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GB/TS/sn/D(2014)1418 C 2013-1162
Please use edps@edps.europa.eu
for all correspondence

Subject: Prior checking notifications concerning public procurement and grants as well as selection and use of external experts

Dear Mr Goldman,

I refer to the notification for prior checking concerning public procurement and grants as well as selection and use of external experts submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Innovative Medicines Initiative Joint Undertaking (IMI) on 18 October 2013.

We note that the already existing procedures at the IMI are in most aspects in compliance with Regulation (EC) No 45/2001 (the Regulation)¹ as outlined in the related EDPS Guidelines² and will therefore only address the existing practices which do not seem to be fully compliant in this respect.

1. Data conservation. Article 4(1)(e) of the Regulation 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 and further processed.

The EDPS notes that the files of unsuccessful tenderers, applicants and candidates are kept for up to five years after the end of the respective procedure to allow for all possible appeals, whereas the files of successful tenderers are further stored for an undetermined period of time for control and audit purposes and for the period in which it can be challenged.

The conservation of the files of unsuccessful tenderers, applicants and candidates can indeed be considered as necessary to allow for all possible legal remedies. At the same time, it seems that no maximum time limit was established for the files of successful tenderers, applicants and

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 (2012-501).

candidates and for the extracts from their judicial records. 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 would like to invite the IMI to establish a maximum time limit for the conservation of files of successful tenderers, applicants and candidates of seven years after the end of the respective procedure.

Furthermore, we are of the opinion that the extracts from judicial records should not be kept for longer than two years after the signature of the related contract⁴ and would like to invite the IMI to establish such a maximum time limit for extracts kept in the electronic form.

2. Information to data subjects. According to the information provided in the notification, a specific privacy statement is made available on the IMI website. We observe that the information about the identity of the controller, rights of data subjects and recourse to the EDPS is rather misleading. Therefore, we recommend that information about the actual identity of the controller is mentioned, as well as information about the right of access and the right of recourse to the EDPS. In particular, the privacy statement should refer to the IMI procurement officer or the IMI call coordinator (and their email addresses) and not just the institution as such since this information is crucial for the exercise of the data subjects' rights.

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 IMI should:

- establish a maximum time limit for conservation of files of successful tenderers, applicants and candidates of seven years after the end of the signature of the related contract;
- establish a maximum time limit of two years for conservation of extracts from the judicial records;
- revise the existing privacy statement in a manner outlined above.

The EDPS would like to invite the IMI to inform him about the implementation of these recommendations within three months after receipt of this letter.

(signed)

Giovanni BUTTARELLI

Cc: Estefania RIBEIRO, 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 judicial record sent by the EDPS to the management of all institutions and bodies on 12 March 2013 (EDPS 2011-482).