



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Ms Kristalina GEORGIEVA
Vice-President
European Commission
Rue de la Loi, 56
B-1049 Brussels

Brussels, 3 December 2014
GB/FP/cpl/D(2014) 2424 **C2014-0301**

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 966/2012 on the financial rules applicable to the general budget of the Union

Dear Vice-President,

Having regard to 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 data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 28(2), I am writing in relation to the proposal for a Regulation of the European Parliament and of the Council amending Regulation No 966/2012 on the financial rules applicable to the general budget of the Union ('the Proposal').¹

We welcome that we have been consulted by the Commission at an earlier stage and that we have been able to provide informal comments orally and in writing as to the compliance of the Proposal with data protection rules. We welcome that some of our informal comments are reflected in the final draft of the Proposal.

The objective of the Proposal is to amend the Commission Financial Regulation and to bring its provisions in line with the new Directives on public procurement and concessions.

Article 108 of the Proposal mandates the Commission to set up and operate a system for the early detection of risks threatening the Union's financial interests and the ensuing exclusion (or fining) of certain economic operators. In order to ensure an optimal level of deterrence, the provision foresees - at paragraph 3(h) - that the information concerning the exclusion or the financial penalty shall be published on the Commission internet site.

In this respect, we note and appreciate that the same paragraph 3 provides for the possibility to withhold publication when natural persons are involved, with consideration for their rights to privacy and data protection and to comply with the provisions of Regulation No 45/2001.

¹ COM(2014) 358 final.

In relation to the early detection system, we understand that the purpose of the envisaged system under Article 108 is to ensure, within the Commission and its executive agencies, the circulation of restricted information concerning third parties who could represent a threat to the European Union's financial interests and reputation or to any other fund administered by the European Union. In this respect, we would like to recall that Article 27(1) of Regulation 45/2001 subjects to prior checking by the EDPS processing operations likely to present specific risks to the rights and freedoms of data subjects. Article 27(2) contains a list of processing operations likely to present such risks and, in particular, provides that "*processing operations for the purpose of excluding individuals from a right, benefit or contract*" should be subject to prior checking.

The registration of a legal or natural person in the early detection system can lead notably to the exclusion from a contract or the granting of an award or to a refusal of a transfer of funds. The early detection system foreseen in Article 108 of the Proposal would therefore fall under Article 27(2)(d) of Regulation 45/2001 and as such would be subject to prior checking by the EDPS.

We note, incidentally, that a notification is also required on the ground of Article 27(2)(b) covering "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" and/or Article 27(2)(a) (processing of data relating to "*suspected offences, offences, criminal convictions or security measures*").

We note that the Commission has already notified to the EDPS similar mechanisms for prior-checking (*e.g.* the early warning system, or EWS, notified for prior checking in 2006 and subject of Case 2005-0120). We also note that, following our recommendations on the EWS in 2006,² the Commission committed to notify such system for prior checking. As of today, such notification has not been received yet.

The EDPS has no further comments on the text of the Proposal itself.

I have sent this letter to the European Parliament and to the Council as well.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Nadia CALVINO, Director General, DG BUDGET
Ms Paraskevi MICHOU, Acting Director General, DG JUSTICE
Mr Paul NEMITZ, Director "Fundamental Rights and Citizenship" - DG JUSTICE
Mr Bruno GENCARELLI, Head of Unit, Data Protection, DG JUSTICE
Mr Philippe RENAUDIÈRE, Data Protection Officer - European Commission

Contact person: Fabio POLVERINO (tel: 02 28 31911)

² EDPS Opinion of 6 December 2006 on a notification for prior checking on the Early Warning System (Case 2005-0120).