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Brussels, 31 October 2013
GB/TS/sn/D(2013)0306 C 2012-0647
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Subject: Prior checking notification concerning public procurement and related contract management

Dear Mr Vanheel,

I refer to the notification for prior checking concerning public procurement and related contract management submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European Aviation Safety Agency (EASA) on 27 July 2012 together with the following documents:

- privacy statement,
- declaration of absence of conflict of interest and confidentiality,
- service contract template,
- declaration of objectivity and confidentiality for preparation of the projects,
- declaration of impartiality and confidentiality for evaluation of the projects.

We note that the procurement procedure at the EASA is in most aspects in compliance with Regulation (EC) 45/2001¹ (the Regulation) as outlined in the EDPS Public Procurement Guidelines² and would therefore only address the existing data conservation policy which does not seem to be fully compliant in this respect.

¹ 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.

² Guidelines 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).

According to the information provided in the revised notification submitted on 11 October 2012, the files of successful tenderers are archived for at least ten years following the signature of the contract or the last payment by the Agency on a basis of the respective provisions of the Common Conservation List of the European Commission³, whereas the files of unsuccessful tenderers are kept for five years after the signature of the related contract.

Article 4(1)(e) of Regulation 45/2001 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 necessary in order to allow for all possible legal remedies.

At the same time, we note that the lengthy storage of files of the successful tenderers cannot be considered necessary for the purpose of financial control and audit. Therefore, we invite the EASA to establish shorter conservation periods in due respect of Articles 48(1)(d) and (2) of the Rules of Application to the Financial Regulation⁴. 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 respective contract⁵ and thus invite the EASA 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 the consideration contained in this Opinion are fully taken into account. In particular, the EASA should:

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

We would like to invite the EASA 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)

³ Common Commission-level retention list for Commission files SEC (2012)713 of 17 December 2012.

⁴ 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.

⁵ 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).