

EEAS PRIVACY STATEMENT - DATA PROTECTION NOTICE

FOR THE PURPOSE OF PROCESSING PERSONAL DATA RELATED TO PROCUREMENT PROCEDURES AND CONTRACTS MANAGED BY THE EEAS (HEADQUARTERS AND UNION DELEGATIONS)¹

1. INTRODUCTION

Protection of your personal data and privacy is of great importance to the European External Action Service (EEAS), including the Delegations of the European Union. You have the right under EU law to be informed when your personal data is processed [e.g. collected, used, stored] as well as about the purpose and details of that processing.

When handling personal data, we respect the principles of the Charter of Fundamental Rights of the European Union, and in particular Article 8 on data protection.

Your personal data are processed in accordance with Regulation (EU) 2018/1725² 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, aligned with Regulation (EU) 2016/679, the General Data Protection Regulation³. In this privacy statement you find information about how the EEAS and EU Delegations process your personal data and what rights you have as a data subject.

2. PURPOSE OF DATA PROCESSING: Why do we process your data?

The purpose of the present processing operation is to ensure:

- The management of procurement procedures launched by the EEAS (Headquarters and Delegations)
- The implementation of public contracts concluded between EEAS services (Headquarters and Delegations) and economic operators.

Description:

A. Procurement procedures

Personal data of contact persons and other individuals are recorded during launching, managing and coordinating calls for tenders, including in particular when receiving requests to participate and tenders and during their opening, evaluation, negotiation, ranking, copying, distribution, filing, archiving and destruction. The processing includes the drafting of opening and evaluation reports, award decisions and public contracts, managing the correspondence with candidates or tenderers, publication of results of the relevant procedure in the Official Journal of the European Union and/or the website(s) of the EEAS.

¹ In line with Article 1 par.4 of the Council Decision 2010/427 of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ L 201/3.8.2010, p. 30–40, the EEAS comprises the Headquarters (central administration) and the Union Delegations to third countries and to international organisations.

² OJ L 295, 21.11.2018, p. 39

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

In most cases, the tenderers or candidates must provide a declaration on their honour that they are not in an exclusion situation as defined in Articles 136 to 140 of the Financial Regulation.

B. Contract management

i. Personal data pertaining to the contractor its sub-contractors and/or entities submitting an invoice

Once the procurement procedure has been finalised and the public contract is signed, the personal data pertaining to the contractor and its subcontractors as well as the contact persons is processed by the EEAS for the purposes of the implementation of the public contract. The type of personal data that may be processed can be found in the CVs or any other certification, licence and/or declaration pertaining to the awardee/contractor and its subcontractors. The contract may also contain personal data, notably contact details of authorised representatives.

In cases where purchases or payments are authorised without a procurement procedure and without the conclusion of a public contract, personal data of entities submitting an invoice and/or other supporting documents included in these submitted documents may also be processed (payment against invoice or payment of reimbursable expenses).

ii. Personal data pertaining to the EEAS/data controller or to other natural persons participating in the procurement procedure or the management of the public contract

In cases where access to and the processing of personal data of EEAS staff or other natural persons is needed for the procurement procedure and the performance of the contract (e.g. as contact persons) personal data will be transmitted to the contractor. The obligation of the contractor to comply with EU data protection law will be stipulated in the invitation to tender and the contract.

3. DATA PROCESSED: What data do we process?

The data, including personal data which may be processed for that purpose, are the following:

- Identification data: name, surname, passport number, ID number, date of birth;
- Function;
- Contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, internet address);
- Certificates such as certificates for social security contributions, salaries (payslips) and taxes paid, extracts from judicial records, certificates related to insurances and licences / authorizations concerning the subject of the procurement;
- Bank Account File (BAF): Financial data such as bank account reference (IBAN and BIC codes), VAT number;
- Legal Entity File (LEF): for natural persons and for legal persons;
- Information for the evaluation of a request to participate, a tender or during the contract execution: expertise, technical skills and languages, educational background, professional experience including details on current and past employment;
- Information in the context of monitoring the implementation of the contract (for example timesheets or payslips of the contractor's staff);
- Declaration on honour on exclusion criteria referred to in Articles 136 to 141 of the FR;
- Other non-required information that may be provided by the candidate, tenderer or by the contractor, its staff or subcontractors, such as gender, age or nationality, which is not necessary for the purpose of the procurement or contract implementation.

4. DATA CONTROLLER: Who is entrusted with processing your data?

Processing operations are under the responsibility of the Controller, i.e. the European External Action Service.

In the context of procurement procedures, the contact details of the EEAS Directorate / Division / EU Delegation – responsible for carrying out the procurement procedure including the data collection and processing activity under the supervision of the Director / Head of Division / Head of Delegation can be found in the Invitation to Tender.

In the context of managing the public contracts, the contact details of the EEAS Directorate / Division / EU Delegation – responsible for implementing the contract, including the data collection and processing activity under the supervision of the Director / Head of Division / Head of Delegation are indicated in the public contract.

5. RECIPIENTS OF THE PERSONAL DATA: Who has access to your data?

The recipients of the data may be:

- Assigned staff of the EEAS or other EU Institutions, executive agencies, Union bodies or Member States' contracting authorities or seconded national experts or interim agents involved in calls for tenders launched by the EEAS and in the management of the contract in case of inter-institutional procurement or joint procurement in accordance with Article 165 of the Financial Regulation (e.g.: staff in EU Delegations including EEAS staff and local agents; staff from other Union institutions, executive agencies, Union bodies or Member States' contracting authorities called to participate in evaluation committees on the grounds of their expertise);
- Assigned staff of the EEAS in charge of internal audit controls and legal matters;
- External experts, including those established outside the EU, participating in the evaluation of tenders, when external expertise is required on the basis of Article 237 of the Financial Regulation;
- Assigned staff from the Institutions or bodies charged with a monitoring, audit or inspection task in conformity with the European Union law. e.g.: staff of European Anti-fraud Office (OLAF), European Public Prosecutor's Office (EPPO), Investigatory and Disciplinary Office (IDOC), Internal Audit Services (IAS), European Court of Auditors (ECA), the Legal Service of the European Commission (also hereinafter Commission) as well as staff of other General Directorates (DGs) of the European Commission (Secretariat General, DG Budget and clearinghouse) and of other EU institutions upon request necessary in the context of official investigations or for audit purposes (e.g. internal audits, Financial Irregularities Panel referred to in Article 93 of the Financial Regulation, Exclusion Panel referred to in Article 143 of the Financial Regulation, OLAF);
- Assigned staff from Third countries' bodies charged with inspection, investigation or proceeding tasks in conformity with these Third countries' national law;
- Assigned staff of the European Commission Directorate General for Budget (DG BUDG) with regard to the Legal Entity Form (LEF) and Bank Account File (BAF) and the financial transactions in ABAC;
- Members of the public (personal data of the individuals to whom the contract is awarded and contact persons of the organisations to whom the contract is awarded, will be made public, in accordance with the obligation to publish information on the outcome of the procurement procedure pursuant to Articles 163 and 38(2) of the Financial Regulation. The information concerns, in particular, name and address of the awardee, the amount awarded and the subject matter of the contract. It will be published in supplement S of the Official Journal of the European Union and/or on the website(s) of the EEAS);
- Assigned staff of host country authorities and implementation partners who participate in the evaluation of tenders or the implementation of the contract;
- Tenderers and contractors for the data of EEAS staff and other individuals participating in the procurement and contract management processes.

Personal data is not intended to be transferred to a Third Country except where stated above. Data may be transmitted to EU Delegations established in Third Countries, to which the Regulation (EU) 2018/1725 fully applies. The given information will not be communicated to third parties, except, where necessary, for the purposes outlined above.

6. ACCESS, RECTIFICATION AND ERASURE OF DATA: What rights do you have?

You have the right to access, verify your personal data and the right to correct your inaccurate, or incomplete personal data taking into account the purpose of the processing. The right of rectification can only apply to factual data processed. Under certain conditions, you have the right to ask the erasure of your personal data or restrict their use as well as to object at any time to the processing of your personal data on grounds relating to your particular situation. Special attention is drawn to the consequences of a request for erasure, as this may lead to an alteration of the terms of the tender and lead to rejection as stated in Article 141 of the Financial Regulation.

We will consider your request, take a decision and communicate it to you without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary. For more details, you can find information in Articles 14 to 21, 23 and 24 of Regulation (EU) 2018/1725. In specific cases, restrictions under Article 25 of the Regulation may apply.

If you wish to exercise your rights or have questions concerning the processing of your personal data, you may address them to the following contact entities:

- EEAS-TENDERS@eeas.europa.eu (for centrally managed procurement procedures);
- Functional mailbox indicated in the invitation letter (section 4) and/or in the contract (for procurement procedures managed by the Delegations/Headquarter Divisions and for all contracts);
- BA-BS-2@eeas.europa.eu (for any general question).

7. LEGAL BASIS: On what grounds we collect your data?

Legal basis:

- Regulation (EU, EURATOM) No 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, "Financial Regulation", in particular Title V – Common rules, Title VII – Procurement and concessions and Annex I – Procurement;
- For contract management, the legal basis is the particular public contract.

The processing operations on personal data carried out in this context are necessary and lawful under Article 5(1)(a), (b) and (c) of Regulation (EU) 1725/2018:

(a) 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, i.e. the purchase of services, supplies and works via public procurement procedures;

(b) processing is necessary for compliance with a legal obligation to which the controller is subject i.e. the procurement and financial rules;

(c) processing is necessary 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 if the contractor is a natural person.

Further legal reference: Council Decision of 26 July 2010 establishing the organisation and functioning of the EEAS (2010/427/EU) – OJ L 201, 3/8/2010, p. 30.

8. TIME LIMIT - DATA STORING: For what period and how we process your data?

Personal data would be retained as follows:

- Files relating to procurement procedures, including personal data, are to be retained in the service in charge of the procedure until it is finalised, and in the archives for a period of 10 years following the closure of the contract in conformity with the Common Commission-Level Retention List (SEC(2019)900 second revision) as part of the e-Domec policy. However, requests to participate and tenders from unsuccessful tenderers have to be kept only for 5 years following the closure of the public contract.
- Files related to implementation of public contracts are kept by the EEAS or EU Delegation for up to 10 years from the date on which the European Parliament grants discharge for the budgetary year to which the data relates (end of the public contract).
- Contractors keep data until they need it to provide the service to the EEAS and only keep them as long as it might be needed with regard to the contract, the applicable law or the establishment, exercise or defence of legal claims, e.g. in a case of an investigation, a complaint or a court case.
- Files could be retained until the end of a possible audit if one started before the end of the above periods.
- After the periods mentioned above have elapsed, the files containing personal data are sampled and sent to the historical archives of the EEAS for further conservation, as applicable. The non-sampled files are destroyed.

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Storage of data: The information is collected in files stored in an isolated and secured system. The collected personal data and all related information are stored after closure of the procurement procedure on the premises of the EEAS or the European Commission (EC) and on servers of the EEAS, of the EC (DG DIGIT or the EC Directorate General issuing the call for tenders).

Security of data: Appropriate organisational and technical measures are ensured according to Article 33 of Reg. (EU) 2018/1725. The collected personal data are stored on servers that abide by pertinent security rules. Data is processed by assigned staff members. Access to specific files requires authorisation. Measures are provided to prevent unauthorised entities from access, alteration, deletion, disclosure of data. General access to personal data is only possible to recipients with a UserID/Password. Physical copies of personal data are stored in a properly secured manner.

9. EEAS DATA PROTECTION OFFICER: Any questions to the DPO?

In case you have queries, you can also contact the EEAS Data Protection Officer at data-protection@eeas.europa.eu.

10. RECOURSE

You have at any time the right of recourse to the European Data Protection Supervisor at edps@edps.europa.eu.