DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Adoption by correspondence - Manual on Data Protection

By document CC 627 dated 26 October 2018, delegations were invited to approve the draft Manual on Data Protection together with the proposed change to Staff Regulation 2.c. as recommended by the Budget Committee.

As specified by Rule 19 of the Rules of Procedure concerning the adoption of decisions by correspondence, members of the Energy Charter Conference were informed that any delegation that wished to object to this decision should notify the Secretariat of its position in writing by 14 November 2018.

Having received no objections within the specified time limit, on 14 November 2018 the Conference approved, with immediate effect (i) the Manual on Data Protection (attached) together with (ii) the following change to Staff Regulation 2.c. (in color), as recommended by the Budget Committee:

Officials shall:

[...]

- carry out their duties in accordance with the Manual on Data protection, which establishes a legal framework for data protection and confidentiality at the Secretariat. The Manual on Data protection does not replace existing provisions of the present Regulations and Rules, and cannot contradict their application.

Keywords: Manual on Data Protection, Staff Regulations and Rules, Amendment
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Article 1

Purpose

1.1 Data protection is important for the safe exchange, secure storage and confidential treatment of personal data. In the context of its international public mandate, the Energy Charter Secretariat (‘the Secretariat’) is required to process personal data from its officials, individuals directly involved in the work of the Secretariat (Seconded experts, Fellows, Interns and Staff on Loan), delegates and participants to events organised or co-organised by the Secretariat and third parties interacting with the Secretariat (recruitment, enquiries etc.)

1.2 The use of personal data also requires the Secretariat to share these data with other parties (mainly representatives of Members and Observers of the Energy Charter Conference). In doing so, the Secretariat needs to ensure that data protection is applied consistently by means of effective and sustainable measures.

1.3 The Energy Charter Secretariat has always ensured a high level of data protection in its activities in accordance with international standards and best administrative practices. The key objective of the Manual on data protection (‘the Manual’) is to codify existing practice in order to ensure that every individual whose personal data are used by the Secretariat is guaranteed protection of his/her privacy. In doing so, the Manual aims to prevent unnecessary and inappropriate disclosure or mishandling of personal data and to provide the Secretariat with the adequate means of compliance and follow-up in case of breach or misuse.

Article 2

Scope

2.1 The Manual applies to the processing of personal data by the Secretariat.

2.2 Compliance with the Manual is mandatory for all officials of the Secretariat as well as individuals directly involved with the work of the Secretariat (Fellows, Seconded experts, Staff on Loan and Interns).

2.3 Obligations contained in the Manual shall continue to apply, when relevant, even after individuals are no longer involved with the Secretariat.

2.4 The Manual does not replace existing provisions of the Staff Manual and cannot contradict their application.

Article 3

Framework

In implementing its data protection measures, the Secretariat will take into account evolving international standards and best administrative practices.
II – Definitions

Article 4

For the purposes of this Manual, the following definitions shall be understood as detailed hereafter:

- **Personal data**: all information that could be used to identify an individual. Personal data may include biographical data (such as name, sex, marital status, date and place of birth, country of origin, individual registration number, religion and ethnicity), biometric data (such as a photograph, fingerprint, facial or iris image), audio recordings, verification documents (such as copies of passports, identity cards, visas or marriage certificates), personal documents (such as health records or bank details). This list is not exhaustive and merely illustrates different types of personal data.

- **Processing of personal data**: any operation performed on personal data, whether or not by automated means. The processing of personal data includes collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, retention or destruction.

- **Data subject**: any individual whose personal data is subject to processing by the Secretariat.

- **Data controller**: the official of the Secretariat who has the authority to oversee the management of, and to determine the purposes for, the processing of personal data.

- **Data processor**: any official of the Secretariat, individuals directly involved in the work of the Secretariat (Seconded experts, Fellows, Interns and Staff on Loan) or other individual or organisation that processes and collects personal data on behalf of the Secretariat.

- **Consent**: any freely given, specific, informed and unambiguous indication by the data subject by which he/she shows agreement to the processing of his/her personal data.

- **Personal data breach**: a breach of data security leading to the accidental or unlawful/illegitimate destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transferred, stored or otherwise processed by the Secretariat.
• ‘Implementing partners’: natural or legal persons independent from the Secretariat and engaged with the latter to implement activities of the Secretariat’s programme of work (e.g. co-organisation of conferences, workshops etc.)

III – Main principles

In the course of processing personal data, the Secretariat shall apply and respect the following main principles.

**Article 5**

Legitimate and fair processing

Processing of personal data may only be carried out on a legitimate basis and in a fair, lawful and transparent manner.

**Article 6**

Purpose specification

6.1 Personal data can only be collected and kept for specific and legitimate purposes and shall not be processed in a way incompatible with this/those purposes.

6.2 Purposes for processing personal data that are within the Secretariat’s mandate may include:

- Organising, advertising and promoting annual meetings, workshops, conferences, trainings and other external events;
- Planning, organising and follow up to internal meetings as well as disseminating official documents;
- Sharing information on the Secretariat’s activities and distribution of newsletters;
- Referring to authors and contributors in publications of the Secretariat;
- Replying, managing and keeping a registry of requests on legal issues (including access to the *Travaux Préparatoires*) and requests to the Conflict Resolution Centre;
- Distribution of documents to members of informal groups or taskforces of the Secretariat;
- Creating and managing delegates’ accounts on the Secretariat’s website;
- Management of the recruitment process, human resources and statistic information on personnel issues.

6.3 The Secretariat may also process data in connection with any other activity necessary to carry out its tasks.
**Article 7**

**Necessity and proportionality**

The processing of personal data shall be necessary and proportionate to the purpose(s) for which it is being processed. Therefore, data that is processed shall be adequate and relevant to the identified purpose(s) and not exceed these purpose(s).

**Article 8**

**Accuracy**

8.1 Personal data shall be recorded as accurately as possible and, where necessary, updated to ensure it fulfils the purpose(s) for which it is processed.

8.2 Every reasonable step must be taken to ensure that personal data that are inaccurate, or unnecessary for the purposes for which they are processed, are rectified without delay, as detailed in Article 13 of the Manual.

**Article 9**

**Confidentiality**

9.1 Personal data shall be processed by the Secretariat as confidential. The confidentiality of the personal data shall be maintained at all times.

9.2 In order to ensure and respect confidentiality, personal data must be filed and stored in a way that it is accessible only to the authorised persons and transferred only through the use of protected means of communication. In doing so:

- All CVs (and any personal data contained in them) received for official positions and applications/expressions of interest for non official positions at the Secretariat (Seconded experts, Fellows, Interns and Staff on Loan) shall be processed and kept secured by the Finance and Administration (FINAD) official nominated for this purpose. There shall be a back-up official nominated to have access to this information in the absence of the specific FINAD official.
  - In case of recruitment of an official position or a fellowship, also the Secretary General and the members of the particular Selection Panel shall have access to personal data received for such recruitment/fellowship.
  - In case of internships, also Senior Management and Heads of Unit shall have access to personal data received for internships.
  - In case of secondment or staff on loan, also Assistant Secretary General shall have access to personal data received for such secondment/staff on loan.

- All information related to visa, medical certificates and leaves, part-time or teleworking shall be processed and kept secured only by the FINAD official nominated for this purpose and stored in a folder accessible by this official only. There shall be a back-up official nominated to have access to this information in the absence of the specific FINAD official;
- All information related to personal information of officials, Seconded experts, Fellows, Interns and Staff on Loan shall be processed and kept secured only by the FINAD officials nominated for this purpose and stored in a folder accessible by them only;

- All personal data received in relation to meetings or events organised or co-organised by the Secretariat shall be stored in a specific folder for such event or meeting accessible to officials of the Secretariat only;

- Business cards received during a mission shall be used only for professional purposes and shall be stored in a folder accessible to officials of the Secretariat only;

- All information related to legal requests (including access to the *Travaux Préparatoires*) and requests related to the Conflict Resolution Centre shall be stored by Legal Affairs and accessible to officials of the Legal Affairs Unit of the Secretariat (Legal Affairs) only;

- All information related to the delegates account shall be processed by the officials nominated for this purpose and stored in a specific folder managed by these officials only.

9.3 Official @encharter.org email accounts shall be used for official purposes. The day after an official, Seconded expert, Intern, Fellow or Staff on Loan finish his/her working relationship with the Secretariat, his/her @encharter.org account will be closed and not accessible anymore. If needed in order to follow up any ongoing project, Secretary General may authorise diversion of incoming emails to such account for a period of seven days after the @encharter.org account shall be closed. After that period, the account will be deleted.

9.4 In view of safeguarding the confidentiality of their personal information, officials, Seconded experts, Fellows, Interns and Staff on Loan shall not keep their personal files in the Secretariat's Shared-Drive. All the content in their Home-drive shall be completely erased before the end of their working relationship with the Secretariat. The day after, their cloud access will be closed and any information contained in the Home-drive completely erased.

9.5 Senior Management can request statistics or general information for management purposes. They shall know who has access to each folder in the Share-Drive and confirm any change of it. In addition, Senior Management can request access and use of personal information in case of proceedings in Disciplinary matters (Regulation 24) and Disputes (Regulation 25 and Regulations 25-Bis), including proceedings before the Advisory Board and ILOAT. The Advisory Board can also request access and use of relevant personal information in case of proceedings before them.
Article 10
Security

10.1 Personal data shall be processed in a manner that ensures appropriate security, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate and reasonable technical and organisational measures.

10.2 Organisational measures shall include:

- Setting up standard operating procedures depending on the nature of the data processed;
- Organising compulsory officials trainings on data protection.

10.3 Technical measures shall include:

- Maintaining physical security of premises, individual offices, servers, portable equipment, vaults, cupboards and drawers;
- Maintaining computer and information technology security, for example, access control (e.g. passwords).

10.4 Where personal data are processed by automated means, reasonable measures shall be taken to ensure that it will subsequently be possible to check which personal data have been processed, at what times and by whom.

10.5 In case of security situations that pose a serious risk of personal data breaches, the Secretariat shall take all necessary and possible steps to avoid such personal data breaches, relocating or, as a matter of last resort, destroying individual case files, whether in paper or electronic form, that contain personal data, in order to prevent harm to data subjects.

IV. Rights of the data subject

Article 11
Information

11.1 Information about data processing shall be made available on the Secretariat’s website.

11.2 When necessary, such information should also be shared directly with the data subject in the course of the processing of his/her personal data.

11.3 In particular, information about the right to rectify and/or delete personal data as well as the contact for additional information shall be included in the Personal Sheet of officials, Seconded experts, Fellows, Interns and Staff on Loan, as well as in invitations/registrations for meetings and events organised or co-organised by the Secretariat.
Article 12
Access

Upon request data subjects shall be given an opportunity to verify the personal data retained by the Secretariat and shall be given access to them, unless otherwise specified.

Article 13
Accuracy and rectification

At the request of the data subject, records containing mistakes or inaccurate data shall be corrected without delay. The right of rectification also includes a right of notification or rectification to the third parties to whom the data have been disclosed.

Article 14
Objection

Data subjects may at any time object the processing of data relating to them based on legitimate or public interests. The right to object to processing is absolute when intended for promotion and/or profiling reasons.

Article 15
Deletion

Data subjects shall be able to have their personal data deleted when retention of such data is not in compliance with the Manual as detailed in Article 21 c) of the Manual.

Article 16
Withdrawal of consent

Data subjects shall have the right to withdraw their consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Article 17
Modalities of request

Requests for information about access, correction, deletion or objection of personal data may be made by the data subject or by his/her authorised legal representative. Requests are to be submitted in writing to Legal Affairs.

Article 18
Exceptions

Exceptions to one of the above mentioned rights can be made in the case of compelling reasons of confidentiality or in the public interest.
V. Data processing at the Energy Charter Secretariat

Article 19
Consent of the data subject

19.1 Consent of the data subject to the processing of his/her personal data for one or more specific purposes should be sought.

19.2 In particular, the Secretariat should sought the consent for data processing of:

- Participants when organising internal or external meetings, annual events, workshops, trainings, conferences etc. via the registration form;
- Delegates when creating their personalised access to the delegates’ website;
- Applicants during recruitment process via the vacancy announcement;
- Officials, Seconded experts, Fellows, Interns and Staff on Loan when processing their personal data in the course of their contract at the Secretariat via the personal information sheet or via any other correspondence with them when necessary;
- Via subscription to the newsletter and information on ECS events.

Article 20
Notification of a data breach

20.1 Data subjects are required to notify the data controller without undue delay upon becoming aware of a personal data breach concerning their data and to properly record the breach.

20.2 Data controllers are also required, without undue delay, to notify any personal data breach to Legal Affairs, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. If a personal data breach is likely to result in personal injury or harm to a data subject, the data controller should use his/her best efforts to inform the data subject and take mitigating measures as appropriate.

Article 21
Retention, storage and deletion of personal data

21.1 Personal data should be kept for as long as necessary, and shall be destroyed or rendered anonymous as soon as the specified purpose(s) of data processing have been fulfilled.

a) Retention

21.2 In order to ensure that data are not kept longer than necessary, a retention period is set in Annex 2 of the Manual. At the end of such period, a review should be
carried out to determine whether the data is still required. Depending on the findings of
the review, the retention period may be renewed when necessary or the data erased or
archived.

21.3 When renewing the retention period of the personal data, consent of the data
subject shall be sought if the original purpose of the retention has been modified.

   b) Storage

21.4 Personal data shall be kept in safe and secure locations with appropriate
confidentiality and access control measures (e.g. passwords, restricted folders…) as
detailed in Article 9 of the Manual.

21.5 Data controllers shall ensure that the integrity and quality of electronic and paper
records are maintained throughout the life cycle of data processing.

   c) Deletion

21.6 Personal data should not be kept for an indeterminate period. Electronic and
paper records, as well as respective backups, should be destroyed, returned or rendered
anonymous as soon as retention periods have expired, as detailed in Annex 2 of the
Manual.

21.7 Personal data should be deleted when:
   o They are no longer necessary for the purposes for which they were collected
     or otherwise further processed;
   o The data subject withdraws his/her consent for processing;
   o The data subject objects to the processing and his/her objection is upheld by
     the Secretariat; or
   o The Manual otherwise provides for deletion.

21.8 However, personal data should not be deleted when there is a legitimate reason
for archiving them, such as for statistical or historical purposes or for accountability of the
Secretariat’s action.

VI. Data processing by implementing partners

   Article 22

22.1 Where the collection and processing of personal data is one of the
responsibilities of an implementing partner of the Secretariat (e.g. a co-organiser of a
conference), implementing partners are expected to respect and implement the same or
comparable standards and basic principles of personal data protection as defined in the
Manual.

22.2 However, the Secretariat shall not be responsible for breaches of one of its
implementing partners.
VII. Transfer of personal data to third parties

Article 23

23.1 The Secretariat may transfer personal data to third parties on condition that the third party affords an adequate level of data protection in conformity with international standards.

23.2 Particularly, transfer of personal data to third parties should respect the following:
   - Transfer is based on one or more specific and legitimate purpose’s;
   - The personal data to be transferred is adequate, relevant, necessary and not excessive in relation to the purpose’s for which it is being transferred;
   - The third party confirms the confidentiality of personal data transferred.

VIII. Accountability and supervision

Article 24

24.1 Legal Affairs will ensure compliance with the Manual.

24.2 In carrying its functions, Legal Affairs will in particular:
   - Provide advice, support and training on data protection within the Secretariat;
   - Monitor and report on compliance with the Manual to the Secretary General (e.g. infringement, deficiencies etc.);
   - Bring to the Secretary General’s attention any proposal for improvement of the data protection system and request the rectification, blocking, or erasure of all data processed in breach of the Manual;
   - Provide advice when requested and/or necessary;

IX. Compliance and internal appeals

Article 25

25.1 Officials in breach of their obligations under the Manual may be liable to disciplinary measures in accordance with the provisions of the Staff Manual.

25.2 Seconded experts, Fellows, Interns and Staff on Loan in breach of their obligations under the Manual may be liable to possible termination of contract in accordance with the Internal Rules applicable to them and the provisions of the Code of Conduct.

X. Entry into force and revision

Article 26

26.1 The Manual shall enter into force on the date of its approval by the Energy Charter Conference.
26.2 A revision of the Manual shall take place 12 months after its entry into force, and after that revisions shall take place as part of the reviews under Article 34 (7) of the Energy Charter Treaty. Additional amendments of the Manual may be approved, when necessary, by the Budget Committee.
ANNEX 1: MODEL PARAGRAPHS

Invitations and Registration forms

The paragraph below shall be included in invitations/registration forms for:

a) Annual meetings and any other forum/event/workshop/training organised or co-organised by the Secretariat, including Industry Advisory Panel meetings, in which the Secretariat has control of the registration data, photos, audio, video etc.;

b) Internal meetings of the subsidiary bodies of the Conference;

Please note that by registering for this event, you consent to our processing of your personal data as well as being photographed and audio/video recorded. You can change your data or have them deleted at any time. If you have any questions or comments, please refer to legalaffairs@encharter.org.

Vacancies

Announcements of vacancies and consultancy contracts shall include the paragraph below:

All personal information contained in the CV and application will be duly processed by the Secretariat. You can change your data or have them deleted at any time. If you have any questions or comments, please refer to legalaffairs@encharter.org.

The same paragraph shall appear in the general “jobs/vacancies” section of the website of the Secretariat.

Internal Debriefing Notes

Debriefing notes shall include the statement below and shall be stored (together with business cards) in the Shared Drive accessible only to officials of the Secretariat:

The content of this debriefing note shall not be shared outside the Secretariat and its information cannot be used for private purposes. Upon express request of a delegate and on case by case basis, the Secretary General may agree to show at the Secretariat the content of a debriefing note.

Email signatures

The paragraph below shall be added to the signature of official @encharter.org emails:

This e-mail is intended for the use of the named recipient only. Information contained in this e-mail and its attachments may be privileged, confidential and protected from disclosure. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others. Please also notify the sender by replying to this message and then delete it from your system.
**Appointment letter**

Appointment letters of officials shall include a reference to the Manual on data protection:

> This appointment is governed by the provisions of the Staff Regulations, Staff Rules (including any subsequent amendments as may be approved by the Charter Conference), Staff Circulars and by the terms of this letter. The Code of Conduct and the Manual on Data Protection are also applicable.

Similarly, appointment letters of Seconded experts, Fellows, Staff on Loan and Interns – as well as contracts with consultants – shall also refer to the Manual on Data Protection.

**Personal Information Sheet**

The following paragraph shall be included in the personal information sheet:

> Please note that by signing this document you consent to our processing of your personal data, including any future update, for the purpose of your contract with the Secretariat. If you have any questions or comments, please refer to legalaffairs@encharter.org. You can also check the Manual on Data Protection.

**Newsletter**

The paragraph below shall be included in the Newsletter emails:

> You received this email because you are subscribed to the Newsletter of the International Energy Charter. You can unsubscribe, change your data or have them deleted at any time. If you have any questions or comments, please refer to legalaffairs@encharter.org.

**Dissemination emails**

The paragraph below shall be included in the emails sent by the front desk when creating a password for accessing the account of a new delegate:

> Please note that by registering, you consent to our processing of your personal data. Hereby, you also subscribe to our Newsletter and agree to receive dissemination messages from the Secretariat for information purposes. You can unregister, change your data or have them deleted at any time. If you have any questions or comments, please refer to legalaffairs@encharter.org.
ANNEX 2: RETENTION PERIODS

- Personal Data from individuals (other than government officials or officials of international organisations) who participated in a conference, workshop, training or any event organised or co-organised by the Secretariat:
  - Physical copies (e.g. physical registration forms): 1 month after the event.
  - Electronic copies: 1 year after the event. After that, only non Personal Data (e.g. name of company or institution, country...) would be kept for statistic purposes.


- Audio recordings of meetings of the Conference and its subsidiary bodies, as well as electronic copies of documents related to them containing personal data of government officials will be kept safely stored and accessible only to officials without any particular retention period. However, physical copies should not be retained for more than 1 year.

- Personal Data contained in the database of subscriptions to the newsletter and information of ECS activities: until request to unsubscribe.

- Personal Data contained in requests for general information should not be stored and emails should be deleted after been replied.

- CV and applications:
  - Non selected applications for official positions:
    - Physical copies: 1 month after the acceptance of the appointment letter by the selected official.
    - Electronic copies: 6 months after the acceptance of the appointment letter by the selected official.
  - Non selected applications for Fellowships, unsolicited applications and consultants (physical and/or electronic copies): 1 month after the acceptance of the appointment letter by the selected fellow.
  - Selected officials (physical and/or electronic copies): 5 years after the end of their working relationship with the Secretariat.
- Personal Data of officials (other than CVs and application): 5 years after the end of their working relationship with the Secretariat. After that, only an electronic file will be kept with the name, surname, position and timing of work at the Secretariat for statistic and historical purposes.

- Personal Data of Interns, Consultants, Seconded Experts, Fellows and Staff on Loan (other than CVs and application): 1 year after the end of their working relationship with the Secretariat. After that, only an electronic file will be kept with the name, surname, unit and timing of work at the Secretariat of the Seconded expert or Staff on loan for statistic and historical purposes. For the rest, only an electronic file will be kept with the institution, country, timing and (if any) particular report produced.

- Personal Data in the registry of legal requests, including access to the *Travaux préparatoires*, and requests linked to the Conflict Resolution Centre: 5 years. After that, only non-Personal Data will be kept for statistic purposes. In case of personal data related to good offices, mediation or support in a particular case, they will be kept secured for as long as necessary.

- Personal Data linked with the delegates’ account: until reception of the request to close the account. Personal Data contained in Excel tables of countries/IOs: until the person is no longer in office.

- Personal data of non-delegates members of groups/task forces established by the Secretariat (including Industry Advisory Panel and Legal Advisory Task Force): until the dissolution of the informal group or until the end of the individual membership to such group. An electronic file will be kept with the name of the company, location of the office and timing for statistic purposes.
**ANNEX 3: DATA CONTROLLERS**

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<thead>
<tr>
<th>Category</th>
<th>Controller</th>
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<tbody>
<tr>
<td>Recruitment</td>
<td>FINAD official dealing with human resources and contracts</td>
</tr>
<tr>
<td>Personal data of officials</td>
<td>FINAD official dealing with visas and special cards</td>
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<tr>
<td>Personal data related to Interns, Seconded experts, Fellows, unsolicited applications, Staff on loan, Consultants</td>
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<tr>
<td>Legal requests</td>
<td>Legal Affairs</td>
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<tr>
<td>Access to the <em>Travaux préparatoires</em></td>
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<tr>
<td>Personal data related to Conflict Resolution Centre</td>
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<tr>
<td>Personal data of delegates</td>
<td>Front Office</td>
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<tr>
<td>Personal data contained in excel tables of countries/IOs</td>
<td>Official in charge of the country/IO</td>
</tr>
<tr>
<td>Database linked to newsletter and Dissemination list for information on events/publications</td>
<td>Official in charge of the newsletter</td>
</tr>
<tr>
<td>Personal data of non-government officials related to ministerial meeting of the conference, forums, events, seminars, trainings…</td>
<td>Official in charge of the registration of the particular event LA can support in deletion process</td>
</tr>
<tr>
<td>Personal data related to non-delegates members of groups/task forces established by the Secretariat (including IAP and LATF)</td>
<td>Official in charge of the group/task force</td>
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