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Brussels, 17 July 2014  
GB/TS/sn D(2014)1540 **C2013-1270**  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu)  
for all correspondence

**Subject: Prior checking notifications concerning public procurement, grant procedures as well as selection and use of external experts**

Dear Mr Dautriat,

I refer to the notification for prior checking concerning public procurement, grant procedures 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 Clean Sky Joint Undertaking on 14 November 2013.

We note that these procedures are in most aspect in compliance with Regulation (EC) No 45/2001<sup>1</sup> (the Regulation) as outlined in the respective EDPS Guidelines<sup>2</sup>, we will only address the existing practices which do not seem to be fully compliant in this respect.

**1. Data conservation.** According to the information provided in the notification, personal data of successful tenderers, applicants and experts are further kept as long as necessary for control and audit purposes, whereas the data of unsuccessful ones are kept for up to five years after the end of the particular procedure for all possible appeals.

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.

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<sup>1</sup> 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.

<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 20013 (EDPS 2012-0501).

The EDPS notes that the above mentioned time limit for conservation of data of unsuccessful tenderers, applicants and experts can be considered as necessary to allow for all possible legal remedies. At the same time, we note that no actual time limit was established for the conservation of data of successful ones and 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 Regulation<sup>3</sup>. Therefore, we invite the Clean Sky to establish such a time limit for conservation of data of successful tenderers, applicants and experts.

**2. Information to data subject.** The EDPS notes that most information required in terms of Articles 11 and 12 of the Regulation is provided in a specific privacy statement posted on the Clean Sky website.

Nevertheless, the information about the identity of the organisational entity representing the controller is missing, whereas the information about the data conservation and recourse to the EDPS seems to be misleading. Therefore, we recommend that the existing privacy statement is revised in the following manner:

- the information about the organisational entity representing the Clean Sky is added;
- it is clarified that the data of unsuccessful tenderers, applicants and experts are kept for up to five years after the end of the procedure (and not "after the end of the period for all possible appeals");
- it is clarified that the data subject has a right of recourse to the EDPS (and not that it "can contact the EDPS in case of queries or complaints").

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation on condition that the considerations contained in this Opinion are fully taken into account. In particular, the Clean Sky should:

- establish the maximum conservation period of seven years for data of successful tenderers, grant applicants and experts;
- revise the existing privacy statement in a manner outlined above.

We would like to invite the Clean Sky to inform us about the implementation of these recommendations within three months after receipt of this letter.

**(signed)**

Giovanni BUTTARELLI

Cc: Bruno MASTANTUONO, DPO

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<sup>3</sup> 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.