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Brussels, 21 October 2013  
GB/TS/sn/D(2013)0212 C **2012-921**  
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**Subject: Prior checking notification concerning public procurement**

Dear Mr Amor,

I refer to the notification for prior checking concerning public procurement submitted on 23 October 2012 to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European Research Council Executive Agency (ERCEA).

We note that the procurement procedure at the ERCEA is in most aspects in compliance with Regulation (EC) 45/2001<sup>1</sup> (the Regulation) as outlined in the EDPS Public Procurement Guidelines<sup>2</sup> and would therefore only address the existing data conservation policy which does not seem to be fully compliant in this respect.

According to the information provided in the notification, the files of successful tenderers are kept for a period of ten years after the signature of the contract, whereas the files of unsuccessful tenderers are kept for five years after the signature of the related contract, all in accordance with section 2.14 of the ERCEA Financial Guidelines based on the Common Conservation List of the European Commission.

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<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

<sup>2</sup> EDPS Guidelines on the processing of personal data in the context of public procurement, grants as well as selection and use of external experts of 25 June 2013 (EDPS 2012-501).

Article 4(1)(e) of the Regulation states that personal data can be kept in a form permitting identification of data subjects for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS observes that the conservation of files of unsuccessful tenderers for five years after the signature of the related contract can be considered as necessary in order to allow for all possible legal remedies.

At the same time, we note that the lengthy storage of the files of successful tenderers (including extracts from their judicial records) cannot be considered necessary for the purpose of financial control and audit. Therefore, we invite the ERCEA to establish shorter conservation periods in due respect of Articles 48(1)(d) and (2) of the Rules of Application to the Financial Regulation<sup>3</sup>. In similar cases, seven years were considered appropriate.

Furthermore, we consider that the extracts from judicial records should not be kept for longer than for two years after the signature of the related contract<sup>4</sup> and thus invite the ERCEA to establish such a conservation period for extracts kept in the electronic form.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the ERCEA should:

- shorten the conservation period for files of successful tenderers to seven years after the signature of the contract;
- establish a two years conservation period for the extracts from judicial record kept in the electronic form.

We would like to invite the ERCEA to inform us about the implementation of these recommendations within three months after receipt of this letter.

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor  
(signed)

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<sup>3</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.

<sup>4</sup> See to this respect the letter on conservation of extracts from the judicial records sent by EDPS to the management of all EU institutions and bodies on 12 March 2013 (EDPS 2011-482).