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Subject: Prior checking notifications concerning public procurement and selection of external experts

Dear Mr Briol,

I refer to the notifications for prior checking concerning public procurement and selection of external experts submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Executive Agency for Health and Safety (EAHC) on 20 September 2013.

We note that the EAHC was replaced by the Consumers, Health and Food Executive Agency (CHAFEA) on 1 January 2014. Since the already existing procedures are in most aspect in compliance with Regulation (EC) No 45/2001¹ (the Regulation) as outlined in the respective EDPS Guidelines², we will only address the existing data conservation policy which does not seem to be compliant in this respect.

According to the information provided in the notifications, personal data processed in this context is kept for the following time periods:

¹ Regulation (EC) No 45/2001 of the European Parliament and 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 2012-0501).

- files of successful tenderers for ten years after the date of payment of the balance, with the exception of the extracts from the judicial records that are kept only for two years;
- files of unsuccessful tenderers for five years after the signature of the related contract;
- files of applicants for external experts for six months after the duration of the respective call for expression of interest;
- files of selected experts for seven years after the date of payment to the expert.

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

The EDPS notes that the above mentioned time limits for conservation of data processed in the context of selection of external experts as well as the limits for extracts from judicial records can be considered as necessary for control and audit purposes, whereas the conservation of data of unsuccessful tenderers for five years can be considered as necessary for all possible appeals.

At the same time, we would like to question the necessity of the lengthy storage of data of successful tenders. In particular, we would like to recall that the further storage for control and audit purposes should correspond to the time limits set out in Article 48(1)(d) and (2) of the Rules of Application to the Financial Regulation³. Therefore, we invite the CHAFEA to shorten the existing time limit to a maximum of seven years.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation on condition that the consideration contained in this Opinion is fully taken into account.

The EDPS expects the CHAFEA to implement the recommendation accordingly and will close the case.

Thank you for your cooperation.

(signed)

Giovanni BUTTARELLI

(signed)

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.

Cc: Beata Gyori-Hartwig, DPO