

REGISTER NUMBER: 877

NOTIFICATION FOR PRIOR CHECKING

Date of submission: **01/08/2012**

Case number: **2012-0666**

Institution: **EFSA**

Legal basis: article 27-5 of the regulation CE 45/2001(1)

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN(2)

(2) Please attach all necessary backup documents

1/ Name and address of the controller

The Head of EFSA Finance Unit

2/ Organisational parts of the institution or body entrusted with the processing of personal data

- Authorizing Officer in charge (EFSA Head of Unit or Director) by delegation of the Executive Director (see **Annex 11** – AO delegation decision)
- Procurement/Grant officers in the Finance Unit and Legal Officers in the Legal & Regulatory Affairs Unit (LRA)
- Planning & Monitoring Team (PM Team) of the EFSA Directorate under which the responsible Authorizing Officer resorts
- The Opening and Evaluation Committee members (see **Annex 6** - template appointment committee members)
- The Public Procurement Committee (PPC) (see **Annex 12** – Decision on PPC establishment & amendment)

3/ Name of the processing

EFSA procurement and grant award procedures and the management of contracts and grants

4/ Purpose or purposes of the processing

0877-2012-0666

The overall purpose of the personal data processing is the management of procurement and grant award procedures in accordance with the applicable legal framework and the management of contracts for services and supplies and of grant agreements. Procurement, grant calls and contract/grant management operations enable EFSA to rely on services and deliveries from contractors and grantees in order to fulfil its mission defined in EFSA's Founding Regulation (EC) n° 178/2002.

- Particularly in the context of procurement and grant award procedures, personal data are processed for the purpose of evaluating information related to the legal, financial, economic, technical and professional capacity of tenderers, candidates and grant applicants (legal or natural persons) with a view of selecting offers best satisfying the criteria set out in the respective procurement or grant call ;
- For the management of resulting contracts and grant agreements, personal data are processed for the purpose of (1) the service provision or supplies and the organisation of cooperation activities outlined in the respective contract or grant agreement and (2) for the execution of the contract or grant agreement in all its modalities, including the reporting and payments.

5/ Description of the category or categories of data subjects

- Staff of organisations or individuals participating in procurement procedures and grant calls and/or entering into a contract or grant agreement with EFSA, comprising:
 - o Individuals identified as contact person for a tenderers / grantholder
 - o Members of the project team proposed to implement contract/grant activities and services or to provide deliveries to EFSA
- Members of the opening & evaluation committees, members of PPC, contact persons of the EFSA unit managing the contract/grant / authorizing officer. Tender/Grant Evaluation Committees may include external members (i.e. not employed by EFSA) in case their specialised expertise is needed. In such case, the external experts signs either a service contract with EFSA or a declaration ('contract letter') according to the model in **Annex 9**, making the requirements of Article 23 of the Data Protection Regulation incumbent on this external Committee member.

6/ Description of the data or categories of data *(including, if applicable, special categories of data (article 10) and/or origin of data)*

- Identification data: name & contact details of representatives and staff of tenderers and grant applicants, including consortium partners and subcontractors data ;
- Evidence on eligibility and absence of falling under exclusion criteria: extracts from the register of the Chamber of Commerce (procurement), legal entity form (procurement, grants) and partnership statements (grants), declaration of honour by tenderers and grant applicants and resp. consortium partners (procurement, grants) and for what concerns tenderers proposed for contract award, turnover statements and balance sheets of the previous three financial years, proofs on payment of social contributions, taxes, extract from judicial records. Extracts from judicial records are considered to be sensitive data in the sense of Article 10 of Regulation (EC) No 45/2001, the processing of which is authorised by virtue of the general Financial Regulation ;
- Financial identification data (also of individuals), including identification details, bank account details and VAT number ; as part of grant application, the payslips of proposed experts are asked with the aim of correctly establishing the amount of the grant award ;
- Information for the evaluation of tender bids and grant proposals against selection criteria, such as information on the financial capacity of tenderers based on turn-over figures and balance sheet data of the three previous financial years, information on the operational capacity of tenderers/applicants, including lists of personnel capable of performing the tasks described in the tender/grant specifications, lists of principle services and supplies delivered over the past 3 years, detailing sums, dates and recipients, curriculum vitae of project managers and (scientific) staff outlining their educational background, professional experience, technical skills, language proficiency, details on past and current employment ;

- Information for the evaluation of tender bids and grant proposals against award criteria, such as a summary of the strategy of the tenderer/grant applicant related to the tender specification, such as a description of the goods and services they may propose (procurement) and related to grant call, such as description of the project for which funding is requested, the financial proposal including hourly/daily rates applied (procurement) and estimated budget (grants) ;
- Appraisal data on tenders/grant proposals in evaluation reports, which may include observations on individuals/consultants/experts proposed for involvement in the contract/grant ;
- For procurement and grant procedures related to a scientific or technical project, a Declaration of interest by tenderers and/or by individuals employed or working as consultants in the sense of Title IV of the Decision of the Executive Director, implementing EFSA's Policy on Independence and Scientific Decision-making Processes regarding Declarations of Interests, adopted on 21/02/2012. The templates for the Declaration of interest form are available in the Procurement section of the EFSA website (see **Annex 4 A&B**).

*Note: Declarations of Interest (DoI) handling of EFSA has been prior checked by EDPS as a separate data processing (case 2008-737). The extension of the DoI requirement to tenderers/candidates in the context EFSA procurement/grant applications is based on the Executive Director Decision of 21 February 2012, available on the EFSA website. (**Annex 1**)*

7/ Information to be given to data subjects

- A general Privacy Statement is available in the procurement section of the EFSA website, detailing the information required in Article 11 and Article 12 of the Regulation (EC) No 45/2001. (see **Annex 2**)
- The template for tender specifications (as well as the EFSA template for a grant application) includes a specific part on data protection (Part II.7.1 in the tender template – see **Annex 3**)
- The template contracts and grant agreements contain a provision on data protection (see Article I.9 in the template framework service contract in **Annex 5**)
- The template declaration of absence of conflict of interest and of confidentiality signed individually by members appointed in the tender/grant opening and evaluation committees refers to data protection (see **Annex 7**)

8/ Procedures to grant rights of data subjects (*rights of access, to rectify, to block, to erase, to object*)

- Data subjects have the right to access or verify personal data EFSA is keeping on them related to a procurement/grant award procedure or a contract or grant agreement in which they are involved and to have their personal data modified, corrected or deleted. In order to exercise these rights, the data subject should contact in writing the Authorizing Officer in charge of the procedure or contract/agreement in question, using the contact data given in the invitation letter for participation in the relevant procedure or indicated in the respective contract or grant agreement.
- Identification data of individuals can be corrected at any time. In the context of contract/grant award procedures, factual data can only be rectified or updated up to the submission deadline for offers for the tender or grant procedure in question. Information that would change the nature of the offer/application made for EFSA cannot be changed after the deadline for submission since this would compromise the award procedure.
- Once the tender/grant evaluation has been completed, each tenderer / grant applicant is informed by means of a personalised letter providing details on the evaluation results in compliance with the general Financial Regulation, with a restriction as concerns comparative data on competing tenderers/applicants except for the winner and the opinions of individual members of the Evaluation Committee. (template feedback letter in **Annex 8**)

9/ Automated / Manual processing operation

- In the context of procurement and grant award procedures, offers are submitted on paper as well as on an electronic device, such as a USB key or CD-ROM. Likewise, at EFSA the information is processed both on paper and electronically via the IT tools, abiding to the EFSA security policy.
- After completion of the award procedure, awarded contracts and grant agreements, including the documentation on the award procedure are kept in paper filing systems with the authorizing officers. In addition, the Finance Unit keeps a central filing of all EFSA contracts and grants.
- In addition, information on contracts and grant agreements is inserted in the CII Tool – Comprehensive, Interconnected and Interactive Tool. The information in this database concerns: (1) the procedure: budget year, EFSA directorate & unit in charge, contract type, contract title, contract status, name of contractor & partners, contract signature date, contract duration, amendments ; (2) contract specific information: name of legal representative of the contractor + full address, contractor contact person, contract amount, commitments, payments

10/ Storage media of data

As mentioned in the previous point, in the context of procurement and grant award procedures, offers are submitted on paper as well as on an electronic device, such as a USB key or CD-ROM. Likewise, at EFSA the procurement/grant selection and contract/grant information is processed both on paper and electronically via the IT tools, abiding to the EFSA security policy.

11/ Legal basis and lawfulness of the processing operation

The processing operation is covered by the mandate of EFSA:

- o Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Union ([‘general Financial Regulation’](#)) ;
- o Commission Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of the aforementioned Regulation ([‘FR Implementing Rules’](#)) ;
- o The European Food Safety Authority’s [Financial Regulation](#) and [Implementing Rules](#), adopted on 28 January 2009 ;
- o Regarding grant award procedures: Article 36 of [EFSA’s Founding Regulation](#) (EC) No 178/2002 as well as Commission Regulation (EC) No 2230/2004 laying down detailed rules with regard to the network of organisations operating in the fields within EFSA’s mission ;
- o Regarding the processing of declarations of interest in the context of procurement and grant award procedures in the scientific remit of EFSA: Title IV of the [Decision of the Executive Director, implementing EFSA’s Policy on Independence and Scientific Decision-making Processes regarding Declarations of Interests](#), adopted on 21/02/2012

12/ The recipients or categories of recipient to whom the data might be disclosed

- The Head of Unit / Director responsible as Authorising Officer for the related contract or grant agreement and his/her staff ;
- The Procurement Team within the Finance Unit, providing overall guidance and support throughout the contract/grant life cycle ;
- Planning & Monitoring Teams (PM Teams) in charge at all five Directorates of EFSA for general management and follow-up, including the preparation of procurement/grant calls, the organisation of opening and evaluation sessions, contract/grant management tasks, including the budgetary commitments and payments, the preparation of amendments, the updating of the CII Tool – Comprehensive, Interconnected and Interactive Tool and the contract/grant filing maintenance. It should be noted that the PM Teams and their role in procurement/grant follow-up were introduced in 2012 in the

context of an ongoing corporate reorganisation of EFSA. Additional safeguards i.e. regarding confidentiality of data handling by the PM Teams may be appropriate, which could take various shapes such as awareness training conducted by the DPO and the Procurement Team and/or the signature of a confidentiality statement by PM Team members. At the stage of this present notification, the establishment of PM Teams is still in course. The aspect of confidentiality of data handling will be addressed later onwards after the PM Teams have been consolidated ;

- the members of the tenders/grants opening and evaluation committees ;
- members of EFSA's Public Procurement Committee (PPC), giving an opinion to Authorizing Officers on the legal compliance of the tender evaluation process before the award decision ;
- staff of the Finance Unit and the Accounting Officer, in charge for the financial verification, budget commitments and payments ;
- Staff of the Legal and Regulatory Affairs Unit, providing legal advice throughout the contract/grant life cycle or in case of litigation and legal action against EFSA ;
- Data of economic operators which are in one of the exclusion situations referred to in Articles 93, 94, 96(1) and 96(2)(a) of the general Financial Regulation may be included in a central database ('Early Warning System') and communicated to the designated persons of the European Commission, other EU institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the general Financial Regulation. This refers as well to the persons with powers of representation, decision making or control over the said economic operators;
- Personal data may be transferred to bodies in charge of a monitoring, auditing or inspection task in accordance with European Union legislation, such as the internal audit services, the EU Court of Auditors or the European Anti-Fraud Office (OLAF), as well as to the EU Ombudsman, the European Data Protection Supervisor ;
- In case of litigation, including contractual liability claims, data may be transferred to the European Court of Justice or to a mediator appointed by the parties ;
- Finally, pursuant to the publication requirements laid down in the general Financial Regulation, limited personal data is made public as concerns the outcome of procurement procedures and grant calls. The information concerns in particular the name, address, year, amount awarded and the name of the project or programme for which the successful tenderers/applications are awarded a contract/grant. The data is published in supplement S of the Official Journal of the European Union and on the EFSA website.

13/ retention policy of (categories of) personal data

- Tender bids and grant applications not selected in the context of the respective contract/grant award procedure including all personal data contained therein, are kept for two years after the award procedure in question is completed ;
- In application of Article 49 of the FR Implementing Rules, contracts and grants, including personal data contained therein are kept for at least seven years after the end date of the contract or grant in question ; The file conservation practise is referred to in Part 4.6 of the EFSA Procurement Guide (**Annex 10**) and also applies to EFSA grants.

13 a/ time limits for blocking and erasure of the different categories of data
(on justified legitimate request from the data subject)
(Please, specify the time limits for every category, if applicable)

Justified requests for blocking and erasure will be handled within 5 working days.

<p>14/ Historical, statistical or scientific purposes <i>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,</i></p> <p>Aggregated data on procurement contracts and grants are extracted from the CII Tool – Comprehensive, Interconnected and Interactive Tool for the annual budget planning and periodical reporting on budget execution.</p>
<p>15/ Proposed transfers of data to third countries or international organisations</p> <p>N/A</p>
<p>16/ The processing operation presents specific risk which justifies prior checking (<i>please describe</i>):</p> <p>X Article 27.2.(b) Processing operations intended to evaluate personal aspects relating to the data subject,</p> <p>Article 27.2.(c) Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,</p> <p>Article 27.2.(d) Processing operations for the purpose of excluding individuals from a right, benefit or contract,</p> <p>Other (general concept in Article 27.1)</p> <p>17/ Comments</p> <p>18/ Measures to ensure security of processing (3) <i>Please check all points of Article 22 of Regulation (EC) 45/2001.</i></p> <p>-</p>

Parma, 31/07/2012

Data Protection Officer: Claus Reunis

European Food Safety Authority (EFSA)

Annexes to the notification:

- Annex 1** Legal basis for procurement/grant management:
- The European Food Safety Authority's Financial Regulation and Implementing Rules, adopted on 28 January 2009:
<http://www.efsa.europa.eu/en/aboutefsa/keydocs.htm>
 - Article 36 of EFSA's Founding Regulation (EC) No 178/2002 as well as Commission Regulation (EC) No 2230/2004 laying down detailed rules with regard to the network of organisations operating in the fields within EFSA's mission
 - Title IV of the Decision of the Executive Director, implementing EFSA's Policy on Independence and Scientific Decision-making Processes regarding Declarations of Interests, adopted on 21/02/2012:
<http://www.efsa.europa.eu/en/keydocs/docs/independencerules.pdf>
- Annex 2** Privacy statement - Processing of personal data in the context of EFSA procurement and grant award procedures and the management of contracts and grants, available on the EFSA website
- Annex 3** Template Tender Specifications (part of this template of particular relevance for this notification: part II.7.1. - information on data protection) / *equivalent template available for Grants*
- Annex 4A** Template institutional Declaration of Interest form available on the EFSA website:
<http://www.efsa.europa.eu/en/calls/procurement.htm>
- Annex 4B** Template individual Declaration of Interest form available on the EFSA website:
<http://www.efsa.europa.eu/en/calls/procurement.htm>
- Annex 5** Template framework service contract of EFSA (data protection provision in Article I.9)
- Annex 6** Template for appointment of the tender/grant opening/evaluation committee
- Annex 7** Template Declaration of absence of conflict of interest and of confidentiality for appointed tender/grant opening and evaluation committee members
- Annex 8** Template feedback letter to unsuccessful tenderers/applicants
- Annex 9** Template '*contract letter*', *inter alia* meant for any external member of an Evaluation Committee, making the requirements of Article 23 of the Regulation incumbent on the expert
- Annex 10** EFSA Procurement Guide, available on the EFSA Intranet Portal (parts of the guide of particular relevance for this notification: Part 4.6 – Archiving and file & Annex 3 – filing instructions) / *equivalent guide available for EFSA Grants*
- Annex 11** Decision on Authorizing Officer delegations (*the ED Decision is periodically updated*)
- Annex 12** Decision on the establishment of the Public Procurement Committee (PPC) & subsequent amendment
- Annex 13** DPO notification by the controller