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GB/TS/sn D(2014)1421 **C2013-1231**
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for all correspondence

Subject: Prior checking notification concerning public procurement

Dear Mr Beckers,

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 Trans-European Transport Network Executive Agency (TEN-T EA) on 5 November 2013.

We note that the TEN-T EA was replaced by the Innovation and Networks Executive Agency (INEA) on 1 January 2014. As the procurement procedure is in most aspects in compliance with Regulation (EC) No 45/2001¹ (the Regulation) as outlined in the EDPS Public Procurement Guidelines², we will only address the existing data conservation policy which does not seem to be fully compliant in this regard.

According to the information provided in the notification, the files of successful tenderers are kept for at least ten years after the signature of the contract³, whereas the files of unsuccessful tenderers are kept for five years after the award decision.

The EDPS observes that the time limit for the conservation of files of unsuccessful tenderers can be considered as necessary in order to allow for all possible legal remedies.

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 2012-0501).

³ In line with the Common Commission-level retention list for Commission files (SEC(2012)713).

At the same time, we note that no maximum time limit has been established for the files of the successful tenderers. 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 Rules of Application to the Financial Regulation⁴. Therefore, we invite the INEA to establish a maximum conservation period of seven years for the files of successful tenderers.

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 contract⁵. Consequently, we invite the INEA to establish such a conservation period for extracts kept in the electronic form.

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 INEA should:

- establish a maximum conservation period of seven years for the files of successful tenderers;
- establish a maximum conservation period of two years for the extracts from judicial records kept in the electronic form.

The EDPS expects that INEA implements the recommendations accordingly and will therefore close the case.

Thank you for your cooperation.

(signed)

Giovanni BUTTARELLI

⁴ Commission Delegated Regulation (EU) No 1268/2012 of 19 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.

⁵ See to this respect the letter on conservation of extracts from judicial records sent by the EDPS to the management of all EU institutions and bodies on 12 March 2013 (EDPS 2011-0482).

Cc: Caroline MAION, Deputy DPO