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

Dear Mr Prieto Fernandez,

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 Central Bank (ECB).

We note that the procurement procedure is in most aspects in compliance with Regulation (EC) No 45/2001<sup>1</sup> (the Regulation) as outlined in the EDPS Public Procurement Guidelines<sup>2</sup>, we will therefore only address the existing practices which do not seem to be fully compliant in this regard.

**1. Data conservation.** According to the information provided in the notification, personal data processed in this context are currently kept for ten years after the contract signature. However, it is mentioned that the ECB envisages shortening of the existing time limits to maximum five years after the completion of the respective procedure. Also, the maximum time limit of one year for extracts from judicial records is being considered.

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.

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<sup>1</sup> 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.

The EDPS welcomes the proposed reduction of the existing time limits as the further conservation of data can be considered as necessary either for control and audit purposes or for the respective legal remedies. Nevertheless, we would like to suggest a maximum conservation period of two years for the extracts from judicial records in order to allow for the audit by the European Court of Auditors<sup>3</sup>.

**2. Information to data subjects.** The information to the tenderers is currently provided in the form of data protection clauses in the invitations to tender, the calls for applications as well as the actual contracts. In addition, it is foreseen that a detailed privacy statement will be posted on the portal of the new e-procurement system.

We note that the draft model privacy statement provides for all information as listed in Articles 11 and 12 of the Regulation, whereas some information in the respective data protection clauses is missing. Therefore, we invite the ECB to proceed with the posting of the detailed privacy statement as announced.

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 ECB should:

- shorten the existing conservation periods to five years after the completion of the respective procedure;
- post the privacy statement on the portal of the new e-procurement system.

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

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI

Cc: Frederik MALFRÈRE, DPO

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<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).

<sup>3</sup> cf. to this respect our letter sent to the management of all EU institutions and bodies on 12 March 2013 (EDPS 2011-0482).