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for all correspondence

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

Dear Mr […],

I refer to the notifications for prior checking concerning public procurement and grants submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the Executive Agency for Competitiveness and Innovation (EACI) on 16 July and 25 September 2013[1].

We also take note of the additional information submitted together with the new privacy statement for processing of personal data related to selection of experts, grant applications and procurement procedures as well as the specific privacy statement for grants and award management in the context of the Horizon 2020 Framework Program for Research on 11 September 2014.

We note that the EACI was replaced by the Executive Agency for Small and Medium Enterprises (EASME) on 1 January 2014. As the procurement and grant procedures at the EASME are in most aspects in compliance with Regulation (EC) 45/2001[2] (the Regulation) as

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[1] The notification on the related selection and management of external experts at the EASME has not been submitted insofar. The registration, selection and management of such experts in the context of the Horizon 2020 Framework Program for Research and Innovation was however already addressed in the EDPS opinion of 23 May 2014 in case 2013-0855 concerning the registration, selection and management of independent experts at the Research Executive Agency (REA).

[2] 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.

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outlined in the EDPS Public Procurement Guidelines[3], we will only address the existing data conservation and information to data subject policies which do not seem to be fully compliant in this respect.

1. Data conservation. According to the information provided in the respective notifications, the data of successful tenderers are kept for five years after the end of contract and the data of the unsuccessful ones for two years after the communication of the results. The data of successful grant applicants are kept for seven years after the end of the particular program and the data of the unsuccessful ones for five years after the end of the respective procedure.

The new privacy statement provided additionally states that the data of successful tenderers are to be kept for seven years and the data of unsuccessful ones for five years after the signature of the related contract. The data of successful grant applicants are to be kept for seven years after the signature of the related agreement or decision and the data of unsuccessful ones for three years after the finalisation of the call.

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.

The EDPS observes that the conservation of files of successful tenderers and applicants for up to seven years after the end of the procedure can be considered as necessary for control and audit purposes in terms of Articles 48(1)(d) and (2) of the Rules of Application to the Financial Regulation[4].

We note that the existing time limits can - in principle - be considered as necessary for control and audit principles and/or to allow for all possible remedies. Nevertheless, we note that the extracts from judicial records should not be kept for longer than two years after the signature of the related contract in order to allow for the audit by the European Court of Auditors[5]. Therefore, we invite the EASME to establish such a conservation period for extracts kept in the electronic form.

2. Information to data subjects. All information required in terms of Articles 11 and 12 of the Regulation is provided in the additionally submitted privacy statements. As already mentioned above, the information about the applicable data conservation periods seems to be misleading as it refers to different time limits than the notification. Consequently, we recommend that the information provided therein is clarified. In addition, information about the newly established time limit for the extracts from judicial records should be added.

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[3] 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).
[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 the judicial records sent by EDPS to the management of all EU institutions and bodies on 12 March 2013 (EDPS 2011-482).

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 EASME should:

- establish a two years conservation period for extracts from judicial records kept in the electronic form;
- revise the existing privacy statements in a way outlined above.

The EDPS expects the EASME to implement these recommendations accordingly and will close the case.

Yours sincerely,

Wojciech Wiewiórowski

(**signed**)

Cc: […], DPO