

FAQ on data protection in ERA-NET Cofund projects

ERA-LEARN 2020 is a project funded by Horizon 2020. The project aims to investigate trans-national coordination experiences and acquires know-how with a view to identifying good examples and to developing a set of recommended procedures. Based on a comprehensive analysis of existing and already validated procedures, ERA-LEARN facilitates the identification of tools that are suitable for a broad use (see www.era-learn.eu).

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The new EU General Data Protection Regulation (GDPR) that enters into force on 25 May has several implications for the use of personal data within the context of implementing co-funded joint call for proposals and funding and managing co-funded projects.

To what extent does the GDPR apply to the execution of joint calls?

The GDPR applies to the processing of 'personal data' meaning any information relating to an identifiable person who can be directly or indirectly identified. The term "processing" is broadly defined and encompasses any operation which is performed on personal data, such as collection, recording or storage of data. Thus, to the extent that the personal information, such as name and title, of individual researcher included in a proposal will be collected and stored, the organization(s) managing the joint call are subject to the rules of the GDPR.

Who will be responsible for compliance with the GDPR in relation to the execution of a joint call?

The GDPR applies to natural or legal persons, public authorities, agencies or other bodies processing personal data. It does therefore not apply to the consortium as such, not being a legal person, but to all composing individual institutions. In particular those members of the consortium that are responsible for the execution of the joint call and that are determining the purpose for which and the means by which personal data are processed (and can therefore be defined as "data controller") will have to ensure compliance with EU data protection law. If the responsibility for executing the joint call is shared between two or more institutions, they are joint controllers and must conclude an arrangement, apportioning data protection compliance responsibilities between themselves. A summary of the arrangement must be made available for the data subjects and should be made available on the website of the ERA-NET Cofund project.

Should responsibility for compliance with EU data protection law be regulated in the Consortium Agreement?

Even though each individual institutions is responsible to comply with the law, it is certainly a good idea to define clearly in the consortium agreement which institution(s) will be responsible for processing personal data within the context of a joint call and to assign responsibility for compliance with the GDPR. One organization should for example be made responsible for providing clear information to data subjects.

What are the concrete legal obligations in the GDPR in relation to the execution of joint calls?

The GDPR contains a number of legal obligations regarding the processing of personal data, the most important fundamental requirement being that personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. It also contains obligations regarding amongst others the accuracy of personal data, data minimization, the limitation of data retention periods and data security, as well as specific rights of the data subjects, for example regarding access to their personal data. Please consult the detailed provisions of the GDPR as well as your institutions' data protection officers for detailed information.

Should the consortium / the organization handling the call (call coordinator) obtain consent of all individuals identified in a proposal for the processing of such personal data?

Consent is just one of the possible legal grounds for the lawful processing of data. Processing will also be lawfully if it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority if laid down in Union law or national law. In most countries, the funding and management of research projects falls under this provision and the processing of personal data in funding applications does therefore not require consent of the persons concerned. Every partner involved in the processing of data should check the relevant national legal provisions.

Can personal data collected for the purpose of implementing a joint call in an ERA-NET Cofund be used for statistical purposes?

Personal data may in principle only be collected for specified, explicit and legitimate purposes and must not be further processed in a manner that is incompatible with those purposes. Further processing of personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes is, however, permitted. The re-use for such purposes of personal data obtained within the context of implementing a joint call is thus permitted.

How long can the personal data be kept?

In principle, personal data may not be retained for longer than is necessary for the purposes for which they were collected, i.e. the evaluation of grant applications and the funding and management of research projects. Personal data may, however, be stored for longer periods insofar as the data will be processed solely for archiving purposes in the public interest, or statistical purposes.

What happens if the proposal submission system, through which the data are entered, will be handled/programmed by a third party?

If the consortium is using a third party to collect or process personal data on its behalf (a data processor), the organization with the main responsibility for this task must enter into an agreement with that third party to ensure the information is processed in accordance with the GDPR.

Who is responsible for compliance with the GDPR in respect of personal data collected and processed within the context of research projects funded by the ERA-NET Cofund?

The individual research organizations carrying out the research project and determining the purpose for which and the means by which personal data are processed will be responsible for compliance with the GDPR. The ERA-NET consortium could consider including a reference to this obligation in the Guidelines related to the call.