



RECORD OF PERSONAL DATA PROCESSING ACTIVITY

Based on Article 31 of the Regulation (EU) 2018/1725¹ on the protection of natural persons with regards to the processing of personal data by the Union Institutions, bodies, offices and agencies and on the free movement of such data, each responsible EISMEA data controller has to maintain a record of the processing activities under his/her responsibility.

Record No: R-2019-05-02

Initial approval by Data Controller: *see date of Ares signature*

Previous Notification: DPO-02-2012

Update (s) (if applicable): *February 2024*

NAME OF THE PROCESSING ACTIVITY

Anti-fraud, OLAF and EPPO cases

IDENTIFICATION OF THE DATA CONTROLLER

European Innovation Council and SMEs Executive Agency (EISMEA) Director, who may delegate the handling of cases to the Head of Department C.

GROUND FOR THIS RECORD (*select relevant ground*)

- Record of a new type of processing activity of personal data (before its implementation)
- Record of a processing activity of personal data that is already in place (ex post)
- Change / Amendment / Update of an already existing previous record (or previous notification to DPO)

DESCRIPTION OF THE PROCESSING ACTIVITY

In the framework of its mandate and the management of grants, prizes and contracts, the Agency may encounter cases of possible irregularities, fraud, corruption, or illegal activities.

External cases related to applicants, beneficiaries of grants, prizes, contractors or experts managed by the Agency, on proposal of its Anti-fraud Team, the Director (who may delegate this task to the Head of Department C) may inform about these cases the Director General of the European Anti-Fraud Office (OLAF), and the European Public Prosecutor's Office (EPPO) if applicable, who decide to open an investigation based on the information transmitted.

The OLAF or EPPO correspondents, the Anti-Fraud Team, the Legal Team and competent Agency staff treat the information relating to the possible irregularities, fraud or illegal activities, including personal data contained in grants or contracts, amendments, information on payments, etc.

Internal cases concern Agency or Commission staff, Steering Committee members or a staff member not submitted to the Staff Regulations (such as interim staff, trainees or in-house consultants), the Director (who may delegate this task to the Head of Department C) transfers the relevant information to OLAF (and/or EPPO, if applicable) for analysis and further follow-up.

Based on Working Arrangements on cooperation between Executive agencies and the EPPO, the Agency may transmit personal data (also on request) to EPPO related to potential criminal investigations on request of EPPO or at the proposal of the EPPO correspondent. The processing relates also to the implementation of recommendations of OLAF, EPPO European Court of Justice or national courts decisions.

¹ 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 295/39 of 21.11.2018).

1. INFORMATION ON THE PROCESSING ACTIVITY of Anti-fraud, OLAF and EPPO cases

This processing activity is performed in accordance with **Regulation (EU) No 2018/1725**² on the protection of individuals with regard to the processing of personal data by the Union, institutions, bodies, offices and agencies and on the free movement of such data.

1.1. The Data Controller is the Director of the **European Innovation Council and SMEs Executive Agency (EISMEA)**, B-1049 Brussels, Belgium, who may delegate the handling of Anti-fraud, OLAF or EPPO cases to the Head of Department C – Compliance, People and Budget, and can be contacted at: EISMEA-ANTI-FRAUD@ec.europa.eu or EISMEA-EPPO@ec.europa.eu.

For the processing of personal data transmitted to OLAF (**OLAF cases**): **OLAF** acts as **separate controller**.

For the processing of personal data transmitted to EPPO (**EPPO cases**): **EPPO** acts as **separate controller**.

1.2. The following entity(ies) is/are acting as Processor(s): *N/A*

1.3. The legal basis for the processing based on **Article 5(1)** of Regulation (EU) No 2018/1725:

- (a) the 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 body³;
- (a2) the processing is necessary for the **management and functioning** of the Union Institutions or bodies (Recital (22) of Regulation (EU) No 2018/1725);
- (b) the processing is necessary for **compliance with a legal obligation** to which the controller is subject⁴.
- (c) the 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;
- (d) the data subject has given **consent** to the processing of his or her personal data for one or more specific purposes;
- (e) the processing is necessary in order to protect the **vital interests** of the data subject or of another natural person.

1.4. The purpose of this processing is to prevent, detect and/or mitigate potential irregularities, fraud, corruption, conflict of interest or illegal activities *internally* in the Agency, Commission or EU Institutions⁵ or *externally*⁶ to ensure the sound financial management of the EU funding managed by the Agency. This includes in particular the analysis of the information/request and the transmission to OLAF or the EPPO, the independent body to investigate, prosecute and bring to judgment crimes against the financial interests of the EU, including fraud, corruption, money laundering, cross-border VAT fraud, as well as the implementation of internal analysis, recommendations of OLAF, EPPO European Court of Justice or national courts decisions.

1.5. The categories of data subjects concerned by this processing are:

(i) *For external cases:* legal representatives and staff of applicants, tenderers, grant beneficiaries or

² [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 295/39 of 21.11.2018).

³ *EISMEA Establishment Act*: Commission Implementing Decision (EU) 2021/173 of 12 February 2021 establishing the European Innovation Council and SMEs Executive Agency (OJ L 50/9 of 15.2.2021).

Act of Delegation: Commission Decision C (2021)949 delegating powers to the European Innovation Council and SMEs Executive Agency with a view to the performance of tasks linked to the implementation of Union programmes in the field of Innovative Europe, Single Market and Interregional Innovation Investments comprising, in particular, implementation of appropriations entered in the general budget of the Union.

⁴ Articles 317 and 325 of the [Treaty of the Functioning of the European Union](#).

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 (OJ L 193/1 of 30.7.2018);

Regulation (EU, Euratom) [883/2013](#) of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248/1 of 18.9.2013);

Council Regulation (Euratom, EC) [2185/1996](#) of 11 November 1996 concerning on the spots checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (L 292/2 of 15.11.1996);

Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (L 283/1 of 31.10.2017).

⁵ https://anti-fraud.ec.europa.eu/system/files/2021-10/gip_2021_en.pdf.

⁶ Related to candidates, applicants, experts, contractors or beneficiaries of EU funds managed by the Agency.

- contractors, experts or other service providers, witnesses, informants or persons mentioned in the file.
- (ii) *For internal cases*: statutory Agency staff (temporary or contractual agents, seconded national experts), Agency staff not subject to the Staff Regulations (interims, in-house consultants, trainees etc.), Commission staff or members of the Steering Committee, witnesses, informants or persons mentioned in the file.

1.6. The following personal data are processed:

- . *Identification data*: last name, first name, nickname, address, e-mail, phone number(s), personnel number (where applicable), etc.
- . *Professional data*: curriculum vitae (CV), position / function within the entity, etc.
- . *Case/conduct relating data*, giving rise to suspicion of possible irregularities, fraud or other illegal activity: description of the serious wrongdoing/irregularity, source of information e.g.: contained in (interim, final, etc.) reports, causes of the presumed wrongdoing/irregularity, impact on EU interests, amount involved, actions to mitigate the wrongdoing/irregularity (taken/planned), case involvement, comments of persons, etc.
- . *Data relating to financial aspects*: personal data concerning payments (pre-financing, recovery orders, interim/final payments, timesheets, etc.) to provide evidence of payments made (e.g. to beneficiaries), invoices;
- . any *other information* that may assist the Agency in deciding whether to take measures to protect its interests and the EU's.

The categories of data listed above will be collected and/or processed on a case-by case basis. Their processing is not systematic and is necessary only depending on the content of a particular case.

The 'special categories of data' falling under Article 10(1) of the above-mentioned Regulation shall only be processed for the reasons set out in Article 10(2) of the Regulation and if the data is strictly necessary for the given case; relates to personal data which are manifestly made public by the data subject; is necessary for the establishment, exercise or defence of legal claims or whenever the Court of Justice of the European Union is acting in its judicial capacity; or is necessary for reasons of substantial public interest, on the basis of Union law which shall be proportionate to the aim pursued.

Data relating to suspected offences, offences, criminal convictions and or security measures are collected and further processed only if they are necessary and proportionate in order to process the given file(s) relating to potential wrongdoing/irregularities, fraud, corruption or illegal activities.

1.7. The recipients to whom the personal data will or might be disclosed on a need-to-know basis are:

Within the Agency: the Director, authorised Agency staff, competent Heads of Department, Heads of Unit/Heads of Sector/Team leaders, project and financial officers, the EISMEA Anti-Fraud Team, the Legal advisors, the OLAF and the EPPO correspondents, DPO.

European Commission, other Executive Agencies or EU Institutions and bodies: the Director General, OLAF and EPPO correspondents and their audit capabilities; the Steering Committee of the Agency, the EDES Panel referred to in Article 143 of the EU Financial Regulation 2018/1046.

In addition, data may be disclosed on a need to know basis to bodies in charge of a monitoring or an inspection task in application of Union or national law (e.g.: Internal Audit Service, European Court of Auditors, European Data Protection Supervisor (EDPS), OLAF, EPPO⁷, the European Ombudsman⁸, the European Court of Justice or National courts as well as the national authorities).

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 on the purpose limitation of the data transmitted.

⁷ Article 4 of Council Regulation (EU) 2017/1939 of 12 October 2017.

⁸ Article 228 of the Treaty on the Functioning of the European Union.

1.8. Personal data will not be transferred to third countries or international organisations.

1.9. The processing of this personal data will not include automated decision-making (such as profiling).

1.10. The following technical and organisational security measures are in place to safeguard the processing of this personal data and to take into consideration the risk presented by the processing and the nature of the data being processed:

Organisational measures include restricted access to the data of only authorised staff with a legitimate need to know for the purposes of this processing operation.

Technical measures include appropriate actions to address online security, risk of data loss, alteration of data or unauthorised access. Electronic data are hosted on servers of the Agency/Commission. All processing operations are carried out pursuant to the Commission Decision (EU, Euratom) [2017/46](#) of 10 January 2017 on the security of communication and information systems in the European Commission, and the electronic data are transferred only encrypted and are stored in a specific repository with restricted and limited access to authorized staff only. Paper files are stored in locked archives/safe.

1.11. The personal data concerned will be kept for the following periods:

For external cases: until the closure of the case by OLAF/EPPO in order to maintain the historical background and for a maximum period of **5 years** after the closure of the OLAF/EPPO cases.

For internal cases: **15 years** after the closure of the file that have given rise to OLAF investigations and 5 years after the closure of the files that have not given rise to investigations.

1.12. Data Subjects are informed on the processing of their personal data via a **data protection notice on their rights:**

- to access their personal data held by a controller
- to request their personal data held by a controller to be corrected
- to obtain in some situations erasure of their personal data held by a controller, e.g.: when data are held unlawfully (right to be forgotten)
- to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal
- **of recourse** at any time to **EISMEA Data Protection Officer** at EISMEA-DPO@ec.europa.eu and to the **European Data Protection Supervisor** at <https://edps.europa.eu>.

Request from a data subject to exercise a right will be dealt with within **one month**.

The right to information, access, rectification, erasure, restriction or objection to processing, communication of a personal data breach or confidentiality of electronic communications may be restricted only under certain specific conditions as set out in the **applicable [Restriction Decision](#)** in accordance with Article 25 of Regulation (EU) 2018/1725.

For the external cases, the data subjects will not be informed by the Agency on these processing activities in application of Article 25 of Regulation (EU) 2018/1725. The data subjects will be directly informed by OLAF or EPPO in accordance with their data protection notice. Any queries concerning the processing of personal data **for external cases**, have to be addressed to the above Data Controller indicated at EISMEA-ANTI-FRAUD@ec.europa.eu or EISMEA-EPPO@ec.europa.eu.

For the internal cases, in application of Article 25 of Regulation (EU) 2018/1725 the data subjects will be informed by the Agency on these processing activities only if immediate information would not harm the investigations, including of OLAF or EPPO if applicable, on a case-by-case analysis, if it is considered appropriate, through its own data protection notice. Any queries concerning the processing of personal data **for internal cases** have to be addressed to the above Data Controller as indicated in the applicable data protection notice.
