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Brussels, 12 January 2015
GB/TS/sn/D(2015)0027 C 2013-0661
Please use edps@edps.europa.eu
for all correspondence

Subject: Prior checking notification concerning public procurement

Dear Mr Montalvo,

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 Insurance and Occupational Pensions Authority (EIOPA) on 17 June 2013.

We note that the procurement procedure at the EIOPA are in most aspects in compliance with Regulation (EC) 45/2001¹ (the Regulation) as outlined in the respective EDPS Guidelines² and will therefore address only 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 processed in this context are kept for at least five years after the budgetary discharge in order to allow for the contract management and the finalisation of all relevant payments, including recovery.

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 or further processed.

We observe that no maximum time limits were set for the conservation of personal data processed within the procurement procedure and would like to recommend that such time

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 (EDPS 2012-501).

limits are established in relation to the actual purposes of the processing. In similar cases, the conservation of the files of successful tenderers for up to seven years after the signature of the respective contract was considered necessary for control audit purposes, whereas the conservation of files of the unsuccessful ones for up to five years was considered necessary to allow for all possible legal remedies.

Furthermore, we recommend a maximum time limit of two years for the conservation of extracts from judicial records kept in the electronic form in order to allow for the audit by the European Court of Auditors³.

2. Information to data subjects. According to the additional information provided on 11 August 2014 upon request of 12 November 2013, information to data subject is provided in the invitation to tender as well as in the contract templates based on the model contracts of the European Commission. It is also mentioned that the EIOPA is currently working on a specific privacy statement for the procurement procedure.

The invitation to tender only provides for information about the legal basis of the processing⁴, contains a link to the specific privacy statement of the European Commission, as well as mentions that the purpose of the processing is "the evaluation of the tender by the DPO". The data protection clauses provided in the EC Framework Service Contract template (Article II.6) mention the rights of access, rectification and recourse to the EDPS of the contractor.

As most information required in terms of Articles 11 and 12 of the Regulations is currently missing (and/or misleading), we recommend that the specific privacy statement is being finalised as soon as possible and added to the existing tender documents.

Furthermore, the reference to the processing of personal data by the DPO should be replaced by the processing by the controller.

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 EIOPA should:

- establish a maximum time limit of seven years for the data of successful tenderers;
- establish a maximum time limit of five years for the files of the unsuccessful tenderers;
- establish a maximum time limit of two years for conservation of extracts from judicial records kept in the electronic form;
- finalise the specific privacy statement and add it to the existing tender documents;
- revise the existing invitation to tender in a manner outlined above.

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

(signed)

Giovanni BUTTARELLI

Cc: Ms Catherine COUCKE, DPO

³ See to this respect the letter on conservation of extracts from the judicial records sent by EDPS to the management of all EU institutions and bodies on 12 March 2013 (EDPS 2011-482).

⁴ Decision of the EIOPA Management Board on the EIOPA Financial Regulation of 31 December 2013.