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GB/TS/sn D(2014)1420 **C2013-1175**  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu)  
for all correspondence

**Subject: Prior checking notification concerning public procurement**

Dear Mr Igneczi,

I refer to the notification for prior checking concerning public procurement submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Office of the Body of European Regulators for Electronic Communications (BEREC) on 21 October 2013.

We note that the procurement procedure is in most aspects in compliance with Regulation (EC) No 45/2001<sup>1</sup> (the Regulation) as outlined in the EDPS Public Procurement Guidelines<sup>2</sup> and will therefore only address the existing practices which do not seem to be fully compliant in that regard.

**1. Rights of data subject.** According to the information provided in the notifications, the data subject's requests to access or rectify their factual data in this context will be dealt with within thirty working days.

Pursuant to Article 14 of the Regulation the data subject shall have the right to obtain from controller the rectification of inaccurate and incomplete data without any delay.

As the existing time limit of thirty working days cannot be considered as being in line with the Regulation, the EDPS invites the BEREC Office to modify it.

**2. Information to data subjects.** All information listed in Articles 11 and 12 of the Regulation is provided in a privacy statement posted on the BEREC Office website. Upon the approval by the

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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).

Administrative Manager, this privacy statement should also be included in all invitations to tender.

At the same time, the EDPS notes that the information about the identity of the controller provided therein is confusing. It refers to the Management Committee and the Administrative Manager as "the controllers", to the Head of Administration and Finance respectively to the Head of Operational Unit as "the controllers in practice" and to the project managers as "sub-delegated controllers in practice" as well as "processors of personal data".

The controller is the organisational entity that determines the purposes and means of the processing of the personal data (Article 2(d) of the Regulation), whereas the processor is an entity that processes personal data on behalf of the controller (Article 2(e) of the Regulation).

As the project managers are actually an organisational part of the controller, namely the BEREC Office represented by the Management Committee and the Administrative Manager as well as the Heads of Unit mentioned above, they can never be considered as processors but only as "the designated unit entrusted with the processing" or "the person designated as being in charge of the processing operation"<sup>3</sup>.

We are of the opinion that only the Administrative Manager together with the respective project managers should be mentioned in the privacy statement and that both references to the project managers should be deleted.

Therefore, we recommend that the existing privacy statement is revised accordingly and that the new version is added to the invitations to tender as announced.

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 BEREC Office should:

- revise the existing rules applicable to the right of rectification;
- revise the information about identity of the controller provided in the privacy statement;
- ensure that the privacy statement is added to the invitations to tender as announced.

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

**(signed)**

Giovanni BUTTARELLI

Cc: Michele Marco CHIODI, DPO

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<sup>3</sup> Cf. to this respect our reply of 30 September 2013 to the Article 46(d) consultation on controllership at the BEREC Office (EDPS 2013-0840 + 0887).