

## TERMS AND CONDITIONS OF USE OF THE ELECTRONIC EXCHANGE SYSTEM

### 1. SUBJECT MATTER AND SCOPE

1.1 The European Commission provides the electronic exchange system (EES) in the 'My Area' section of the Participant Portal (<http://ec.europa.eu/research/participants/portal/>) for:

- **applicants, beneficiaries, candidates and winners managing EU grants and prizes** in EU funding programmes;
- **external experts** in the context of EU funding programmes.

It allows beneficiaries to:

- register in the 'Beneficiary Register' (<http://ec.europa.eu/research/participants/portal/desktop/en/organisation/s/register.html>) and view and edit their data;
- create, revise and submit proposals;
- prepare grants, sign grant agreements and submit deliverables, reports and payment requests during the implementation of their action;

It allows experts to create or update their profile, manage their expert contract and submit supporting documents and payment requests.

1.2 These Terms and Conditions govern the relation between:

- the European Commission and its Executive Agencies and funding bodies using the EES (collectively 'the European Commission'); and
- beneficiaries, experts and users

in relation to their access to and use of the EES.

For the avoidance of doubt, the award of grants, prizes and expert contracts shall not be governed by these Terms and Conditions.

1.3 Requesting access to the EES, accessing the EES or using the EES signifies unconditional acceptance of these Terms and Conditions (in the then-current version).

Users will be requested to agree explicitly to the Terms and Conditions on their first login to 'My Area'.

Applicants, beneficiaries, candidates and winners that are organisations (i.e. not individuals) will be asked explicitly to agree at the moment they appoint their LEAR ('Declaration of consent') (see below).

Organisations must provide their LEAR, LSIGNs and FSIGNs with a copy of these Terms and Conditions.

Users and organisations are responsible for verifying the applicable Terms and Conditions each time they access or otherwise use EES.

- 1.4 These Terms and Conditions constitute the entire agreement between the European Commission and users, beneficiaries or experts, as regards the conditions for access to and use of the EES.

## **2. ACCESS TO THE ELECTRONIC EXCHANGE SYSTEM**

### **2.1 Users and organisations**

- 2.1.1 Access to the EES is open to natural persons with a European Commission Authentication Service (ECAS) account ('users').
- 2.1.2 Access rights to certain information and functions in the EES are restricted to users with specific roles (which are in turn linked to their functions within their organisation or in relation to a particular grant or expert contract).
- 2.1.3 Applicants, beneficiaries, candidates and winners that are organisations can access the EES only via users employed by or representing them.

### **2.2 Means of access — ECAS user account**

- 2.2.1 Users must obtain an ECAS account in accordance with the procedures applicable to ECAS accounts.

Users who already have an ECAS account must use that account.

- 2.2.2 Users guarantee that the information provided for registration for an ECAS account is accurate and complete.

The European Commission has — at any time — the right to verify the accuracy and validity of the information.

If this reveals any inaccuracy or invalidity, the European Commission has the right to close the ECAS account and suspend or refuse access.

- 2.2.3 The means of access (i.e. the ECAS account user name and password) are strictly personal and users are responsible for safeguarding their confidentiality and security, and ensuring their appropriate use.

Users undertake to take all steps to prevent any unauthorised third party from gaining knowledge and making use thereof.

Users may not transfer or sell their means of access to any third party.

Users must notify the European Commission immediately (via the IT helpdesk under the 'Support' menu at <http://ec.europa.eu/research/participants/portal>) of the loss, theft, breach of confidentiality or any risk of misuse of the means of access.

If the European Commission has any reason to suspect that the confidentiality or security of the means of access has been breached or that the EES is being misused, it may — without prior notice — suspend or refuse access.

## 2.3 Access rights and roles

2.3.1 For experts, there is only one role, i.e. that of Expert.

For prizes and grants, the EES has different roles (both at organisation level and at the level of each project, grant or prize).

Roles within an organisation			
Role	Who is this?	Duties and system rights	Comments
<b>Legal Entity Appointed Representative (LEAR)</b>	The person appointed by an organisation to manage its data in the EES.	Must keep beneficiary data up to date. Attributes and revokes the following roles: – LSIGNs for the organisation; – FSIGNs for the organisation; – AcAds.	The LEAR does not appoint the PLSIGNs and PFSIGNs for a particular grant.  This is done by that grant's Coordinator Contact (CoCo) or Participant Contact (PaCo).
<b>Account Administrator (AcAd)</b>	Assists LEAR in their tasks.	Cannot attribute other account administrators.	
<b>Legal Signatory (LSIGN)</b>	Person in a beneficiary organisation authorised to sign (on behalf of the organisation) legal commitments for grants (i.e. grant agreements, amendments).		
<b>Financial Statement Signatory (FSIGN)</b>	Person in a beneficiary organisation authorised to sign (on behalf of the organisation) financial statements for grants managed through the EES.		
<b>Self-registrant</b>	Person who registers a new organisation for the first time in the 'Beneficiary Register' (see section 1.1).	Manages the applicant/candidates's organisation data up until it has appointed a LEAR, (normally after the organisation has been validated as a legal entity	

		— see section 1.1).	
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Roles related to projects and grants or prizes			
Role	Who is this?	Duties and system rights	Comments
<b>Coordinator Contact (CoCo)</b>	Person representing the coordinator for a particular grant.	Has full viewing rights Manages information related to the grant. Submits information to the European Commission. Can attribute or revoke all other roles for the grant in his/her organisation and PaCos of the other beneficiaries in the grant.	A coordinator may have more than one CoCo for a particular grant.
<b>Participant Contact (PaCo)</b>	Person representing a beneficiary organisation (but not the coordinator) for a particular grant.	Has full viewing rights Manages information related to the beneficiary's participation in the grant. Submits information to the coordinator. Submits information directly to the European Commission (if laid down in the grant agreement — see Article 52 of the Annotated Grant Agreement). Can attribute or revoke all other roles for the grant, within his/her organisation.	A beneficiary may have more than one PaCo for a particular grant.
<b>Project Legal Signatory (PLSIGN)</b>	Person authorised to sign legal commitments (grant agreements, amendments) for a particular grant.	Same rights as for CoCos and PaCos.	PLSIGNs must be nominated by the CoCo or PaCo from the list of LSIGNs for their organisation (see above).  A coordinator or beneficiary may have more than one PLSIGN for a particular

			grant.
<b>Project Financial Statement Signatory (PFSIGN)</b>	Person authorised to sign financial statements for a particular grant.	Same rights as for CoCos and PaCos.	PFSIGNs must be nominated by the CoCo or PaCo from the list of FSIGNs for their organisation ( <i>see above</i> ).  A coordinator or beneficiary may have more than one PFSIGN for a particular grant.
<b>Task Manager (TaMa)</b>	Person who can perform various actions for managing a particular grant.	Completes and saves web forms.  Uploads documents about their organisation's participation.  Cannot submit information to the coordinator or the European Commission.  Cannot attribute or revoke any roles.	
<b>Team Member (TeMe)</b>	Person who has read-only rights for the management of a particular grant.	Cannot attribute or revoke any roles.	

For prizes, not all roles are relevant for every prize.

## 2.4 LEAR appointment

- 2.4.1 Organisations are required to appoint a LEAR the first time one of their proposals submitted via the EES passes the evaluation stage ('LEAR appointment letter').

Individuals (i.e. beneficiaries that are natural persons) will automatically have the role of LEAR.

- 2.4.2 Organisations can appoint no more than one LEAR.

- 2.4.3 Organisations warrant that the user appointed as its LEAR is duly authorised to represent them in relation to all LEAR responsibilities.

Organisations are responsible for verifying regularly the scope of the LEAR responsibilities and to ensure that the LEAR remains at all times duly authorised to represent them in relation to these responsibilities.

## **2.5 Appointment of signatories — (P)LSIGNs and (P)FSIGNs,**

2.5.1 The LEAR must appoint one or more LSIGNs and FSIGNs for the organisation.

2.5.2 The LEAR and its organisation warrant that users appointed as LSIGNs or FSIGNs are duly authorised to represent the organisation in relation to all LSIGN or FSIGN responsibilities.

The LEAR and its organisation are responsible for verifying regularly the scope of the LSIGN and FSIGN responsibilities and to ensure that LSIGNs and FSIGNs remain at all times duly authorised to represent the organisation in relation to these responsibilities.

2.5.3 The CoCo or PaCo must appoint the PLSIGNs and PFSIGNs for their grant from the list of LSIGNs and FSIGNs for their organisation.

## **2.6 Data updates on the roles**

2.6.1 The LEAR has ultimate responsibility for keeping data related to the roles of its organisation up to date.

2.6.2 The CoCo or PaCo has ultimate responsibility for keeping data related to the roles for each project, grant or prize up to date.

# **3. USING THE ELECTRONIC EXCHANGE SYSTEM**

## **3.1 General**

3.1.1 Users warrant that the EES is used in accordance with these Terms and Conditions, all applicable national and international legislation and, in general, in a responsible manner, and exclusively for their professional purposes and without breach of the rights of third parties.

3.1.2 Users are not permitted to make modifications to the EES.

3.1.3 Users may not:

(a) download, send or disseminate data containing viruses, worms, spyware, malware or any other similar malicious programs;

(b) carry out any calculations, operations or transactions that may interrupt, destroy or restrict the functionality of the operation of EES or any program, computer or means of telecommunications; or

(c) submit any information or materials that infringe third party rights, are libellous, obscene, threatening or otherwise unlawful.

- 3.1.4 Users are fully and unconditionally responsible for any use of the EES (including misuse of their means of access), and for any detrimental consequences that may arise directly or indirectly therefrom.
- 3.1.5 Organisations acknowledge and accept that they are responsible for the actions and omissions of users employed by or representing them.
- 3.1.6 Users and their organisations are liable for — and will indemnify and hold harmless the European Commission against — any damage that results from:
  - modifications made to the EES or
  - use of the EES in a manner that does not correspond with these Terms and Conditions.

### **3.2 Required hardware, software and services**

- 3.2.1 Users acknowledge and agree that they are responsible for the choice, purchase and operation of any hardware, software or telecommunication services required to connect with and to use EES.

Such hardware, software or telecommunication services must meet the minimum requirements, as may be specified on the Participant Portal.

Users are responsible for the installation and related costs of purchasing and licensing such hardware, software or telecommunication services.
- 3.2.2 The European Commission is not liable for hardware, software, products and services of third parties, such as telecommunication equipment, internet connections, operating systems and internet browsers.

### **3.3 Electronic notifications and signatures**

- 3.3.1 Users and their organisations acknowledge and accept that pursuant to the Rules of application of the Financial Regulation<sup>1</sup>:
  - (a) data sent or received through the EES enjoys legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving (as indicated by the EES);
  - (b) a document sent or notified through the EES is considered as equivalent to a paper document, is admissible as evidence in legal proceedings, is deemed original and enjoys legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it;
  - (c) electronic signatures made by users through the EES have the equivalent legal effect of handwritten signatures.

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<sup>1</sup> Commission Delegated Regulation (EU) of 29 October 2012 on the rules of application of Regulation (EU) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p.1).

3.3.2 Users and their organisations acknowledge and accept that:

- (a) any communication or document sent or notified using any type of electronic signature through the EES shall be considered as equivalent to a paper document with a handwritten signature and shall be admissible as evidence in legal proceedings and constitute sufficient evidence in legal proceedings;
- (b) any contract signed using any type of electronic signature through the EES shall be considered as equivalent to a paper contract with a handwritten signature and shall be admissible as evidence in legal proceedings and constitute sufficient evidence in legal proceedings;
- (c) they cannot dispute:
  - (i) the existence or validity of any communication, document or contract signed using any type of electronic signature through the EES; or
  - (ii) the admissibility of any communication, document or contract submitted or signed through the EES as evidence in legal proceedings, solely on the basis that such communication, document or contract was submitted electronically through the EES or signed with an electronic signature.

3.3.3 The European Commission registers access to and use of the EES.

This access and use log provides evidence that access has been gained to and use has been made of EES, unless users or their organisations can prove the contrary.

3.3.4 Electronic messages, connections, operations on the network and transactions between the European Commission and the users or their organisations shall be proven using the logs and transaction files kept electronically by the European Commission.

Users and their organisations accept the evidential value of this data.

This does not prevent the parties from providing other proof, using permitted legal methods (such as proof on paper).

### **3.4 Intellectual property rights**

3.4.1 The intellectual and industrial property rights and know-how associated with the EES belong exclusively to the European Commission and its licensors.

Only the European Commission has the right to correct errors.

3.4.2 The European Commission grants users a non-transferable, limited, non-exclusive licence to use the EES for their own professional purposes (unless access is suspended or refused).



Without prejudice to the rights of users under the legislation relating to the protection of computer programs (which cannot be contractually denied), users may not in any way:

- (a) modify, translate or adapt the EES;
- (b) decompile or disassemble the EES;
- (c) copy the EES (or parts of it);
- (d) pass on, dispose of, grant as a sub-licence, lease, lend or distribute EES or EES documentation to third parties;
- (e) create any product or service substantially similar to EES; or
- (f) copy any ideas, characteristics or functions of EES.

### **3.5 EES availability**

- 3.5.1 The European Commission will to the best of its abilities take reasonable care to ensure the availability of the EES.

The European Commission does not guarantee that the EES will be available without interruption or degradation of service.

### **3.6 Suspension and refusal of access**

- 3.6.1 Users acknowledge that the European Commission may refuse access to a user logging in, if a session is already open on another computer where another user is using the same means of access (i.e. the same ECAS account name and password).
- 3.6.2 Users and their organisations acknowledge and accept that the European Commission may suspend or refuse access to the EES:
- (a) in case of suspected or actual breach of these Terms and Conditions;
  - (b) if the information provided for the registration for an ECAS account is inaccurate or invalid (clause 2.2.2);
  - (c) if the European Commission has any reason to suspect that the confidentiality or security of the means of access (i.e. ECAS account name and password) have been breached or that the EES is being misused (clause 2.2.3);
  - (d) fraudulent practices of users or their organisations;
  - (e) if the IT systems of the European Commission are being attacked;
  - (f) if required under applicable laws or regulations;
  - (g) to avoid any detrimental impact for the European Commission or a user, applicant, beneficiary, candidate or winner;

- (h) for preventive, corrective or routine maintenance; and
- (i) in any other situation where the European Commission considers that suspension or refusal of access is reasonably required or desirable.

3.6.3 The European Commission is not liable for any damage suffered in connection with the suspension or refusal of access.

## **4. MISCELLANEOUS**

### **4.1 Personal data**

4.1.1 Personal data submitted or otherwise collected through the EES is subject to the [privacy statement](#) on the Participant Portal.

### **4.2 Waiving of rights**

4.2.1 The rights and remedies of a party under these Terms and Conditions may be waived only by express written notice to the other party.

4.2.2 Any waiver shall apply only in the specific instance, and for the purpose for which it is given.

### **4.3 Liability of the European Commission**

4.3.1 In addition to clauses 3.2.2 and 3.6.3 and to the maximum extent permitted by the applicable law (see clause 4.7.1), the European Commission shall not be liable for any direct or indirect damage of any kind (including disruption of business, third party claims and loss of profits, anticipated savings, or goodwill), except in the event of wilful misconduct.

To the maximum extent permitted by the applicable law, the European Commission cannot be held liable for gross negligence.

The European Commission is not responsible or liable for any damage in case of force majeure, external cause or any other events which are not under the reasonable control of the European Commission.

### **4.4 Interpretation of the Terms and Conditions**

4.4.1 These Terms and Conditions have been drawn up in English and its provisions will be interpreted and construed in accordance with applicable law (see clause 4.6) and their generally accepted meanings in the English language.

Any translation of these Terms and Conditions is for the convenience of the parties only, and shall not be binding towards any party.

In the event of any inconsistency between the English original and its translation, the provisions of the English version shall prevail.

- 4.4.2 If a provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall (if possible and insofar as it is invalid, illegal or unenforceable) be replaced by a valid, legal and enforceable clause that reflects the initial intentions as closely as possible.

If the invalid, illegal or unenforceable provision cannot be validly replaced, no effect is to be given to the clause and it shall be deemed not to be included in these Terms and Conditions, without affecting or invalidating the remaining provisions of these Terms and Conditions.

#### **4.5 Changes to the Terms and Conditions**

- 4.5.1 The European Commission may, at any time, vary, add to or delete any provision of these Terms and Conditions.

- 4.5.2 Users and their organisations expressly acknowledge and agree that such new terms and conditions can be notified by the European Commission via notice on the Participant Portal.

Unless otherwise stated in the notice, the new terms and conditions shall apply as from 7 days from the notice on the Participant Portal.

- 4.5.3 In accordance with clause 1.3, any access to or use of the EES shall constitute unconditional acceptance of these Terms and Conditions (in the then-current version).

Accordingly, users and their organisations expressly acknowledge and agree that any modification to the Terms and Conditions shall be deemed accepted by them as from the first time they access or use the EES after the date of entry into force of the new Terms and Conditions.

#### **4.6 Termination of the Terms and Conditions**

- 4.6.1 These Terms and Conditions shall be deemed terminated vis-à-vis a user or organisation in case:

- the European Commission no longer makes available the EES or
- of refusal of access pursuant to clause 3.6.

- 4.6.2 Those clauses that by their nature are expressly or implicitly intended to survive the termination or expiry of these Terms and Conditions shall so survive, including but not limited to clauses 2.4.3, 3.3, 3.5, 4.3, 4.4 and 4.7.

#### **4.7 Applicable law and dispute settlement**

- 4.7.1 These Terms and Conditions are governed by the applicable EU law, supplemented if necessary by the law of Belgium.

- 4.7.2.1 For applicants, beneficiaries, candidates and winners, the General Court — or on appeal the Court of Justice of the European Union — shall have exclusive jurisdiction to settle any and all disputes which may arise out

of or in connection with these Terms and Conditions or any access to or use of the EES, if they cannot be settled amicably.

- 4.7.2.2 For experts, all disputes which may arise out of or in connection with these Terms and Conditions or any access to or use of the EES that cannot be settled amicably must be brought before Brussels courts.