



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Vicência Gomez da Silva
Head of Legal Affairs & Contract Sector
SESAR JU
Avenue de Cortenbergh 100
B-1000 Brussels

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GB/TS/sn/D(2014)0775
C 2011-0927
Please use edps@edps.europa.eu
for all correspondence

Subject: Prior checking notification concerning public procurement

Dear Ms Gomez da Silva,

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 EU Joint Undertaking for Single European Sky Air Traffic Management Research (SESAR JU).

We note that the procurement procedure at the SESAR JU is in most aspects in compliance with Regulation (EC) No 45/2001¹ (the Regulation) as outlined in the EDPS Public Procurement Guidelines² and will therefore only address the existing practices which do not seem to be fully compliant in this respect.

1. Data conservation. According to the information provided in the notification, files of successful tenderers are kept for seven years after the signature of the related contract or until the dissolution of the SESAR JU, whichever comes first. The files of unsuccessful tenderers are kept for five years after the signature of the related contract.

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 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 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 successful tenderers for up to seven years can be considered necessary for control and audit purposes in terms of Articles 48(1)(d) and (2) of the Rules of Application to the Financial Regulation³, whereas the storage of files of the unsuccessful tenderers for up to five years can be considered necessary in order to allow for all possible appeals.

At the same time, we note that the extracts from judicial records should not be kept for longer than two years after the signature of the related contract⁴ and thus invite the SESAR JU to establish a conservation period of two years for extracts from judicial reports kept in the electronic form.

2. Information to data subjects. The EDPS notes that most information about the data processing in the context of public procurement required in terms of Articles 11 and 12 of the Regulation is provided in the specific privacy statement as well as the model data protection clause for contracts.

Nevertheless, we recommend that information about the identity of the controller as well as the legal basis is being added to the respective documents in order to insure full compliance with the Regulation.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of any provisions of the Regulation on condition that the consideration contained in this Opinion are fully taken into account. In particular, the SESAR JU should:

- establish a two years conservation period for extracts from judicial records kept in the electronic form;
- modify the existing privacy statement and the model data protection clause in a way outlined above.

He would like to invite the SESAR JU to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

Cc: Daniella PAVKOVIC, DPO

³ 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.

⁴ 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).