

GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Ms Bernadette FREDERICK
Head of Unit R1
Programme Support, Coordination &
Communication
Innovation and Networks Executive Agency
Chaussée de Wavre 910
1049 Brussels

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Please use edps@edps.europa.eu for all correspondence

Subject: Prior checking notifications concerning grant procedures and selection of external experts

Dear Ms Frederick,

I refer to the notifications for prior checking concerning grants procedures and selection of external experts submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Innovation and Networks Executive Agency (INEA) on 29 April 2014.

We note that the already existing procedures at the INEA 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 data conservation practice which does not seem to be fully compliant in this regard.

According to the information provided in the notifications, data processed in this context are kept in the following manner:

- the files of the selected experts, successful grant applicants as well as the files relating to the management of grant agreements and decisions are kept for ten years after the end of the respective procedure, all in accordance with the Common Retention List of the European Commission³;
- the files of unsuccessful grant applicants are kept for three years after the end of the respective procedure;

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).

³ Common Commission-Level Retention List for European Commission Files - SEC(2007)970 adopted on 4 July 2007 and revised on 17 December 2012 as SEC(2012)713.

- the files of the unsuccessful experts are kept for a year after the end of the particular procedure.

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 observes that the time limits for the conservation of files of unsuccessful applicants and experts can be considered as necessary in order to allow for all possible legal remedies.

At the same time, we would like to question the necessity of the lengthy storage of the data of the successful grant applicants and experts. 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 the Rules of Application to the Financial Regulation⁴. Therefore, we recommend to the INEA to shorten the existing time limit to a maximum of seven years or to provide for specific justifications.

Furthermore, we are of the opinion that the extracts from judicial records should not be kept for longer than two years after the end of the particular procedure⁵ and therefore recommend to the INEA to establish such a maximum time limit for the 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:

- shorten the existing time limit for conservation of files of successful applicants and experts to seven years or provide for specific justifications;
- establish a maximum time limit of two years for conservation of extracts from the judicial records kept in the electronic form.

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

Yours Sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Caroline MAION, Data Protection Officer

⁴ 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.

⁵ 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).