



RECORD
of processing personal data during claim assessment process under F4E works contracts
according to Article 31 Regulation 2018/1725

NAME of data processing:

Claim assessment process regarding the FIDIC based works contracts.

Evaluation and processing of the supporting documents and evidence of the claims issued by Contractors, which include data of natural persons, as well as processing during the Claim Assessment process under FIDIC works contracts provisions based on Claim procedure.

Last update: November 2019

1) Controller(s) of data processing operation (Article 31.1(a))

Controller: Organisational entity of Fusion for Energy (F4E)

Unit / Department **responsible** for the processing activity:

Legal Service Unit for BIPS (Buildings, Infrastructure and Power Supply),

Contact: LSU-DP@f4e.europa.eu

Data Protection Officer (DPO): DataProtectionOfficer@f4e.europa.eu

2) Who is actually conducting the processing? (Article 31.1(a))

The data is processed by F4E (responsible unit) itself X

The data is processed by a third party (e.g. contractor) (Art. 29 – Processor) X

Contact points at ENERGHIA Consortium (Data Protection Officers) are:

Data Protection Officer of the Group : dpo.group@altran.com

Data Protection Officer for France : dpo.france@altran.com

Data Protection Officer in Idom: dpo@idom.com

Data Protection Officer at ENGAGE: Julien.Desousa@iter.org

3) Purpose and Description of the processing (Article 31.1(b))

Why is the personal data being processed? Specify the underlying reason for the processing and what you intend to achieve. Describe, summarise the substance of the processing.

When you (later on) intend to further process the data for another purpose, please inform the Data Subject in advance.

3A) Purpose of the processing

The data are collected and processed with the purpose to verify the entitlement of the Contractor to an alleged right, most of the cases related to a possible extension of time and/or additional payments. Some processing may also be necessary during the assessment of a claim to carry out actions pursuant to the contractual provisions of F4E FIDIC works contracts, namely the claim and dispute settlement agreement under Sub-Clauses 3.5 [*Determinations*], 20.1 [*Contractor's Claims*], 20.2 [*Disputes and Differences*], 20.3 [*Adjudication*] and 20.4 [*Joinder to Adjudication*].

3B) Description of the processing

Pursuant to the applicable law of the Contract or to specific contractual provisions, for instance Sub-Clause 20.1 [*Contractor's Claims*] of the F4E works contracts, if the Contractor considers itself to be entitled to any extension of time for completion and/or to an additional payment, the Contractor shall give notice to the Engineer and shall also submit any other notices which are required by the Contract and supporting particulars for the claim relevant to the event or circumstance giving rise to the claim.

The Legal Service Unit for BIPS will receive the Contractor's claims with all supporting particulars and will assess the Contractor's entitlement to any extension of time for completion and/or any additional payment. Through these supporting particulars could be data of natural persons and the F4E dedicated staff will process these data only for the purpose for which they were transmitted, meaning for the assessment and establishment of the Contractor's entitlement to any extension of time for completion and/or any additional payment (see Annex II).

In ENGAGE and/or ENERGHIA as “Processors” on behalf of F4E:

Engage performs the tasks of the Architect/Engineer for the performance of their contract for the provision of civil engineering and construction consultancy services in connexion with the ITER project. Pursuant to Sub-Clause 3.5 [*Determinations*] of the F4E works contracts, the Engineer shall proceed to agree or determine any matter taking due regard of all relevant circumstances. If an agreement between the parties is not reached, the Engineer shall make a fair determination in accordance with the Contract, and in order to assess the Contractor’s claims, the Engineer shall assess all relevant information, including the supporting particulars, which could contain data of natural persons. These data will be processed by the Engineer (Engage) only for the assessment and establishment of the Contractor’s entitlement to any extension of time for completion and/or any additional payment (see Annex II).

Energhia performs its tasks to support F4E by the provision of civil engineering and construction consultancy services in connection with the ITER project. During the performance of its contract, Energhia will support F4E in order to complete the tasks related to Contractor’s Claims assessment, meaning to receive relevant supporting particulars which could be data of natural persons and to process these data only for the assessment and establishment of the Contractor’s entitlement to any extension of time for completion and/or any additional payment (see Annex II).

4) Lawfulness of the processing (Article 5(a)–(d)):

Mention the legal bases which justifies the processing

Processing necessary for:

(a) performance of tasks in the public interest attributed by EU legislation (including management and functioning of F4E)

- Council Decision of 27 March 2007 “establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it” - 2007/198/Euratom, as last amended by Council Decision of 10 February 2015 (2015/224 Euratom), O.J. L 37, 13.2.2015, p.8, in particular Article 6 thereof;
- Statutes annexed to the Council Decision (Euratom) No 198/2007 “establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it”, as last amended on 10 February 2015, in particular Article 10 thereof;

(b) compliance with a *specific* legal obligation for F4E to process personal data

- F4E works contracts amended under FIDIC license (Sub-clauses 3.5, 20.1 of F4E works contracts);
- Contract for the provision of civil engineering and construction consultancy services to support F4E in connection with the ITER project – ENERGHIA Consortium – reference F4E-OPE-090;
- Contract for the provision of civil engineering and construction consultancy services to support F4E in connection with the ITER project – ENGAGE Consortium – reference F4E-OPE-058-01;
- Claim Assessment Policy under F4E works contracts (also referred in the document as “Claim Assessment Procedure”), F4E reference - F4E_D_27UGLV, January 2019;
- F4E Claims Procedure – FIDIC based contracts (SOP-97.1), F4E reference - F4E_D_24MPFV June 2019;

(c) necessary for the performance of a contract with the data subject or to prepare such a contract

(d) Data subject has given consent (ex ante, freely given, specific, informed and unambiguous consent)

5) Description of the data subjects (Article 31.1(c))

Whose personal data is being processed?

Data Subjects are natural persons acting as Contractor’s employees, Sub-Contractor’s employees or third economic operator’s employees whose details are submitted as supporting documents for Contractor’s claims issued during the implementation of the F4E works contracts.

6) Categories of personal data processed (Article 31.1(c))

Please give details in relation to (a) and (b). In case data categories differ between different categories of data subjects, please explain as well.

(a) **General personal data:**

Personal data shall mean any information relating to an identified, directly or indirectly, or identifiable natural person which shall only be processed in the exercise of activities of which fall within the Claims assessment process under F4E’s works contracts, such as:

- name, date of birth, gender, personal numbers or other identifiers of general application, nationality, contact details (company and department, postal address, country of residence, business telephone number, mobile telephone number, fax number, e-mail address and internet address) and signature;
- functions, working hours, working place, salaries, time sheets, other information or personal data provided under the works contracts.

It is an illustrative listing without limitation to any others possible personal data, which could be disclosed during the claims assessment process.

Thus, only relevant and necessary data for the claim assessment may be collected and further processed during claims assessment process. Since the information is not provided on standard forms, the Contractor may supply information, which might not be necessary for the purpose of the claim assessment, for instance gender, age and nationality.

(b) Sensitive personal data (Article 10)

It is not the case to process sensitive personal data during the claims assessment process.

7) Recipient(s) of the data (Article 31.1 (d))

Recipients are all people to whom the personal data is disclosed (“need to know principle”). Not necessary to mention entities that may have access in the course of a particular investigation (e.g. OLAF, EO, EDPS).

The following recipients have access to the personal data processed:

- F4E staff members from the Operational, Legal, Procurement and Finance involved in the areas concerning Claims assessment procedure regarding FIDIC works contracts;
- FIDIC Engineer;
- FIDIC Resident Engineer;
- FIDIC Resident Engineer’s Representative;
- TB’s teams assigned for the Claims procedure on behalf of the Engineer;
- FIDIC Employer’s Senior Representative;
- Staff from the units entrusted with a monitoring or inspection task in application of European Union law (e.g. internal audit);
- Support to the Owner (ENERGHIA Consortium) Contractor;
- ENGAGE Consortium Contractor;
- Other staff member may be consulted, only if deemed necessary for a specific case.

If necessary, for monitoring, inspection or auditing tasks, access may be given to:

- Director of F4E; Head of Admin / PTM / HoU responsible, Head of the Legal Service Unit and/or responsible Legal Officer, F4E OLAF and Ethics Officer, Internal Auditor (IAC/IAS), ECA;
- F4E ICT staff, providing technical support.

8) Transfers to third countries or International Organizations (Article 31.1 (e))

If the personal data is transferred outside the EU, this needs to be specifically mentioned, since it increases the risks of the processing operation (Article 47 ff.).

Data is transferred to third countries or International Organizations recipients:

Yes

No

If yes, specify to which country/IO:

Staff of the ITER (International Thermonuclear Experimental Reactor) Organisation (F4E is ITER's European Domestic Agency) could exceptionally be involved in the claim assessment procedure, in the framework of the implementation of FIDIC works contracts. This transfer would in any case be necessary for the performance of the particular FIDIC works contracts.

If yes, specify under which safeguards and add reference:

Adequacy Decision (from the Commission)

Memorandum of Understanding between public authorities/bodies

Standard Data Protection Clauses (from the EDPS/Comission)

Binding Corporate Rules

Others, e.g. contractual/agreements (subject to authorisation by the EDPS)

Reference: F4E - ITER IO Data Protection Agreement

9) Technical and organisational security measures (Articles 31.1(g) and 33)

Please specify where the data is stored (paperwise and/or electronically) during and after the processing. Specify how it is protected ensuring "confidentiality, integrity and availability". State in particular the "level of security ensured, appropriate to the risk".

Security measures are implemented to ensure integrity, confidentiality and availability of information. The default provisions include backups, centralized logging, software updates and continuous vulnerability assessment and follow-up. Specific provisions resulting from the characteristics of the information system may lead into the implementation of encryption, two factor authentication among others found relevant following a risk analysis.

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10) Retention time (Article 4(e))

How long is it necessary to retain the data and what is the justification for this retention period? If appropriate, differentiate between the categories of personal data. If the retention period is unknown, please indicate the criteria for determining it.

Files including all the documents related to a claim procedure which could comprise personal data of Contractor's personnel should be kept up to 7 (seven) years after payment of the final instalment of the Contract Price. Also after this period the files will be subjected to a sample/selection for elimination or preservation. Files might be retained until the end of a possible audit or Court Proceeding if one started before the end of the above period.

11) Information/Transparency (Article 14-15)

Information shall be given in a concise, transparent and easily accessible form, using clear and plain language.

Information to data subjects is provided at different stages of the life cycle of each F4E works contract in the respective **contractual provisions on data protection contained in the F4E works contract** amended under FIDIC license and **during the implementation of the F4E works contracts**, if procession of any personal data is required by the Engineer (F4E and/or ENGAGE and/or ENERGHIA) under the Contract (supporting documents for a detailed claim). See respective contract clauses attached in Annex II.

Members of the team assessing the claim, who are F4E staff shall be reminded of their confidentiality obligations stemming from the Staff Regulations (art. 17) and who are not F4E staff, shall sign the Declaration of Confidentiality (ANNEX III – ref. F4E_D_29XJDL).

In addition, a Specific Privacy Notice (ref. F4E_D_29XMCY) will be sent to the Contractor and to the members of the claim assessment team on how personal data are processed during the claim assessment procedure.