regulation, personal data shall be processed in a manner that ensures the appropriate security of the personal data, including protection against unauthorised processing.
40. In this regard, the EDPS welcomes the fact that REA will store personal data for the defined retention periods or until it is not deemed necessary anymore, under the strictest security measures possible and based on a 'need to know' basis.
41. The EDPS welcomes the fact that the necessity to retain personal data that was further processed will be periodically revised/reviewed at the beginning of every framework programme, or every time there is a change in the applicable legal framework with an impact on the way the personal data shall be handled by the Data Controller. In addition, a mid-term revision will also take place. The Data Controller will perform an analysis of the state of play of the access of the personal data retained and the actual use implemented. The analysis will also take into consideration the evolution of the applicable legal framework and the technical knowledge.<sup>29</sup> However, in this regard, the EDPS recommends that REA put in place a dedicated policy on the contemplated review procedure (**Recommendation 4**).

### 3.3.1.6. Storage limitation - Article 4(1)(e)

42. According to the information provided by REA, currently, any electronic information is usually stored in a database that resides on the servers of the European Commission, the operations of which are managed by DG DIGIT and abide by the European Commission's security decisions established by the Directorate of Security.<sup>30</sup> The EDPS requested further information on the servers of the European Commission and the related security decisions. In its response to the EDPS, REA clarified that the European Commission's communication and information systems which are owned, managed or operated by or on behalf of the European Commission are governed by two Decisions<sup>31</sup> and are required to respect certain IT security

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<sup>29</sup> REA's consultation request to the EDPS, p. 9.

<sup>30</sup> *Ibid*, p. 8.

<sup>31</sup> Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission (OJ L6, 11.1.2017, p.40) and Commission Decision of 13 December 2017 laying down implementing rules for Articles 3,5,7-12,14-15 of Decision 2017/46 on the security of communication and information systems in the Commission (C(2017)8841 final).

standards<sup>32</sup>. In addition, REA explained that, for the management of personal data related to MSCA applications and projects, specific information systems (EC Grants) are in place and owned by DG RTD, ERCEA and the European Commission's Directorate-General for Communications Networks, Content and Technology ('DG CNECT').<sup>33</sup> REA states that it is the responsibility of the respective owners of the information systems to comply with the above-mentioned Decisions and IT security standards.

43. In addition, according to the information provided by REA, the latter foresees a **specific database for further storing of the data**, as well as security measures for the storage of the data to minimise the risk of unauthorised accessing of the data. The EDPS requested further information on what is foreseen with respect to this specific database. REA replied that internal discussions with ERCEA, and that there will probably be a central database established by DG DIGIT.<sup>34</sup> The EDPS did not receive any additional information in this regard.
44. According to the information provided by REA<sup>35</sup>, the latter is also exploring the possibility of establishing a procedure for granting access to the above-mentioned specific database to third parties for very limited types of data and purposes (for instance, for statistical analysis and assessment of the MSCA program). The level of access, on a need-to-know basis, is still to be defined.
45. REA has also stated that at a later stage, it will assess the relevance of using this procedure to give restricted access to the research community and individual researchers for limited purposes. According to REA's consultation<sup>36</sup>, these third parties will be able to access and use the database by making a specific request to the data controller specifying the purpose for processing the data. The third-party user will be requested to sign a confidentiality agreement which will include minimum conditions for access to data, the obligations of the researcher and measures for the preserving of the confidentiality of data (preventing of copying database and providing exports of data). The EDPS did not receive any additional information in this regard.
46. In addition, the EDPS welcomes that if deemed necessary, depending on the development of the technologies and on the scale of the data processed, REA will conduct a data protection impact assessment ('DPIA'). When deciding whether a

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<sup>32</sup> See here the full list of IT security standards.

<sup>33</sup> Follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 9.

<sup>34</sup> REA's consultation request to the EDPS, p. 9.

<sup>35</sup> Follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023), page 10.

<sup>36</sup> REA's consultation request to the EDPS, p. 10.

DPIA should be conducted, REA should take into consideration the EDPS Decision on DPIA lists.<sup>37</sup>

47. In light of the above and given that REA is still at the stage of establishing and designing the system and the related procedures, the EDPS is not in a position to provide its views on whether the safeguards put in place are appropriate, however, the **EDPS recommends that that the new specific database and the third party access procedure that will be developed should at a minimum implement the safeguards developed by the European Commission referenced above, applicable to the initial processing of the information (Recommendation 5).**

### 3.3.3. Assessment of the proposed retention periods

48. According to REA, the justification for the extension of the retention periods is that in order to document the role the European Union has played in supporting the best talents who have made transformative scientific discoveries, it is essential to store and analyse the personal data processed under the actions for scientific, historical research, and statistical purposes. This will allow the European Union to develop in the future the most appropriate instruments to support excellence among individual researchers.<sup>38</sup>

#### 3.3.1.7. Assessment of the proposed retention period for historical research purposes

49. According to the information provided by REA, it wishes to extend the retention period of the personal data of MSCA researchers for the purposes of historical research indefinitely, applying the starting dates specified in its Privacy Statement.
50. Regarding the reasoning behind keeping the personal data **for historical research purposes indefinitely**, in its consultation, REA has stated that ‘historical research is crucial to assess how MSCA candidates or funded researchers behave, evolve, and influence future generations.’<sup>39</sup> According to the information provided by REA, it must analyse the effect of long term funding throughout the career of a researcher. Studying the long-term impact of MSCA funding schemes in the scientific community is a tool for REA to assist in defining new policies at EU level. In addition, according to REA, the latter must be in a position ‘to provide analysis of historical trends in science/funding and technology’ to detect, amongst other things, success rates, geographical and gender issues. Based on the information provided, REA deems

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<sup>37</sup> EDPS, *Decision of the EDPS of 16 July 2019 on DPIA lists issues under Article 39(4) and (5) of Regulation (EU) 2018/1725.*

<sup>38</sup> REA’s consultation request to the EDPS, p. 5.

<sup>39</sup> *Ibid.*

that it would be impossible to achieve the above without retaining the relevant personal data of MSCA researchers for a longer period.<sup>40</sup>

51. The EDPS acknowledges the importance of providing now and in the future the possibility to carry out research on the development and functioning of scientific programs. The EDPS also considers that indefinite retention periods can only be justified when the information, including personal data, have proven importance or because of their historical value. In addition, long-term retention periods require careful management of the data to ensure their integrity, accuracy, technical availability and the effective exercise of data subjects' rights.
52. Studying the long-term impact of MSCA funding schemes in the scientific community to assist REA in defining new policies at EU level and the need to provide analysis of historical trends in science/funding and technology' to detect, amongst other things, success rates, geographical and gender issues can justify, in view of the EDPS, long retention periods. However, research data may lose value over time or can be become obsolete and unlikely to be used in further research.
53. REA has indicated that it will periodically revise/review the need to retain personal data that was further processed at the beginning of every framework programme, or every time there is a change in the applicable legal framework with an impact on the way the personal data shall be handled by the data controller. In addition, a mid-term revision will also take place. As previously mentioned, the EDPS welcomes such initiatives and calls for the swift implementation of such measures, including the establishment of policies to that effect.
54. In light of the above, while agreeing on the need to set retention period which allows REA to proceed with the processing of personal data for historical research purposes, the EDPS **recommends that REA establish a policy setting a specific, longer but not indefinite retention period, combined with regular reviews aiming at ensuring that only personal data which retain historical value are preserved, provided that the appropriate safeguards are implemented taking into account the EDPS' recommendations (2 to 4) (Recommendation 6).**

#### 3.3.1.8. Assessment of the proposed retention period for scientific research and statistical purposes

55. According to the information provided by REA, it wishes to extend the retention period of the personal data of MSCA researchers for the purposes of statistics and scientific research to 35 years in total, applying the starting dates specified in its Privacy Statement.

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<sup>40</sup> REA's consultation request to the EDPS, p. 5-6.

56. Regarding the extension of the retention period for **scientific research purposes to 35 years in total**, REA puts forward the reasoning that it is necessary ‘to preserve the records on the mechanisms of science for current and future scientists. It is also necessary to ensure the scientific legacy of the proposals funded by REA, and ultimately, to protect the public interest.’<sup>41</sup> In this regard, REA explains that it is not always possible to define upfront all the reasons to retain the personal data for purposes of scientific research because a scientific researcher may not know the scope of his/her research until after the data is further processed.<sup>42</sup> As such, it is necessary to keep the personal data for a longer period. In this regard, REA asserts that 35 years in total is the minimum time it would require to achieve the above described purposes.
57. Regarding the extension of the retention period for **statistical purposes to 35 years in total**, according to REA, it needs to retain the personal data to be able to offer a quantitative understanding of the interactions among MSCA researchers across diverse geographic and temporal scales.<sup>43</sup> Hence, data analysis is crucial to guide and improve REA programme operations. Indeed, according to the information provided by REA<sup>44</sup>, the latter needs to retain the submitted proposals for a longer period to be able to retrieve statistics on successful and unsuccessful applications (e.g. in relation to gender and nationalities or concerning areas of research which are more successful in terms of participation), in order to assess the relevant work programmes and to analyse the impact of EU sanctions against specific countries.<sup>45</sup> In this way, REA will be in a position to monitor the diversification of MSCA grants among researchers to ensure adequate treatment of diversity and widening participation, as well as to develop policies to enhance these and assess their effectiveness.<sup>46</sup>

#### 3.3.1.9. Necessity of the proposed retention period for scientific research and statistical purposes

58. While the EDPS understands REA’s reasoning for the extension of the retention periods for scientific and statistical purposes, it nevertheless finds the proposal to extend each respective retention period from 25 years<sup>47</sup> in total to 35 years in total excessive. In particular, it is unclear under which circumstances such further processing would be **necessary**.

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<sup>41</sup> *Ibid*, p. 6.

<sup>42</sup> *Ibid*.

<sup>43</sup> *Ibid*.

<sup>44</sup> *Follow-up of the REA request of opinion to the EDPS (Ares(2023)491756 - 23/01/2023)*, page 7.

<sup>45</sup> *Ibid*, page 6.

<sup>46</sup> *REA’s consultation request to the EDPS*, pp. 6-7.

<sup>47</sup> *Privacy Statement ‘Grant management and registration/validation of participants’*, page 5-6.



59. As stated in the EDPS necessity Toolkit<sup>48</sup>, ‘necessity implies the need for a combined, fact-based assessment of the effectiveness of the measure for the objective pursued and of whether it is less intrusive compared to other options for achieving the same goal. The measure should be genuinely effective, that is to say essential to achieve the objective pursued. In the Toolkit, the EDPS underlined that not everything that might prove to be useful for a certain purpose is desirable or can be considered as a necessary measure in a democratic society.
60. Additionally, REA’s consultation request<sup>49</sup> makes reference to the outcome of the consultation of the EDPS by ERCEA regarding its retention periods.<sup>50</sup> However, in ERCEA’s consultation, the same arguments as those put forward by REA were used to justify a retention period of only 25 years in total of personal data for scientific and statistical purposes.
61. In light of the above, the EDPS considers that REA has not provided sufficient reasoning to justify the necessity of the retention of such data for a supplemental 10 years (35 years in total) and the consequential additional intrusion on the concerned data subjects’ rights.
62. As such, the **EDPS recommends that REA conduct a more thorough assessment of whether it is necessary to keep personal data for scientific and statistical purposes for 35 years, or in the alternative, that REA consider keeping the retention period of such personal data at 25 years in total<sup>51</sup>**, all while ensuring that the **appropriate safeguards are implemented taking into account the EDPS’s recommendations (1 to 4) (Recommendation 7).**

## 4. CONCLUSION

In this Opinion, the EDPS has made the following findings in relation to REA’s proposed retention periods:

1. **Detection of plagiarism and other scientific misconduct purposes:** the EDPS finds the proposed retention period of 15 years in total for the purposes of detection of plagiarism and other scientific misconduct justified.

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<sup>48</sup> EDPS Necessity Toolkit

<sup>49</sup> REA consultation request, page 1.

<sup>50</sup> EDPS Opinion on the ERCEA note concerning the application of provisions on retention time for scientific, historical research and statistical purposes (Case 2021-0639)

<sup>51</sup> 51 Privacy Statement ‘Grant management and registration/validation of participants’, page 5-6.

2. **Historical purposes:** the EDPS finds that REA has not provided sufficient evidence to demonstrate that only personal data which retain historical value will be preserved indefinitely for historical research purposes.
3. **Statistical and scientific research purposes:** the EDPS finds that REA has not provided sufficient justifications demonstrating the necessity of keeping personal data for statistical and scientific research purposes for 35 years in total.

In addition, in this Opinion, the EDPS has made the following recommendations to ensure REA's compliance with the Regulation. Namely, the EDPS **recommends** that:

1. **Recommendation 1:** Concerning the **proposed safeguards specifically for the further processing of personal data for statistical purposes**, REA should, if achievable, apply data minimization through anonymisation.
2. **Recommendation 2:** Concerning the **proposed safeguards specifically for the further processing of personal data for the purposes of historical and scientific research**, REA should explore the possibility to apply pseudonymisation.
3. **Recommendation 3:** Concerning the **proposed safeguard involving the clear identification in the data protection notice of the rights of the data subjects** with regards to the use of their personal information for further processing for historical, statistical/scientific purposes or to detect plagiarism and scientific misconduct, REA should also include this information in the relevant records of processing activities.
4. **Recommendation 4:** Concerning REA's contemplated **review procedure**, REA should put in place a **dedicated policy**.
5. **Recommendation 5:** Concerning the foreseen safeguards for the further processing of personal data for historical, statistical/scientific purposes and to detect plagiarism and other scientific misconduct, namely the **development of a specific database for further storage and the development of a related third party access procedure**, REA should at a minimum implement the safeguards applicable to the database that resides on the servers of the European Commission used for the initial processing of the personal data.
6. **Recommendation 6:** Concerning the proposed **indefinite retention period of the personal data for historical research purposes**, REA should instead put in place a specific, longer but not indefinite retention period, combined with a policy establishing regular reviews aiming at ensuring that only personal data which retain historical value are preserved, provided that the appropriate safeguards are implemented taking into account the EDPS's recommendations (2 to 5).

7. **Recommendation 7**: Concerning the **extension of the retention period of the personal data for scientific and statistical purposes to 35 years in total**, REA should conduct a more thorough assessment of whether it is necessary to keep such personal data for 35 years in total, or in the alternative, consider limiting the retention period to 25 years in total, all while ensuring that the appropriate safeguards are implemented taking into account the EDPS's recommendations (1 to 5).

In light of the principle of accountability enshrined under Article 4(2) of the Regulation, the EDPS expects REA to implement the above recommendations accordingly and has decided to **close the case**.

Done at Brussels