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Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu)  
for all correspondence

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

Dear Mr Mylly,

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 European Maritime Safety Agency (EMSA) on 15 November 2013.

We note that this procedure is 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, all personal data processed in this context are kept for ten years after the signature of the respective contract.

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.

We note that the existing time limit cannot be considered as necessary for the conservation of personal data of unsuccessful tenderers. Therefore, we invite the EMSA to establish a shorter

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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 2013 (EDPS 2012-0501).

conservation period corresponding to the time limits set out for the applicable legal remedies. In similar cases, five years were considered appropriate in this respect.

Furthermore, we note that the extracts from judicial records should not be kept for longer than two years after the signature of the related contracts<sup>3</sup> and invite the EMSA to establish such a conservation period for the extracts from judicial records kept in the electronic form.

**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 the specific privacy statement available on the EMSA website. However, the information about the time limits for data conservation is missing. Therefore, we recommend that the information about the newly established maximum data conservation limits is added to the existing privacy statement.

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 EMSA should:

- establish a maximum time limit of five years for the conservations of files of the unsuccessful tenderers;
- establish a maximum time limit of two years for the conservation of the extracts from the judicial records kept in the electronic form;
- add the information about the newly established time limits to the existing privacy statement.

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

**(signed)**

Giovanni BUTTARELLI

Cc: Malgorzata NESTEROWICZ, DPO

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<sup>3</sup> See to this respect the letter on conservation of extracts from the judicial records sent by the EDPS to the management of all EU institutions and bodies on 12 March 2013 (EDPS 2011-0482).