



Opinion on a notification for Prior Checking received from the Data Protection Officer of the Council of the European Union on its e-Tendering application covering the Council's public procurement procedures

Brussels, 10 January 2008 (Case 2007-573)

1. Proceedings

On 19 September 2007, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the Council of the European Union (Council) a notification for prior checking relating to the processing of personal data for the purposes of the Council's e-Tendering application covering its public procurement procedures.

The EDPS requested further information on 19 October 2007. This was provided on 14 November 2007. More clarifications were requested on 21 November and replies were sent on 29 November 2007. The draft Opinion was sent to the DPO of the Council for comments on 17 December 2007 and these were received on 7 January 2008.

2. Facts

The present processing operation concerns the Council's e-Tendering application covering its public procurement procedures. The e-Tendering application is an electronic procurement service on the website of the Council which has been developed by the DG A5 Communication and Information Systems. It will be managed by the Data Controller Unit which is part of the DGA 4 - Finances (Procurement Coordination Unit). The e-Tendering application will consist of three phases. The first phase will be launched end of January 2008, whereas the second and the third phases will be implemented by the end of 2008 (see below).

Purpose

The data will be collected and processed with the purpose to evaluate the eligibility of economic operators to participate in the procurement procedures, and to evaluate the content of tenders submitted during the procurement procedure with the view to award the contract.

This does not mean that the contracts will be awarded automatically through the e-Tendering application. The e-Tendering application is a tool for communication with economic operators in the framework of executing procurement procedures. The long term goal is to replace almost entirely the existing communication channel where communication takes place manually. The main purpose of introducing this system is to increase the efficiency and transparency of the procurement process. At the beginning, in the transitional period, the Data Controller Unit will still allow communications on paper, if requested by participating economic operators. In the long term however, all communication will be moved to the e-Tendering application, except in the following few cases:

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail: edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

- ❖ The contract to be awarded is declared secret
- ❖ The tendering documents contain classified data
- ❖ The contract is considered highly strategic and / or sensitive. The applicability of this exception will be decided on case by case basis by the Head of the Data Controller Unit

Procedure

An economic operator or interested party will become a User after Registration on the e-Tendering application. A user will be either a Registered or an Authorized User of the e-Tendering application.

A Registered User will act as a contact person of an economic operator with limited access to the external functionalities of e-Tendering. Only basic contact information will be required for registration.

An Authorised User will be a Registered User who will also be manually validated as the legal representative of an economic operator (i.e. a registered company or an individual doing business). The Authorised User will have access to all external functionalities of the e-Tendering.

Upon acceptance of the Terms and Conditions, the User will be licensed to access and to make personal use of the e-Tendering application for the duration of the contractual relationship on a non-exclusive basis.

Within the framework of the e-Tendering application, original and registered data will be collected.

Original data refer to the three categories of data as described in the EDPS Opinion of 19 July 2007 on the "*Council's public procurement procedures*" (2007-275) which are submitted by the data subjects either through the e-Tendering or on paper.

Registered data are the data submitted by the data subjects through the e-Tendering application during the process of user registration and company registration.

The data submitted during the user registration constitute the user account of the e-Tendering application including: name, surname and contact information of the data subject.

The data submitted during the company registration concern the data required in the Legal Entity Form, namely title of the individual, name, first name, official address, postal code, town/city, country, VAT number, identity card number, passport number, date, place and country of birth, phone, fax and e-mail.

There will be three phases involved in the e-Tendering application:

Phase 1

- **Online publishing of tendering documents** - Calls for tenders and Calls for expressions of interest (Calls) and related tendering documents will be published online
- **Electronic registration of economic operators with possibility to subscribe to a notification service about newly published Calls** - All economic operators will have the possibility to subscribe to the automatic notification service free of charge. They will have to select areas of interest in order to receive a notification of every newly published Call in the selected area. Upon publication, the application will automatically send notifications per e-mail to every economic operator that registered

for the area within which the respective Call falls. The notification about a new Call would contain a direct link to the page where the Call is published. A notification will in principle be sent only once per Call. The economic operators will have the possibility to unsubscribe from the service any time. This service will only be available for the Calls published in the Official Journal of the E.U.

- **Subscription to notification on updates and deadlines related to published Calls** - If any update to the tendering documents is published, including answers to questions, all economic operators associated to the specific Call will receive an e-mail notification containing a direct link to the page where the update can be retrieved from. They will also receive a reminder a few working days before the deadline for submission of candidature or tender. At any time they will have the possibility to unsubscribe and no longer receive this information.
- **Online questions and answers, private messages** - (e.g. notification of acceptance/rejection of candidatures, award notification, requests for additional information or clarifications). The idea behind this is to manage the entire communication related to the Call online. Templates in different languages for the standard letters will be integrated into the application.

Phase 2

- **Online submission of candidatures** - Economic operators will have the possibility to submit their candidatures online.
- **Tenderer Profile** - information about the exclusion criteria.

For most Calls, a declaration on honour, declaring that the economic operator is not in any situation leading to exclusion from participation in a Call, will be sufficient at the stage of candidature and tender submission. After the award only the awarded economic operators will have to present a proof. Upon receiving the relevant document(s), the UCA system¹ will enter the relevant data. These data include the type of document, its relevance to the exclusion criteria, the validity period, which is 12 months after the date of issue of the respective document according to Article 134(6) of the Implementing Rules to the Financial Regulation of the Council n° 2342/2002 of 23 December 2002².

The information in the supplier profile can be used for every Call conducted within the validity period. The economic operators will have access to that information, so that there is no confusion as to whether they must submit a new document for a specific exclusion criterion within the framework of an eventual other Call.

As most of the relevant documents do not exist in electronic format, the economic operators will submit them off-line. However, during the development of the application, an option for the electronic submission of such documents (which would probably only be relevant at a later stage) will also be available.

Phase 3

¹ The UCA system is the internal database of the Data Controller Unit used for internal management of procurement procedures. In order to increase efficiency and prevent data entry errors, a link between the e-Tendering application and the UCA database is established. This means that the registered data will be transferred automatically from the e-Tendering to the UCA database as soon as the company registration is validated by the administrative staff of the Data Controller Unit.

² Article 134(6) provides that "The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence ... if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid".

- **Online submission of tenders** - economic operators will have the possibility to submit tenders off-line.
- **Evaluation Tables** - For each individual Call, the award criteria with their weight can be presented on-line in a separate section. The internal interface will be designed as an evaluation table for tenders submitted by individual economic operators. The evaluation will be manual, namely the scores for each awarding criterion will be entered manually by the responsible official. However, the system will calculate the final score for each economic operator and present the ranking. When economic operators request justification of the award decision, their individual evaluation table and the evaluation table of the awarded economic operator (without displaying their name) can be made visible to them, instead of writing a justification letter.

The evaluation tables refer to the list of criteria according to which the tenders are evaluated and the contract awarded. The results of the evaluation (scores for individual evaluation criteria attributed to individual tenders) will be entered into the system by the Data Controller Unit. The advantage of this functionality is that the data can be retrieved in a structured way. Furthermore, participating economic operators will be granted access to their own evaluation table and the evaluation table of the awarded economic operator. Currently this information is transmitted to them on paper by registered mail. Evaluation tables are annexed to the Tender Evaluation Committee reports. (For more details on the members of the Tender Evaluation Committee, see below under the title "*recipients*").

Access to the portal:

- The portal will be accessible by internet 24 hours a day, 7 days a week. The homepage, the general information about the portal and the list of Calls (those published in Official Journal of the E.U) will be visible to everybody on the web. Public information of all published Calls (including tendering documents for Calls in open procedure) will also be visible to everybody on the web.
- In order to submit questions or subscribe to the notification service, the economic operators will have to register. Upon registration, they will enter basic information (company and contact information). The user name and password will be validated automatically upon registration.
- For online submission of tenders and candidatures as well as access to restricted Call information (notification of acceptance/rejection of candidatures, award notification, requests for additional information or clarifications, tendering documents in restricted and negotiated procedures a separate, manual approval process will be in place.

Procedure for approval of economic operators for access to restricted data:

- In order to be approved, the users would be required to present more information about the company and proof that they are indeed representatives of the company. The Legal entity form will be used as a registration form and it must be submitted through the e-Tendering application and on paper so that the authenticity of the data can be assured. The data required in the Legal entity form are the following: title of the individual, name, first name, official address, postal code, town/city, country, VAT number, identity card number, passport number, date, place and country of birth, phone, fax and e-mail. The user would fill it in electronically, save it, print it out and send it signed to the Data Controller Unit of the DGA 4 - Finances by registered mail, accompanied by a copy of the identity card or passport and an extract from the trade register. By signing and submitting the form, the economic operator would be accepting the terms and conditions of the e-Tendering portal.

- These documents form in fact part of a candidature which will in Phase 1 be submitted off-line. In later phases, this part will still have to be done off-line, but all other parts of the candidature and the tenders can be submitted on-line.
- The Legal entity form would stay in the system; the users can retrieve it for the purpose of participation in future Calls.
- Companies can have several users, different users being in charge of different Calls. In order to prevent confusion, the economic operators will have to nominate one user for each Call. Only exceptionally, on case by case basis, the access can be granted to several users representing the same economic operator for the same individual Call. In this case, all users would have the same rights; if one of the users is about to perform an action, for instance ask a question or submit a document, the others would be blocked. This is to prevent conflicting entries, namely several tenders are submitted by different users on behalf of one and the same economic operator.
- Submission: The economic operators will have to perform additional authentication when submitting their candidatures/tenders online. When they are approved as described above, a personal authentication token will be generated. The token is a list of specific words designated by their serial number sorted in an order dedicated to the economic operator they are related to. This list will be printed on paper and can only be sent by registered mail. When the economic operator submits candidature or tender, they will first have to present the authentication token, the Secretariat of the Council server will verify it and only if the verification is positive, the economic operator will be able to complete the submission.

Recipients

The recipients within the framework of the e-Tendering application are identical to the recipients of the Council's processing operation on "*public procurement procedures*", (Data Controller Unit, authorising departments, members of the Tender Evaluation Committee, Accounting Unit, Audit Service, OLAF, Court of Auditors, European Parliament). However, the confidentiality agreement signed by the external experts of the Tender Evaluation Committee was not provided to the EDPS while the latter was prior-checking the "*public procurement procedures*".

Some members of the Tender Evaluation Committee (TEC) are external experts who are not officials of the institution. They are nominated by the Data Controller Unit after proposal from the authorising departments in case there is a shortage of capabilities to evaluate technical aspects of candidatures and/or tenders. In case these experts are not officials of the European Communities or nationals of any Member States, a confidentiality agreement will be signed prior to their nomination. They have indirect access to the e-Tendering application by receiving a paper copy of tender and candidature printed out from the application or an electronic copy saved on a CD-ROM. The data they receive remains within the E.U. territory.

The confidentiality agreement is entitled "*Confidentiality agreement to be signed by participants in the TEC who are not members of the Council Secretariat*". It is indicated that the undersigned agrees to maintain and respect confidentiality of information and data received in the course of providing the required advisory services to the TEC appointed for the tender procedure. It is furthermore pointed out that "*the undersigned shall take all necessary measures to prevent any situation that could compromise the impartiality and objectivity of the required services and shall abstain from any contact likely to compromise his/her independence. Any conflict of interests which may arise during the provision of the services must be notified immediately in writing*".

Right of access and rectification

The procedure provided in Section 5 of the Council Decision 2004/644/EC regarding the procedure for data subjects to exercise their rights is applicable. The data subject shall have the right of access to his personal data and the right to rectify any such data that are inaccurate or incomplete. Information can be deleted upon request but can also be modified and/or updated through the registration page for the e-Tendering application at any time before the deadline for submission expires. Should the User have any queries concerning the processing of his/her personal data or should the User need to rectify or erase any of his/her data after the deadline expires, he/she shall address them in a justified request to the Secretariat of the Council responsible for registration and for the submissions of the Legal entity form.

The data shall be blocked or erased within 14 days from the date on which the request is justified. All personally identifiable information such as user accounts and documents containing personal data will be able to be marked as "blocked" so that they may be retained by the application for audit purposes, but they will not be displayed or provided electronically to any user while blocked. Only three administrative persons, within the Data Controller Unit, who manage the application, will have the authorisation to block or unblock information within the system. Their specific tasks are the following: They may

- grant access to the Council staff to the e-Tendering application,
- validate the company registration,
- block and delete the user or company registration,
- block a document submitted by a economic operator through the e-Tendering application and
- access the log-files application.

It is indicated that these administrators will be given the appropriate data protection training, namely they will be informed of the nature and extent of personal data collected through the application as well as of the rules applicable to the processing of that data. The blocking and the reason for it, as well as eventual unblocking, will be documented

Right to information

A declaration entitled "*Personal Data Protection*" will be included in the notice on "*General Terms and Conditions of the use of the e-Tendering application*" and will be published on the internet site of the Data Controller Unit. When data subjects register in the application and submit their personal data, they will be provided with the direct link to the Terms and Conditions notice. In order to proceed with the registration they will be obliged to accept them. The declaration includes the identity of the controller, the existence of the right of access and the right to rectify, the right of data subjects to delete their registered data upon request, the time-limits of storing the data and the right to have recourse at any time to the EDPS.

As for the purpose of the processing operation, it is indicated that "*Upon Registration in e-Tendering, the Secretariat stores your personal information in a data file, processed solely for the purposes of the performance, management and follow-up of the e-Tendering service by the Procurement Coordination Unit ...*"

With regard to recipients, it is stated that "*... without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. Data will in general be accessible to third parties (i.e. services of the Secretariat other than the Procurement Coordination Unit) directly, under the condition that they are authorised to access the data. Upon submitting the Legal Entity File and the Financial Identification File, these data will equally be stored by the Secretariat and used by the Accounting Officer's Department solely for the purpose of processing and accounting for financial and contractual relations you have or will have with the Secretariat*".

Retention data policy

The data collected for the e-Tendering processing operation will be retained in the following way:

- ❖ Original data will be kept for a period of at least five years from the date on which the European Parliament grants discharge for the last budgetary year to which the data relates.
- ❖ Data may be kept for a maximum of ten years in exceptional cases of long term framework contracts, for example with a duration of more than four years³. In such cases, the contract might still be in force after the minimum time limit for storage of documents applicable to the relevant procurement procedure and therefore the documents will be kept until the contract expires. After the expiration of the legally imposed time limit, it will be decided on a case by case basis whether and which data should still be kept. In this case, the decision will be documented, that is the Data Controller Unit will keep record of the decision. The documents in question can be blocked.
- ❖ Registered data will not be deleted from the accounts for audit trail reasons and to permit at all times queries on past execution of payments. These data, namely name, family name and contact information concern the data not only of the candidates until the end of the procedure but also of the candidates who decide to unsubscribe in Phase I of the e-Tendering application. Registered data are required by the Accounting Unit. They will be stored in a separate database of the e-Tendering application which will only be accessible by the System Administrators of DGA 5 - Communication and Information Systems and only for the purpose of technical support. The User can request at any time his user account and/or company registration to be deleted. In case the data subject is an individual, participating as an economic operator, additional personal data may be stored, such as date and place of birth, identity card/passport number and VAT number.

Storage and security measures

[...]

3. Legal aspects

3.1. Prior checking

The Regulation 45/2001 applies to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law (Article 3(1) of the Regulation). The procedure related to the e-Tendering application clearly involves the processing of personal data. It is carried out by a Community institution, the Council, in the exercise of activities which fall within the scope of Community law.

The Regulation applies to the processing of personal data wholly or partly by automatic means, and to the processing of personal data otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system. In the present case, most of the data will be submitted on-line, in an electronic form and those data

³ In general, a contract is awarded for a period of four years, but there are cases where contracts are awarded for longer periods, for example eight years.

which will be submitted on paper, such as the required documents, are intended to form part of a filing system. Article 3(2) of the Regulation therefore applies.

The e-Tendering processing operation is an electronic procurement service which collects data with the purpose of awarding contracts to the selected economic operators. It intends to replace in the long term the current manual processing operation related to public procurement procedures which has already been prior-checked⁴. 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*". Considering that the categories of data collected within the e-Tendering application as well as the purpose are identical to those described and analysed at the Council's "*public procurement procedures*", already prior-checked by the EDPS⁵, Articles 27(2)(a) and 27(2)(b) are applicable following the same line of arguments already exposed in the Opinion of 19 July 2007.

Moreover, the legal basis, the three categories of data subjects, the data collected as well as the recipients within the e-Tendering are identical to those described and analysed during the EDPS Opinion on the Council's "*public procurement procedure*". It follows that all recommendations that the EDPS made regarding these issues in his Opinion of 19 July 2007 should be implemented and the EDPS should be informed as soon as possible of the appropriate measures taken by the controller based on these recommendations.

The legal analysis of the e-Tendering application will concentrate on the different and new elements and information that this new system reveals.

The notification of the DPO was received on 19 September 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 21 days to allow comments from the DPO, altogether for 55 days. Thus the present opinion must be delivered no later than 14 January 2008.

3.2. 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 facts, a contract is usually awarded for a period of four years whilst the longest period for a contract to remain in force will be for eight years. According to the Council's policy, original data will be kept for a period of at least five years for budgetary discharge purposes. Data may be kept for a maximum of ten years in exceptional cases of long term framework contracts. After the expiration of the legally imposed time limit, it will be decided on a case by case basis whether and which data should still be kept.

The EDPS considers that the period of five years is a reasonable conservation period and this should be the official retention policy adopted by the Council for the e-Tendering application. As concerns the ten year period in exceptional cases, the EDPS considers it as a reasonable period for example in the case of an eight year contract. However, it is recommended that a

⁴ See EDPS Opinion on 19 July 2007 related to the "*public procurement procedures by the Council*", case 2007-275.

⁵ Idem.

set of predefined data should be kept in the light of the duration of each long term contract awarded in each case. Thus, depending on the duration of the contract, data should be erased immediately after they are no longer in use.

In the case of registered data, these data concern the data not only of the candidates until the end of the procedure but also of the candidates who decide to unsubscribe in Phase I of the e-Tendering application. They are not deleted from the accounts due to audit trail reasons and due to queries on past execution of payments. They will be kept in a separate database of the e-Tendering application which will only be accessible by the System Administrators of DGA 5 - Communication and Information Systems and only for the purpose of technical support. The data subject may request at any time to delete his registered data.

The EDPS finds the reasons for the conservation of the registered data justified and is satisfied with the fact that the data subjects have the possibility to request the deletion of these data. However, the EDPS recommends that a precise period should be determined for the conservation of registered data in the database accessible by the System Administrators. This period should not be excessive to the purposes for which registered data will further be processed, that is audit and queries of past payments.

3.3. 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 of inaccurate or incomplete personal data without delay.

In this case, data subjects are provided with the right of access to their personal data and with the right to rectify their data through the Registration page for the e-Tendering application or by contacting the Secretariat of the Council. The data can also be blocked or erased within 14 days from the date on which the request is justified.

In case data subjects need to rectify or erase any of their data after the deadline for submission expires, they shall address them in a justified request to the Secretariat of the Council responsible for registration and for the submissions of the Legal entity form. The EDPS acknowledges that this restriction on the right of data rectification and erasure does not influence the purpose of the processing operation, i.e. the selection of tenderers, but may indeed be necessary to protect the rights and freedoms of others as provided for in Article 20(1)(c) of the Regulation. The EDPS stresses in this respect that the sole purpose of the restriction must be to ensure a fair procedure and objective conditions for all applicants.

The EDPS consequently considers that Articles 13 and 14 of the Regulation are complied with.

3.4. Information to the data subject

Articles 11 and 12 of the Regulation 45/2001 provide that data subjects must be informed of the processing of data relating to them and list a range of general and additional items. The latter apply insofar as they are necessary in order to guarantee fair processing in respect of the data subject having regard to the specific circumstances of the processing operation.

In this case, Article 11 (*Information to be supplied where the data have been obtained from the data subject*) applies where data have been provided directly by the data subjects themselves when an individual is an economic operator.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) applies in the case where economic operators provide information about their employees or subcontractors (third category of data subjects) as well as where information is obtained from the members of the TEC during the evaluation phase of the e-Tendering.

Within the framework of the e-Tendering application, a declaration entitled "*Personal Data Protection*" will be included in the notice on "*General Terms and Conditions of the use of the e-Tendering application*" and will be published on the internet site of the Data Controller Unit. The declaration regarding the right to information includes the identity of the controller, the existence of the right of access and the right to rectify, the time-limits of storing the data and the right to have recourse at any time to the EDPS.

The EDPS is satisfied that a declaration specifically dedicated to the rights of the data subjects will be included in the terms and conditions of the e-Tendering application.

The EDPS, however, would like to point out that the information regarding the purpose of the e-Tendering application needs to be reformulated and indicate precisely the exact purpose of the processing operation, which is namely processing in order to evaluate and award a contract to potential tenderers. The information related to recipients also needs to be reformulated and list clearly all recipients involved within the e-Tendering processing operation, specially reference to possible external experts. Moreover, the legal basis as well as the information whether replies to the questions in Phase 2 and 3 of the e-Tendering application are obligatory or voluntary, as well as the possible consequences of failure to reply should be clearly indicated in the declaration on "*personal data protection*".

In the case of the third category of data subjects, where the economic operator provides data about his/her employee or subcontractor, it is evident that it proves impossible or would involve a disproportionate effort for the controller of the e-Tendering application to inform the employees or subcontractors of their rights regarding data protection. In this case, Article 12.2 of the Regulation 45/2001 is applicable. It is therefore recommended that the declaration on data protection should indicate the obligation of the economic operators to inform their employees or subcontractors about their rights related to Article 11 and 12 of the Regulation. The economic operators should make sure that all relevant information, which will be published on the site of the Council, can be accessible to them.

Consequently, the EDPS recommends that all the above elements are clearly outlined in the declaration in conformity with Articles 11 and 12 of the Regulation.

3.5. 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 ensures compliance with those measures.

According to the facts, external experts may process data on behalf of the Council in the light of a Confidentiality Agreement signed by the experts prior their nomination, binding therefore the processor with the controller.

The Confidentiality agreement refers to the principle of confidentiality of information and data received that must be agreed by the expert in the course of providing the required advisory services to the TEC. Reference is also made to the importance of impartiality, objectivity as well as to the prevention of any conflict of interests.

The EDPS is satisfied that the element of confidentiality is pointed out in the agreement. However, the EDPS recommends that the obligation of the experts to process data in conformity with the principles of data protection as provided in Regulation 45/2001 must clearly be stated in the Confidentiality agreement.

3.6. Security measures

According to Article 22 of Regulation (EC) No 45/2001, concerning the security of processing, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected"*.

The EDPS is satisfied that the e-Tendering application will be accredited by the Security Accreditation Authority (SAA) of the Council before it is launched, so that it will be assured that the whole system will be in compliance with the applicable security requirements.

Conclusion:

There is no reason to believe that there is any breach of the provisions of Regulation 45/2001 provided that the above considerations are fully taken into account. In particular, the Council should:

- keep a set of predefined data in the light of the duration of each long term contract awarded in each case. Thus, depending on the duration of the contract, data should be erased immediately after they are no longer in use;
- adopt a precise period for the conservation of registered data; it should not be excessive to the purpose for which they will further be processed;
- ensure that the declaration on *"personal data protection"* will include the following additional elements:
 - ✓ the purpose of e-Tendering is reformulated and the exact purpose of the processing operation should be precisely indicated,
 - ✓ all recipients involved within the e-Tendering should be clearly listed,
 - ✓ the legal basis,
 - ✓ the information on whether replies to the questions in Phase 2 and 3 of the e-Tendering application are obligatory or voluntary, as well as the possible consequences of failure to reply should be mentioned;
 - ✓ the obligation of the economic operators to inform their employees or subcontractors about their rights related to Article 11 and 12 of the Regulation should be mentioned. The economic operators should make sure that all

relevant information, which will be published on the site of the Council, can be accessible to them;

- indicate in the Confidentiality agreement that the experts have a legal obligation to process data in conformity with the principles of data protection as provided in Regulation 45/2001.

Done at Brussels, 10 January 2008

Peter HUSTINX
European Data Protection Supervisor