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ASSISTANT SUPERVISOR

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GB/TS/sn/D(2014)0927 C 2013-0913
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correspondence

Subject: Prior checking notification concerning the selection and management of experts for evaluation activities in the field of Intelligence Energy Europe (IEE), Eco innovation (ECO-I) and Marco Polo programmes

Dear Mr Lheritier,

I refer to the notification for prior checking concerning the processing of personal data in the framework of the selection and management of experts for evaluation activities in the field of Intelligence Energy Europe (IEE), Eco innovation (ECO-I) and Marco Polo submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Executive Agency for Competitiveness and Innovation on 22 July 2013.

We note that the Executive Agency for Competitiveness and Innovation was replaced by the Executive Agency for Small and Medium-sized Enterprises (EASME) on 1 January 2014. As the existing procedures at the EASME are in most aspects in compliance with Regulation (EC) No 45/2001¹ (the Regulation) as outlined in the respective EDPS Guidelines², we will only address the existing practices which do not seem to be fully compliant in this respect.

1. Data conservation. Concerning the applicable data conservation periods, the EDPS notes that the conservation of files of successful candidates for up to seven years after the end of the particular programme can be considered as necessary for control and audit purposes in terms

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 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).

of Article 48 of the Rules of Application to the Financial Regulation³, whereas the conservation of files of unsuccessful candidates for up to five years after the end of the selection procedure can be considered as necessary for all possible appeals. At the same time, we are of the opinion that the extracts from the judicial records should not be kept for longer than two years after the accomplishment of the particular procedure⁴. Consequently, we recommend that such a conservation period is established for the extracts from judicial records kept in the electronic form.

2. Information to data subjects. We also observe that some information is provided in the respective call for expression of interest and appointment letter. In order to ensure full compliance with Articles 11 and 12 of the Regulation, information about identity of the controller, recipients and time limits for data conservation of the data processed should be added to the existing documents.

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 EASME should:

- establish a maximum two years conservation period for extracts from judicial records kept in the electronic form;
- add the missing information to the calls for expression of interest and appointment letters as indicated above.

We would like to invite the EASME to inform us about the implementation of these recommendations within three months of reception of this letter. Considering that this is an ex post prior-check, the recommendations need to be immediately applied to the already on-going processing activities.

(signed)

Giovanni BUTTARELLI

Cc: Elena FIERRO SEDANO (Data Protection Officer)
Ana Elena PALLARES (Deputy Data Protection Officer)

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 judicial records sent by the EDPS to the management of all institutions and bodies on 12 March 2013 (EDPS 2011-482).