



Opinion on a notification for Prior Checking received from the Data Protection Officer of the Council of the European Union on the public procurement procedures

Brussels, 19 July 2007 (Case 2007-275)

1. Proceedings

On 30 April 2007 the European Data Protection Supervisor (EDPS) received a notification for prior checking on the public procurement procedures managed by DG A4 from the Data Protection Officer (DPO) of the Council of the European Union. The DPO enclosed with the notification a document on "Marchés de travaux, de fournitures et de services; Règles et procédures internes" (hereafter: Implementing rules).

The EDPS requested further information on 21 May and on 7 June 2007. The controller provided the requested information on 24 June and 13 June 2007, respectively. The procedure was suspended for comments on 11 July 2007 for 7 days.

2. Examination of the matter

2.1. The facts

According to Article 91(1) of the Financial Regulation applicable to the general budget of the European Communities¹ (henceforward: FR) procurement procedures shall take one of the following forms: (a) the open procedure; (b) the restricted procedure; (c) contests; (d) the negotiated procedure; (e) the competitive dialogue. The factual and legal analysis carried out by the EDPS will concentrate on the processing operations related to the procurement procedures. Procedural specificities of the different procedures will only be mentioned if they are crucial from data processing point of view.

The Procurement Coordination Unit (PCU), which is a part of Directorate-General A4 of the General Secretariat of the Council of the European Union, is in charge of launching public procurement procedures and evaluating the tenders received. The PCU carries out these tasks in close co-operation with the Authorising Department (AD)². The PCU is responsible for ensuring as much publicity for invitations to tenders as possible in order to have sufficient numbers of bids. Invitations to tenders are published in the Official Journal of the European Union (OJ) and on the website of the Council.

¹ Council Regulation (EC; Euratom) No 1605/2002 of 25 June 2002

² Authorising Department can be any service holding a budget and being responsible for its implementation and requesting the acquisition of goods, services or works.

On the basis of the value of the project, public procurement procedures are classified in four categories³. The Implementing rules contain detailed procedures to be followed in each category.

Public procurement procedures in Category IV are carried out by the Authorising Department. The PCU does not intervene; however, it receives all the information related to such procedures from all ADs. This information is kept by the PCU and is available for consultation to the Authorising Department later on.

In Category III the AD is launching the procurement procedure by addressing the PCU with a demand of acquisition. Following the approval of the PCU, the AD can proceed and ask for bids. The AD evaluates the offers received and establishes a Note for the Dossier which is the first document leading to engagement with the economic operator selected. The PCU may add comments to this document, which is always communicated to it.

In Category II, similarly to procurement procedures falling under Category III, the AD⁴ is launching the procedure with a demand of acquisition addressed to the PCU. The PCU issues an opinion on the demand. In the course of the procurement procedure the AD, with the approval of the PCU, appoints a Tender Evaluation Committee (TEC) in which both the AD and the PCU are represented. The offers received are forwarded to TEC members. The TEC reviews and evaluates all the bids and issues an opinion which is taken into consideration by the AD. On the basis of the TEC opinion the AD draws up a Note for the Dossier and sends it to the PCU for information.

Public procurement procedures in Category I are launched together by the PCU and AD. Tenders are evaluated by the TEC appointed by the PCU taking into account the opinion of the AD. The Advisory Committee on Procurement and Contracts (ACPC) is involved only in the Category I procedures, where the estimated value of the contract to be awarded exceeds 100 000 Euros. The ACPC is composed of officials of the institution⁵. ACPC members receive a file related to specific procurement procedures before the meeting in which they are discussed. This ACPC file contains the tender(s) and the TEC reports. The information about the distribution of documents can be retrieved from the register of procurement procedures submitted to the ACPC, the ACPC meeting agenda and the meeting report. The ACPC issues a formal opinion on the procurement which is binding on the AD. Following the receipt of the opinion, the acquisition will be carried out by the AD. Currently a procedure is being put in place which aims at informing TEC and ACPC members at their appointment about the procedure regarding the treatment of personal data included in the candidatures and tenders.

The PCU may announce a call for expression of interest to economic operators in different domains. Economic operators must have proper experience and financial capacity. These calls are published in the OJ. Applications are examined on the basis of the criteria set up in the call by the PCU and the AD. A list of economic operators showing interest in future public procurement procedures will be drawn up on the basis of this pre-selecting evaluation. Economic operators pre-selected in this way and put on the list may be invited to submit a bid in future restricted or negotiated procedures.

³ Category IV: the value of the project is between 3 500€ and 5 000€, category III: between 3 500 and 25 000€, category II: between 25 000 and 60 000€, category I: over 60 000€

⁴ According to the Financial Regulation, the Authorising Officer, who is representing the AD is solely responsible for the execution of the budget, and therefore for awarding contracts as a result of procurement procedures. In practice however, the ACPC and the TEC opinion is respected by the Authorising Officer.

⁵ It is presided by the Director of DG A IV, its members are: one representative of the Budget Management Unit, one representative of the Legal Service, one representative of DG A I (Human resources). One representative of the AD and TEC are also participating in the work of the ACPC as observers.

Tenders are evaluated in the light of formal criteria and of their content. The latter includes technical and financial aspects. Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 93, 94 and 96(2)(a) of the Financial Regulation has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders⁶. The absence of these exclusion criteria, are controlled by the application of the so-called Early Warning System⁷ and the information provided by the candidates and tenders concern inter alia, criminal convictions.

Purpose of the processing

Data are collected and managed by the Procurement Coordination Unit with the purpose to evaluate the eligibility of economic operators to participate in the procurement procedure, and/or to evaluate the content of tenders submitted during the procurement procedure with the view to award the contract. Certain data are necessary for the execution of the contracts awarded.

Personal data processed

The possible categories of data subjects cover the providers of different services and staff of external firms. The set of personal data managed during the public procurement procedure varies according to the data subjects' role in the procedure:

1. If the data subject is representing an economic operator, the following personal data are processed: name, address, phone number, fax number, e-mail address.
2. If the data subject is participating as an individual economic operator, the processing involves the data as follows: name, address, phone number, fax number, e-mail address; copy of passport or national identity card; proof of the status of an independent worker or extract from the trade register; bank certificate stating his/her financial situation; bank account number and bank information (bank's name); statement as to the overall turnover and turnover for the supplies and/or services referred to in the procurement procedure; proof of having fulfilled all obligations to pay social-security contributions and taxes; certificate of clear criminal record or extract of the judicial record; extract from the register of bankruptcy and reorganization proceedings; extract from the register of debt regulations or a certificate given by a creditor; documents attesting professional standing (curriculum vitae, copies of diplomas, certificates, references regarding professional activities); proof of security clearance. It was indicated that the data related to security clearance is not collected for the purpose of every procurement procedure. It was furthermore stated that Article 93 of the Financial Regulation allows in many cases to substitute the proof of documents related to the exclusion criteria by a declaration on honour.
3. Provided that the data subject is an employee or subcontractor of an economic operator participating in the procurement procedure, the relevant personal data are included in the candidature or the tender. These data may cover: name, address, phone number, fax number, e-mail address; copy of passport or national identity card; proof of the status of an

⁶ Article 97(1) of the Financial Regulation.

⁷ It must be noted that the "Early Warning System" carried out by the Council is in itself subject to prior-checking and it should therefore be notified to the EDPS. See the EWS Opinions issued by the EDPS: EWS of the Commission, on 22 December 2006 and EWS of the Court of Justice, on 6 December 2006. See also the EDPS legislative Opinion on Financial Regulation, on 12 December 2006.

independent worker or extract from the trade register; statement as to the overall turnover and turnover for the supplies and/or services referred to in the procurement procedure; documents attesting professional standing (curriculum vitae, copies of diplomas, certificates, references regarding professional activities); proof of security clearance.

Information to the data subjects

At the time of submitting the notification data subjects are informed in the tendering documents that personal data involved in the procurement procedure will be processed for this purpose only. They are informed about their right to have access to and rectification of the data processed. It is also indicated that they can have recourse at any time to the EDPS.

For future procedures the Council foresees that a declaration, covering all points of Articles 11 and 12 of the Regulation (EC) No 45/2001 will be included in the tendering documents for each procurement procedures and this document will also made available on the website of the PCU. A shortened text of the declaration will be published in the Official Journal when a procurement procedure is published with direct link to the declaration mentioned above.

Furthermore, the PCU notifies all candidates or tenderers whose application or tenders are rejected of the grounds on which the decision was taken, and all tenderers whose tenders are admissible and who make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings⁸.

Access to data managed during the public procurement procedure

Documents containing personal data are received by the Procurement Coordination Unit. Data are disclosed to the members of the TEC. This Committee is composed of members of the PCU, the relevant Authorising Department and exceptionally external experts (not officials of the Council)⁹ after signing a Confidentiality Agreement. A copy of the tender is given to the members of the TEC following its opening date. A copy of the candidatures may be also given to the TEC members, if requested. TEC reports including evaluation data on tenders and/or candidatures are distributed to all TEC members. It can be retrieved from TEC reports to whom and which information has been distributed.

For contracts above a certain threshold (100.000 €) the results of tender evaluation are transmitted to the ACPC for approbation.

Detailed rules are being drawn up on the procedure concerning data transfer to the Accounting Unit. Transfer of data to the Accounting Unit is necessary for the execution of the payment according to the contracts awarded. Data forwarded to the Accounting Unit concerns personal data only if the awarded operator is an individual.

⁸ Article 100(2) of the FR

⁹ If Authorising Departments do not have the capabilities to evaluate technical aspects of candidatures and/or offers, they can propose to nominate external experts as members of the Tender Evaluation Committee. This proposal needs to be approved by the PCU. It is legally not excluded that external experts are not European Union nationals but the processing is always carried out in the territory of the EU and thus Directive 95/46 applies

Furthermore, internal entities with investigative capacity may have access upon request to the documents including personal data processed in the frame of the public procurement procedure. These entities include the Audit Service, OLAF, Court of Auditors, EDPS, European Parliament (for discharge of the budget).

External experts may also receive information related to ongoing public procurement procedures if Authorising Departments do not have the capabilities to evaluate technical aspects of candidatures and/or offers. It has been stated that the external experts are bound by a Confidentiality Agreement with the Council. It may be the case that these external experts are not officials of the European Communities or nationals of any Member States, but it is confirmed that the data will remain within the EU territory.

Data retention policy

Documents received in relation to procurement procedures are stored in the archive of the PCU. A record of procurement procedures and related stored documents is also kept by the PCU. After the expiry of the 5 years minimum time limit for storage the documents are destroyed. However, the PCU may decide to keep certain documents for longer period if they are related to long term framework contracts (with the duration of more than the usual 4 years). In these cases documents are kept as long as the contract expires. In case of longer storage a decision is taken by the PCU. A record containing the list of the stored documents is also kept.

Documents related to unsuccessful candidatures are also kept for the general five years retention period for auditing purposes. This retention period makes it also possible to use the documents if they are needed for legal disputes.

Personal data are stored for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the data relates. The longest retention period possible has not yet been set up so far. In case of recurring contracts it is useful to store the documents applicable to procurement procedures longer than the 5 year period.

Data subjects' rights

As regards data subjects' rights, the implementing rules of the Regulation apply¹⁰. These rules ensure that (a) data subjects can access the data processed about them; (b) data subjects can request rectification of any inaccurate or incomplete personal data; (c) they can request the blocking of data under Article 15 of the Regulation; (d) data subjects can request the erasure of the data processed about them in case of unlawful processing; (e) data subjects may object to the processing of their personal data in conformity with Article 18 of the Regulation; (f) data subjects are entitled not to be subject of automated individual decisions unless explicitly stipulated by national or Community legislation.

¹⁰ 2004/644/EC: Council decision of 13 September 2004 adopting implementing rules concerning Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data

The future eTendering application

The processing of personal data will change in some aspects after putting in place the eTendering application. eTendering application will be introduced in three phases¹¹: 1) In the first phase tenderers will be able to register on-line, get general and tender information and communicate with the AD/PCU; 2) In the second phase tenderers will be able to submit their application on-line; 3) The third phase will include, beyond the tender submission, the possibility of online evaluation of tenders. The eTendering application will be made operational in three stages, during 2008.

Data storage for historical purposes

Data related to previous similar procurement procedures can be helpful to understand the market and develop the correct procurement strategy. After the expiry of the retention period as foreseen in the FR it is decided on a case by case basis which data shall be kept for historical purposes. The PCU ensures that this is done only in anonymous form.

Security measures

At present, data are received in paper format and archived by the PCU. The data received in paper format, as well as the originals of the TEC reports are stored in the archive, which is locked and accessible only to the officials of the PCU and the security staff. The offices of the officials of the PCU are also locked and accessible only to them. Electronic versions of the TEC reports are stored in the common directory of the PCU to which only officials of this Unit and the system administrator have access.

The PCU keeps limited part of the data in electronic form. Certain data (contact information and data subjects' status in the procurement procedure) are entered manually in the database. Only the system administrator and the officials of the PCU have access to the database. The log files record every operation performed.

2.2. Legal aspects

2.2.1. Prior checking

The notification reveals that there is a processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2(a) of Regulation (EC) No 45/2001 ("the Regulation"). In the framework of the public procurement procedure personal and not personal data are processed. The present opinion focuses on the processing of personal data. The processing of personal data implies collection, storage, consultation, use and transfer of personal data which qualifies the operation as processing of personal data (Article 2(b) of the Regulation). The processing operation is carried out by a Community institution, in the exercise of activities which fall under the scope of Community law (Article 3(1)).

The processing of personal data is carried out partly by automatic means and the data processed form part of a filing system. Thus Article 3(2) applies in this case.

Article 27(1) of the Regulation subjects to prior checking by the EDPS all "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes*". Article 27(2) of the Regulation contains a list

¹¹ The first phase will be initiated in early 2008, the second phase in summer 2008 and the third phase at the end of 2008

of processing operations that are likely to present risks as referred to in Article 27(1). The processing under scrutiny has to be prior checked based on several points of Article 27(2).

Article 27(b) provides for that the specific risks are also present if the "*processing operation intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*". The procedure clearly aims at evaluating the tenderers' abilities and capacities. Since tenderers may be natural persons or the personal aspects of employees may also play a crucial role in the evaluation of tenders, the processing has to be prior checked by the EDPS. In addition, Article 27(a) provides for that the processing is likely to present specific risks if it concerns processing of data relating to health and to suspected offences, offences, criminal convictions or security measures. The processing may imply keeping information included in criminal records received from the tenderers

Prior checking is designed to address situations that are likely to present certain risks, thus the opinion of the EDPS should be given prior to the start of the processing operation. In this case, however, the processing operation has already been established. In any case, this is not a serious problem in that any recommendations made by the EDPS may still be adopted accordingly.

It has to be mentioned at this point that the future eTendering application will probably have to be subject to another prior checking opinion to be issued by the EDPS. The EDPS is expecting a notification (or in case of doubt by the DPO, a consultation on the need for prior check may be sent) on the eTendering application before it is made operational. Indeed, some crucial aspects of the data processing operation will have to be dealt with differently, such as information to the data subjects, mechanism to exercise the right to rectification, etc. The foreseen "online evaluation" in the third phase deserves also careful analysis.

The notification of the DPO was received on 30 April 2007. According to Article 27(4) of the Regulation, the present opinion must be delivered within a period of two months following the receipt of the notification. The two months period was suspended for 34 days for requesting further information and for 7 days to allow comments from the DPO, altogether for 41 days. Thus the present opinion must be delivered by 19 July 2007.

2.2.2. Lawfulness of the processing

Article 5(a) of the Regulation stipulates that personal data may be processed if "*the processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body.*" Furthermore, the EDPS considers that recital 27 of the Regulation must be also taken into consideration according to which "*processing of personal data for performance of tasks carried out in the public interest includes the processing necessary for the management and functioning of those institutions and bodies*".

The public procurement procedures are carried out in the public interest and in the interest of the institution, within the framework of its management and functioning. Consequently, public procurement procedures fall within the scope of the legitimate exercise of official authority vested in the institution and the EDPS considers that the processing is lawful under the above provision and recital.

The legal basis of the processing can be found in Articles 93 and 94 of the FR regarding the exclusion criteria and Article 97 relates to the selection criteria for evaluating the capacity of

economic operators. Articles 135 (Selection criteria), 136 (Economic and financial capacity) and 137 (Technical and professional capacity) of the FRIR must also be mentioned. The legal basis supports the lawfulness of the processing.

2.2.3. Processing of special categories of data

Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards (Article 10(5) of the Regulation).

The processing may involve operations relating to offences, criminal convictions or security measures since a proof of criminal record is requested from the data subject if he or she is participating in the public procurement procedure as an individual economic operator or as an employee or subcontractor of an economic operator participating in the procurement procedure. The EDPS considers that this processing is authorised by Article 93(1)(b) of the FR and thus the requirement of Article 10(5) is met.

2.2.4. Data Quality

Personal data processed must be adequate, relevant and not excessive in relation to the purposes for which collected and/or further processed (Article 4(1)(c) of the Regulation).

Data collected and described above are processed in the framework of the procurement procedure with the purpose to evaluate the eligibility of economic operators to participate in the procurement procedure, and/or to evaluate the content of tenders submitted during the procurement procedure with the view to award the contract. The EDPS considers that the data collected and further processed are necessary and not excessive in relation to the purpose of the processing. The processing thus fulfils the requirements set out in Article 4(1)(d) of the Regulation.

In addition, personal data processed have to be *"accurate and, where necessary, kept up to date; Every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified"* (Article 4(1)(d) of the Regulation). The system itself must guarantee accuracy and updating of the data processed.

The implementing rules of the Regulation, which indeed are of full application during the public procurement procedure, guarantee that data subjects have the right to access and to rectify data relating to them, so that the file can be as complete as possible. These rights are the means of ensuring that data are accurate and kept up to date. Thus the procedure guarantees the quality of the data.

The data must also be *"processed fairly and lawfully"* (Article 4(1)(a) of the Regulation). The lawfulness of the processing has already been discussed (see point 2.2.2.). As regards fairness, this relates to information given to the data subject (see point 2.2.8.).

2.2.5. Conservation of data/ Data retention

The Regulation states that personal data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*" (Article 4(1)(e)).

According to the policy of the controller, data related to unsuccessful candidatures are kept for the same retention period as related to successful ones.

The Council has set a minimum retention period which is five years but has not yet established a maximum retention period. Thus the EDPS recommends setting up a retention period which serves as the longest possible retention period for documents produced during public procurement procedures. This period of time shall satisfy the purpose of the processing and should guarantee that data/documents are erased as soon as they are no longer used.

Documents related to the public procurement procedure may be kept for historical purposes. The PCU ensures that this is done only in anonymous form. The EDPS considers that Article 4(1)(e) is complied with.

2.2.6. Transfer of data

Article 7(1) of the Regulation provides that "*personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

Documents are received by the Procurement Coordination Unit. Data are disclosed within the Council to the members of the Tender Evaluation Committee (TEC), the relevant Authorising Department and exceptionally external experts (not officials of the Council), to the Advisory Committee on Procurement and Contracts (ACPC) for approbation, to the Accounting Unit, to internal entities with investigative capacities.

In addition, data may be disclosed to external entities with investigative capacity upon request like the Audit Service, OLAF, Court of Auditors, EDPS, European Parliament (the latter for discharge of the budget).

The EDPS considers that the information transferred to the recipients mentioned is necessary for the legitimate performance of the tasks covered by their competence therefore the conditions of Article 7(1) are fulfilled. The EDPS welcomes the fact that the PCU is drawing up rules concerning data transfer to the Accounting Unit and urges the Council to do that as quickly as possible.

It is recommended that it is explicitly indicated in the rules by the Council that any member of the Tender Evaluation Committee as well as any other recipients may not use the data for any other purposes than for public procurement procedures.

Furthermore, external experts may also receive information related to ongoing public procurement procedures if Authorising Departments do not have the capabilities to evaluate technical aspects of candidatures and/or offers. There is indeed a Confidentiality Agreement signed between the Council and the external experts. It may be the case that these external experts are not officials of the European Communities or nationals of any Member States, but it is confirmed that the data will remain within the EU territory. Article 8(a) of the Regulation provides that personal data shall only be transferred to recipients subject to the national law

adopted for the implementation of Directive 95/46/EC *"if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority"*. It follows that article 8 of the Regulation applies in the current case due to the fact that the data are transferred to recipients covered by the Directive 95/46/EC since the data are processed within the EU territory. The EDPS considers that such transfer is necessary for carrying out public procurement procedures. Consequently, the EDPS concludes that Article 8 of the Regulation is respected.

2.2.7. Right of access and rectification

Article 13 of the Regulation establishes a right of access and the arrangements for exercising it upon request by the data subject. Under Article 14 of the Regulation the data subject has the right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data.

The implementing rules of the Regulation are of full application during the whole public procurement procedures which ensure that the right of access and the right of rectification¹² can be exercised by the data subjects. The EDPS consequently considers that Articles 13 and 14 of the Regulation are complied with.

2.2.8. Information to the data subject

The Regulation states that data subjects must be informed of the processing of data relating to him/her and lists a range of compulsory items of information which must be provided (identity of the controller, categories of data concerned, purposes of processing, recipients, whether replies to the questions are obligatory or voluntary, origin of the data, right of access). Insofar as such information is necessary to guarantee the fair processing, additional information has to be supplied regarding the legal basis, time-limits and the right to have recourse at any time to the EDPS.

In this instance, data may be supplied directly by the data subject (if a natural person is applying as an economic operator) and/or by other persons or entities (e.g. the economic operator provides data about its employees). It must be also added that information stems from the recipients in charge of evaluating the tenders, like the Tender Evaluation Committee, too. Thus both Articles 11 and 12 apply in this case.

The notification raised that a new document is being drawn up including all elements required by Articles 11 and 12. The EDPS urges the controller to draw up this document without delay and make it available in the tendering documents for each procurement procedures and on the PCU website.

2.2.9 Processing data on behalf of controllers

Article 2(e) of the Regulation states that *"processor' shall mean any natural or legal person, public authority, agency or any other body which process personal data on behalf of the controller"*.

Article 23 of the Regulation stipulates the role of the processor and the obligations of the controller in ensuring sufficient guarantees in respect of the technical and organisational security measures and ensure compliance with those measures.

¹² Articles 17 and 18

According to the facts, external experts may process data on behalf of the Council in the light of a Confidentiality Agreement signed between them, binding the processor with the controller.

The EDPS recommends that specific clauses should be added in the Confidentiality Agreement indicating explicitly on one hand that the processor shall act only on instructions from the controller and on the other hand ensuring that the obligations with regard to confidentiality and security laid down in the national law by virtue of Article 17(3), second indent, of Directive 95/46/EC are incumbent on the processor.

2.2.10. Security measures

After careful analysis by the EDPS of the security measures adopted, the EDPS considers that these measures are adequate in the light of Article 22 of the Regulation.

Conclusion:

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations are fully taken into account:

- The EDPS recommends setting up a retention period which serves as the longest possible retention period for documents produced during public procurement procedures;
- The EDPS welcomes the fact that the PCU is drawing up rules concerning data transfer to the Accounting Unit and urges the Council to draw up these rules as quickly as possible;
- It is recommended that it is explicitly indicated in the rules by the Council that any member of the Tender Evaluation Committee as well as any other recipient may not use the data for any other purposes than for public procurement procedures;
- The EDPS urges the controller to draw up the document including all pieces of information as required by Articles 11 and 12 without delay and make it available in the tendering documents for each procurement procedures and on the PCU website.
- The EDPS recommends that specific clauses should be added in the Confidentiality Agreement indicating explicitly on one hand that the processor shall act only on instructions from the controller and on the other hand ensuring that the obligations with regard to confidentiality and security laid down in the national law by virtue of Article 17(3), second indent, of Directive 95/46/EC are incumbent on the processor.

Done at Brussels, 19 July 2007

Peter HUSTINX
European Data Protection Supervisor