



EUROPEAN RESEARCH EXECUTIVE AGENCY (REA)

## RECORD OF PERSONAL DATA PROCESSING ACTIVITY

*In accordance with Article 31 of the Regulation (EU) 2018/1725 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 (Regulation)<sup>1</sup>, individuals whose personal data are processed by the European Research Executive Agency (hereinafter “REA” or the “Agency”) in any context whatsoever, are to be protected with regard to the processing of personal data and the Agency has to keep records of their processing activities.*

Record No: 36  
Created on (date): 19/12/2019  
Last update (date): October 2022

### NAME OF THE PROCESSING ACTIVITY

Management and administration of calls for tenders and contracts between the Agency and economic operators in the context of its administrative budget.

### GROUND FOR THE RECORD

Change of a data processing activity (e.g. update of a record).

<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of 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 of 21.11.2018, p.39).

## 1. MANDATORY RECORD UNDER ARTICLE 31 OF THE REGULATION

### 1.1. Name and contact details of controller

The controller is the European Research Executive Agency (REA), represented by its Director. For organisational reasons, the role of data controller has been entrusted by the Director to REA Head of Department D (the delegated controller).

The data controller may be contacted via the functional mailbox: [REA-CONTRACT-MANAGEMENT@ec.europa.eu](mailto:REA-CONTRACT-MANAGEMENT@ec.europa.eu).

### 1.2. Name and contact details of the Data Protection Officer (DPO)

REA DPO - [REA-DATA-PROTECTION-OFFICER@ec.europa.eu](mailto:REA-DATA-PROTECTION-OFFICER@ec.europa.eu).

### 1.3. Name and contact details of joint controller (where applicable)<sup>2</sup> - NA.

### 1.4. Name and contact details of processor (where applicable)

DG Budget (BUDG) for validation of payments<sup>3</sup>;

Secretariat-General (SG) for data in HERMES/Ares – [SG-EDOMEC@ec.europa.eu](mailto:SG-EDOMEC@ec.europa.eu);

DG for Informatics (DG DIGIT) for Outlook and shared-drives – [DIGIT-COMM-TEAM@ec.europa.eu](mailto:DIGIT-COMM-TEAM@ec.europa.eu);

DG for Informatics (DG DIGIT) for calls for tenders managed electronically through the e-Procurement applications (incl. Public Procurement Management Tool). Thus, personal data may be processed through the “e-Submission” application, managed by DG DIGIT, where economic operators prepare and submit their tenders<sup>4</sup>. This is based on the Service Level Agreement SLA DIGIT-043-00 signed between the Agency & DIGIT on 02/08/2019 (Ares(2019)5117166).

European Research Council Executive Agency (ERCEA) for data in Speedwell IT tool dealing with payments – [ERC-BACKOFFICE-PORTAL@ec.europa.eu](mailto:ERC-BACKOFFICE-PORTAL@ec.europa.eu);

External lawyers providing legal assistance and/or representing REA in courts (on a very exceptional basis).

External experts participating in the evaluation of tenders, if applicable, when external expertise is required. The participation of experts in the evaluation of tenders is done on an exceptional basis.

### 1.5. Purpose of the processing

The purpose of the personal data processing operation is the management and administration of calls for tenders and contracts between the Agency and economic operators in the context of its administrative budget.

In particular, the personal data are collected and processed with the purpose to the above-mentioned processing operation and is necessary in order to:

- Evaluate the eligibility of economic operators to participate in the procurement procedure in accordance with the exclusion and selection criteria as defined in the Financial Regulation<sup>5</sup> (Point 18 of Annex I Section 2 – “Procurement

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<sup>2</sup> DG Budget (BUDG) is sole controller in relation to the registration of Legal Entities and Bank Account Files in ABAC - [BUDG-FICHIER-TIERS@ec.europa.eu](mailto:BUDG-FICHIER-TIERS@ec.europa.eu)

<sup>3</sup> SLA between REA and DG BUDG Ares(2020)1187395 - 25/02/2020

<sup>4</sup> For procurements up to 15.000,00 euros, tenders are submitted by email

<sup>5</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

procedures”), including checking economic operators’ representatives’ criminal records<sup>6</sup>;

- Assess the economic and financial, as well as the technical and professional capacity of the tenderers, their staff and subcontractors, as defined in the Financial Regulation (Points 19 and 20 of Annex I Section 2 – “Procurement procedures”) and obtain the best offer for the REA with the view to award the contract as defined in Article 167 of the Financial Regulation and in the tender specification<sup>7</sup>;
- Manage and monitor the execution of the awarded contracts.

## **1.6. Legal basis for the processing**

In accordance with Article 5(1)(a) of the Regulation, processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body<sup>8</sup>;

In accordance with Art 5.1(b) the processing is necessary for compliance with a legal obligation to which the controller is subject and more specifically:

- Articles 160-179 and Annex I Section 2 – “Procurement procedures” of the Financial Regulation;
- Article 50 on procurement of Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, (OJ L 297, 22.09.2004, p. 6).

In accordance with Art 5.1(c) for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

## **1.7. Categories of data subjects**

Data subjects are natural persons (representatives/staff of tenderers and/or subcontractors), whose details are referenced in tenders, contracts and related documents.

## **1.8. Categories of personal data**

The categories of data that are processed are the following:

- for economic operators:
  - a) Identification data

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<sup>6</sup> For procurements up to 15.000,00 euros, this evaluation is not mandatory

<sup>7</sup> For procurements up to 15.000,00 euros, this assessment is not mandatory

<sup>8</sup> The general legal basis under Article 5(1)(a) for REA: Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, OJ L 11, 16.1.2003; REA Establishment act: COMMISSION IMPLEMENTING DECISION (EU) 2021/173 of 12 February 2021 establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency and repealing Implementing Decisions 2013/801/EU, 2013/771/EU, 2013/778/EU, 2013/779/EU, 2013/776/EU and 2013/770/EU, OJ L 50, 15.2.2021; REA Delegation Act: COMMISSION DECISION C(2021)952 of 12.2.2021 delegating powers to the European Research Executive Agency with a view to the performance of tasks linked to the implementation of Union programmes in the field of Research and Innovation, Research of the Fund for Coal and Steel and Information Provision and Promotion Measures concerning Agricultural Products comprising, in particular, implementation of appropriations entered in the general budget of the Union.

First name, last name, passport number, ID number, contact details (e-mail address, phone number(s), postal address, function, company and department, country of residence)

b) Financial data of the company in public procurement

- Bank account reference (IBAN and BIC codes);
- Bank Account File (BAF);
- VAT number;
- Registration of the company in the National Fiscal Database: data related to the legal existence and representatives: company registration details, legal representative data.

c) Legal Entity File (LEF).Data relating to the evaluation of compliance with eligibility and selection criteria as set in the Public Tender Specifications document – Article 5 ‘Evaluation of Tenders’: tenderers certify they have the economic, financial, technical and professional capacity to perform the tender. CV of staff employed by economic operators and involved in the implementation of the contract<sup>9</sup>.

d) Data relating to exclusion criteria as set in the Public Tender Specifications document – Article 5 ‘Evaluation of Tenders’/ in Article 137 of the Financial Regulation, such as:

- Certificates for social security contributions and taxes paid, extract from judicial records;
- Declaration on honour that the economic operator is not in one of the exclusion situations referred to in Article 136 and 141 of the Financial Regulation 2018<sup>10</sup>.

e) Declaration of absence of conflict of interests (including signature of the company’s legal representative)<sup>11</sup>.

f) Information for the evaluation of selection criteria: expertise, technical skills and languages, educational background, professional experience including details on current and past employments<sup>12</sup>.

Data are provided directly by the data subjects and are mandatory for the purpose(s) outline in the above section 1.5. In case personal data have not been obtained from the data subject: evidence that the economic operator is not in a situation of exclusion can be accessed by the Contracting Authority on a national database free of charge, in which case the economic operator shall provide the Contracting Authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

### 1.9. Retention time (time limit for keeping the personal data)

a) Retention period: As per Commission-Level Retention List<sup>13</sup>:

- 10 years for successful tenders;
- 5 years for unsuccessful tenders following the award of the contract of the concerned procedure;
- 10 years for contract management following award of contracts;
- 2 years for economic operators’ representatives’ criminal records.

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<sup>9</sup> Not mandatory for procurements up to 15.000,00 euros

<sup>10</sup> Not mandatory for procurements up to 15.000,00 euros

<sup>11</sup> Not mandatory for procurements up to 15.000,00 euros

<sup>12</sup> Not mandatory for procurements up to 15.000,00 euros

<sup>13</sup> SEC (2019) 900/2, Ares(2021)3395475 – 21/05/21 - second revision

b) Storage period:

Same as retention period indicated in the above section 1.9(a).

c) Is any further processing for historical, statistical or scientific purposes envisaged, which would go beyond the normal retention period? Yes

After the period mentioned above has elapsed, the files containing personal data may be sampled to be sent to the historical archives of the Agency and/or the European Commission for further conservation in line with the retention policy applied by the Commission. The non-sampled files are destroyed.

#### **1.10. Recipients of the data**

##### Who will have access to the data within the Agency?

- The Director of the Agency;
- Staff members of the Operational and/or Administrative Units in the Agency in charge of the call for tenders, procurement, the management of the contract, financial and legal matters as specified in the relevant data protection notice;
- Members of the Opening Committee set up for the opening of applications and tenders in accordance with §28 of Annex I of the Financial Regulation, if applicable;
- Members of the Evaluation Committee set up for the evaluation of applications and tenders in accordance with § 29 of Annex I of the Financial Regulation, if applicable;
- The authorised staff for the legal validation and preparation of financial viability assessment in PDM, if applicable.

##### Who has access to the data outside the Agency?

- Members of the Opening Committee from other EU Institutions, bodies or agencies set up for the opening of applications and tenders in accordance with §28 of Annex I of the Financial Regulation, if applicable;
- Members of the Evaluation Committee from other EU Institutions, bodies or agencies set up for the evaluation of applications and tenders in accordance with § 29 of Annex I of the Financial Regulation, if applicable;
- External experts participating in the evaluation of tenders, if applicable.
- Contractors staff working as processors on behalf of the Agency or the EU Institutions in various stages of the procurement procedures (publication, evaluation, contract execution, checks, reviews, ex-post controls), if applicable;
- Contractors staff entitled to collect data or to run satisfactions surveys to assess the performance of the Agency or if applicable other EU Institutions, bodies and agencies, if applicable;
- DG Budget (BUDG) for Legal Entity and Bank Account Files in ABAC;
- Secretariat-General (SG) - HERMES/Ares;
- DG for Informatics of the European Commission (DIGIT) - Outlook, shared drives;
- European Research Council Executive Agency (ERCEA) - Speedwell IT tool dealing with payments);

- In case of audits or proceedings, etc., personal data may be provided to REA Internal Controller, DPO, Staff Committee, etc.

In addition, data may be disclosed to public authorities, which are not regarded as recipient but may receive personal data in the frame of a particular inquiry in accordance with Union and Member State law, namely:

- The European Court of Justice or a national judge as well as the lawyers and the agents of the parties in case of a legal procedure;
- The competent Appointing Authority in case of a request or a complaint lodged under Articles 90 of the Staff Regulations;
- IDOC in line with Commission Decision of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings - C(2019)4231;
- OLAF in case of an investigation conducted in application of Regulation (EC) No 1073/1999;
- The Internal Audit Service of the Commission within the scope of the tasks entrusted by article 118 of the Financial Regulation and by Article 49 of the Regulation (EC) No 1653/2004;
- The Court of Auditors within the tasks entrusted to it by Article 287 of the Treaty on the Functioning of the European Union of the EC Treaty and Article 20, paragraph 5 of Regulation (EC) No 58/2003;
- The European Ombudsman within the scope of the tasks entrusted to it by Article 228 of the Treaty on the Functioning of the European Union;
- The European Data Protection supervisor in accordance with Article 58 of the Regulation (EC) 2018/1725;
- The European Public Prosecutor's Office within the scope of Article 4 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

This transmission is restricted to the information necessary for the legitimate performance of tasks within the competence of the recipient. The recipients of the data are reminded of their obligation not to use the data received for other purposes than the one for which they were transmitted.

#### The public

In case an economic operator is awarded a contract by the Agency, personal data may be made public. Information may be disclosed to the public in accordance with the Commission's obligation to publish information on the outcome of the procurement procedure and on the beneficiaries of funds deriving from the budget of the European Union (Article 38 (2) and Article 163 and 189(2) of the Financial Regulation, respectively). This information concerns in particular the name and address of the economic operators amount awarded and the name of the project/programme (where applicable) for which contract is awarded. This information is published in supplement S of the Official Journal of the European Union on the website of the Commission (see the Financial Transparency System of the European Commission and/or on the public website of the Agency<sup>14</sup>).

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<sup>14</sup> When a contract is awarded to a natural person, the private address of this person is not published

### **1.11. Transfers of personal data to third countries or international organisations**

On exceptional cases, REA or the processor may transfer personal data outside the EU or EEA organised in the context of the tender, contract or to award the contract to a contractor established in a third country. In these cases, REA shall always carry out a case-by-case assessment to assess the risk for data subjects and determine the transfer ground. REA shall comply with Chapter V of the Regulation. In no case, the level of the protection of the natural persons can be undermined.

### **1.12. High-level description of security measures**

All data in electronic format (emails, documents, etc.) that are processed during this processing activity are stored on the servers of the European Commission, the operations of which abide by the European Commission's security decisions and provisions established by the Directorate of Security for this kind of servers and services. The login and the passwords are managed by the common certification service of the European Commission. The Agency is bound by Commission Decision 2017/46 of 10/1/17 on the security of communications & information systems in the EC.

Appropriate access rights and access control are put in place via authentication system (usual User IDs and passwords) and/or secure connections and firewalls. Only designated staff on a need to know basis has the possibility to access the data kept for the purpose of administrative or financial process.

For hardcopy documentation, limited number of staff has access to cupboards (physical locks); the storage offices are always locked when unattended.

Personal data stored electronically and on paper is accessible only by the authorised personnel for the purposes of the processing on a need to know basis. Access is granted only if there is a clearly specified administrative purpose, and only to those whose role and level of responsibility require them to have access. Staff having access to the data is bound by confidentiality in line with the Staff Regulation<sup>15</sup>.

### **1.13. Data Protection Notice**

A Data Protection Notice (DPN) relevant to this data processing is available in the tender specifications documents and it is transmitted by the data controller to the data subjects, where applicable. Furthermore, the Data Protection Notice is available in REA public register of records<sup>16</sup>, together with Part 1 of this record.

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<sup>15</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385)

<sup>16</sup>[https://rea.ec.europa.eu/public-central-register-data-protection-records-rea\\_en](https://rea.ec.europa.eu/public-central-register-data-protection-records-rea_en)