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[...]

Brussels, 8 February 2012  
[...]

**Subject: Publication on the Internet of the official directory of the agents of European institutions of bodies**

Dear [...],

Thank you for your consultation under Article 46 of Regulation (EC) 45/2001 (hereinafter the 'Regulation') in which you request the EDPS' position concerning the publication on the Internet of an official directory of the agents of [the European body concerned (the 'Body')] the containing, among others, the agents' professional telephone number and e-mail address. Please find below the result of the EDPS assessment.

## 1. FACTS

In the letter you state that in the framework of the transparency policy adopted by the Body [...], a question was raised whether the Body should publish on its website an official directory of its agents, indicating their professional telephone number and e-mail address. According to the Body, such publication would be based on a number of grounds, namely the need to ensure greater accessibility of EU civil servants by citizens, the need of various external stakeholders to make direct contact with the Body's agents as well as the need to reduce the burden on certain services [...] which normally act as intermediaries. You requested the EDPS' advice on the compatibility of such a publication with the Regulation.

Our analysis will focus only on the categories of data mentioned in your letter (i.e. professional telephone number and e-mail address) and will therefore not deal with other personal data or information whose inclusion in the directory might be further considered by Body.

## 2. ANALYSIS

Publication of contact details of civil servants by the Body involves the processing of personal data by a European Union's body in the exercise of activities within the scope of European Union law, and therefore results in the applicability of the Regulation (Article 3 and

corresponding definitions under Article 2).<sup>1</sup> The fact that the data at stake are of a professional nature does not invalidate this conclusion<sup>2</sup>. It follows that this processing must be based on one of the grounds laid down under Article 5 of the Regulation and comply with the other requirements set out therein.

## 2.1. Lawfulness of the processing

On the basis of the reasons put forward in your letter, the lawfulness of the processing should be first analysed in light of Article 5(a) of the Regulation, which provides that personal data may be processed if the processing is '*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof* [...]'. For the processing to be lawful under Article 5(a) it has thus to fulfil three cumulative conditions: 1) it has to be carried out in the performance of a task in the public interest; 2) it has to be necessary for the performance of that task; 3) it has to be based on the Treaties or other legal instrument adopted on the basis thereof.

In cases where the processing can indeed be based on this legal ground, under the conditions set out below, it will not be necessary to ask for the consent of the staff member involved. In this regard, it should be noted that the use of consent in the framework of employment relationship is a vulnerable legal basis. For the consent to be valid, it must be freely given. In the context of employment relationships, where there is an element of subordination, the use of consent as a legal basis is therefore controversial.

### 2.1.1. Performance of a task carried out in public interest

According to the Body, the publication of the directory would be justified in view of the need to ensure greater accessibility of its agents by the citizens and to facilitate direct contacts with external stakeholders. Moreover, the Body underlines that the publication of the directory would be necessary in order to reduce the burden on the services which normally act as intermediaries [...]. These activities can be considered as carried out in the public interest, insofar as they are aimed at ensuring greater openness and accessibility of the Body vis-à-vis its stakeholders and a better allocation of its resources.

### 2.1.2. Necessary for the performance of the task

In order to be lawful the processing of personal data not only has to be carried out in the performance of a task in the public interest, but also be *necessary* for this purpose. In this regard, the EDPS emphasises that (1) the organisational needs mentioned by the Body should be real and unavoidable and (2) the necessity test may apply differently to different situations. The need to publish contact details of the agents, as well as the nature and range of data to be published, may vary according to the position, the ranking and the tasks carried out by the agent concerned. This assessment cannot be undertaken *in abstracto* for all Body's agents but should be conducted on a case by case basis or, in more general terms, per categories of staff. In particular, the Body could identify specific professional categories or profiles of its agents,

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<sup>1</sup> See, in particular, Case C-101/01, *Lindqvist*, ECR I-12971, para. 27: '[...] the act of referring, on an internet page, to various persons and identifying them by name or by other means, for instance by giving their telephone number or information regarding their working conditions and hobbies, constitutes "the processing of personal data wholly or partly by automatic means" within the meaning of Article 3(1) of Directive 95/46"'.

<sup>2</sup> The European Court of Human Rights clarified that the right to privacy must not be interpreted restrictively so as to exclude activities of a professional or business nature. See in particular ECtHR, judgment of 16 December 1992, *Niemietz*, A-251.B, point 33 and judgment of 16 February 2000, *Amann*, Reports 2000-II, point 65.

whose particular function or job tasks require their professional contact details to be made public. This may be the case, for instance, for those agents whose function or job tasks involve a constant or frequent relationship with the public or with external stakeholders.

In this regard, the EDPS would also like to flag the possibility for the Body to have recourse, in addition or as an alternative to the publication of individual contact details, to functional e-mail addresses. Functional mailboxes could be created for example for certain services of the Body or for specific subject-matters. These mailboxes would increase, for the sake of greater transparency and accessibility, the possibilities and the means for the public to interact with the Body's services.

### *2.1.3. Based on the Treaties or other legal instrument adopted on the basis thereof*

In the present case, the processing of personal data can be considered in principle to be based on Article 1 TEU and Article 15 TFEU in combination of Article 309 TFEU.<sup>3</sup> The publication of the directory indeed would be instrumental in ensuring greater accessibility and openness of the activities of the Body's tasks under Article 309 TFEU, as required by the above Treaty articles.

Nevertheless, given the generality of these provisions, the EDPS advises the Body to further specify and integrate the legal basis with a specific implementing decision or other adequate administrative measure. This decision or measure should specify more precisely the purposes, the modalities and any other rules applicable to the processing of personal data taking place in this context.

## **2.2. Data subject's rights**

Data subjects must be given clear and comprehensive information before their contact details are included on the published directory in conformity with Article 12 of the Regulation. Furthermore, they should be granted the right to object at any time under Article 18 of the Regulation on compelling and legitimate grounds.<sup>4</sup> For instance, this could apply where the official concerned has been previously exposed to threats (e.g. excessive telephone calls) or holds a sensitive post that makes him particularly vulnerable (although in that case it would be less likely that the publication could still be considered as necessary for the performance of the relevant task).

## **2.3. Security measures**

Article 22(1) of the Regulation puts on the controller a general obligation to *'implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected'*. This general provision is further specified in Article 35 of the Regulation in connection with internal telecommunication networks of European institutions and bodies.

In relation to directories of users, Article 38 of the Regulation further provides that:

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<sup>3</sup> Article 1 TEU provides that EU decisions are to be taken *'as openly as possible and as closely as possible to the citizen'*. Article 15 TFEU further provides that *'[i]n order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies and agencies shall conduct their work as openly as possible'*.

<sup>4</sup> See in this regard, EDPS document on Public access to documents and data protection, p. 49-50 (example 8), available on EDPS website.

*'1. Personal data contained in printed or electronic directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory.*

*2. The Community institutions and bodies shall take all the necessary measures to prevent personal data contained in those directories, regardless of whether they are accessible to the public or not, from being used for direct marketing purposes'.*

In light of the above legal framework, the EDPS draws the Body's attention to the need to put in place appropriate technical and organisational measures aimed at preventing that the personal data contained in the directory could be used for direct marketing, spamming or other malicious purposes. For example, the following non-exhaustive measures should be put in place in this respect:

- technical measures to avoid that the data contained in the directory could be indexed and retrieved through external search engines. In order to allow easy access to the published data, internal search facilities should be used instead;
- technical measures to make it technically more difficult to carry out a full downloading of the published data;
- inclusion of a specific warning or clause in the directory pages, alerting the viewer that the use of the published information for direct-marketing, spamming or similar purposes and unauthorised publication is illegal<sup>5</sup>;
- as the e-mail address of an agent can be easily identified from his/her first name and family name, limit where necessary the publication to the full family name and the initials of the first name (this precaution would not be necessary in cases where the e-mail address is published).

### **3. CONCLUSIONS**

In light of the above observations, the EDPS concludes that the publication of a directory of Body's agents indicating their contact details is compatible with the Regulation as long as the following recommendations are complied with:

- the Body should adopt a decision or another administrative act specifying the legal basis as well as the purpose, the conditions and the modalities for such a publication;
- the Body should only publish contact details of staff members, whose function or job tasks require their professional contact details to be made public (for instance because of their constant or frequent relationship with the public or external stakeholders);
- data subjects should be provided in advance with clear and comprehensive information as to the purposes, scope and modalities of the processing in compliance with Article 12 of the Regulation;
- data subjects should be granted the right to object on compelling and legitimate grounds under Article 18 of the Regulation;
- the Body should implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of personal data to be protected. In particular, the Body should take all the necessary measures to prevent personal data contained in the directory from being used for direct marketing, spamming or other malicious purposes (see, among others, the examples listed in Section 2.3).

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<sup>5</sup> See for example the warning published in the Commission's directory:  
[http://ec.europa.eu/staffdir/plsql/gsys\\_page.display\\_index?pLang=EN](http://ec.europa.eu/staffdir/plsql/gsys_page.display_index?pLang=EN).

The EDPS therefore recommends the Body to adopt the necessary measures to ensure compliance with Regulation (EC) 45/2001 in the light of the above conclusions, and subsequently provide him within three months with all relevant documents evidencing proper implementation.

Yours sincerely,

**(signed)**

Giovanni BUTTARELLI