

**Opinion on a notification for Prior Checking received from the Data Protection Officer of Fusion for Energy, The European Joint Undertaking for ITER and the Development of Fusion Energy, regarding the practical arrangements for managing potential conflicts of interest of Members of the Executive Committee of Fusion for Energy**

Brussels, 30 May 2013 (Case 2013-0269)

**1. Proceedings**

On 8 March 2013, the European Data Protection Supervisor ("**EDPS**") received a notification for prior checking relating to the processing of personal data from the Data Protection Officer ("**DPO**") of Fusion for Energy, The European Joint Undertaking for ITER and the Development of Fusion Energy ("**F4E**"), with regard to the practical arrangements for managing potential conflicts of interest of Members of the Executive Committee ("**ExCo**"). The notification contained the following annexes:

- Decision of the Governing Board of the European Joint Undertaking for ITER and the Development of Fusion Energy on Confidentiality, Independence and Managing Potential Conflicts of Interests, adopted on 28 June 2007 ("**Governing Board Decision 2007**");
- Specific Privacy Notice - Executive Committee Declarations of Interest;
- Decision of the Governing Board of Fusion for Energy Approving the Amended Rules of Procedure of the Executive Committee.

Questions were raised on 16 April 2013 to which F4E replied on 25 April 2013, on 7 May 2013 to which F4E replied on 14 May 2013, and on 15 May 2013 to which F4E replied on 16 May 2013. F4E sent a revised notification with a narrowed scope including a new Specific Privacy Notice on 14 May 2013. The draft Opinion was sent to the DPO for comments on 24 May 2013. The EDPS received a reply on 29 May 2013.

F4E also informed the EDPS that it intends to adopt new general rules on Declarations of Interests ("**DoI**") for the ExCo as well as for other bodies of F4E. The EDPS would like to remind F4E that any differences in terms of data protection to the new processing operations currently notified would require an update to this notification.

**2. The facts**

The notified processing concerns the practical arrangements for managing potential conflicts of interest of Members of the ExCo of F4E.

The controller is F4E, represented by its Director.

The data subjects concerned are the Members of the ExCo including its Chair and their family members (i.e. spouse or partner or dependent children in the same household).

The purpose of the personal data processed is to manage conflict of interest situations by evaluating personal interests of ExCo Members (including its Chair), which might be considered prejudicial to their treatment of items on the ExCo agenda.

ExCo consists of 13 external experts who meet at least six times per year to pass decisions on the award of contracts and grants on behalf of F4E and to comment on high level documents relating to the organisation. ExCo Members are to be experts with recognised standing and professional experience in scientific, technical and financial matters relating to the management of public procurement ideally for high technology projects or facilities. In this context, technical experience is considered to include legal and administrative matters. However, the ExCo Members shall not be bound by any instructions, shall be completely independent in the performance of their duties and shall act in the general interest of F4E.

Therefore all ExCo Members including the Chair need to provide information to determine any external interests (direct or indirect) which they may have (e.g. personal benefits arising from employment, contracted work, directorships, board membership, investments, fees, grants to an institution, or other kind of benefits) – both for the respective ExCo Member or its family members. The current notification covers processing with regard to the Annual DoI (Annex IV to the Governing Board Decision 2007), Spontaneous DoIs during ExCo Meetings as well as the Declaration of Independence and Commitment (Annex II to the Governing Board Decision 2007) to be provided for that purposes by ExCo Members.

Upon nomination or appointment each ExCo Member is required to complete a DoI and a Declaration of Independence and Commitment. Furthermore an annual DoI needs to be filled in thereafter and the DoI need to be updated at least annually. In addition ExCo Members are required to declare any conflict of interest spontaneously when they come aware of it during a meeting.

Before being requested to fill in the annual DoI, the ExCo Members are provided with a copy of the Governing Board Decision 2007, including the Guidance (Annex VI of the Governing Board Decision 2007) also on the information that the declarations can be made publicly available after prior consent of the ExCo Member. ExCo Members are alerted orally of if their DoI is provided to a third party and must give their prior consent to making a declaration public.

The monitoring is ensured by the ExCo Secretariat under responsibility of the Director and the ExCo Chair. The Chair (who does not have a vote in ExCo) assesses the existence of a conflict of interest, then notifies the Secretariat and considers appropriate action. The ExCo Secretariat is provided by the Director of F4E who also designates a member of F4E staff as Secretary who shall perform his/her duties independently.

ExCo Members are obliged to provide data concerning their personal interests and in case of failure the ExCo Chair and the Governing Board Chair in consultation with the respective Secretariats would decide on appropriate action. On the basis of the type and nature of interests noted, the Chair, in consultation with the Secretariat, could consider various options, including the fundamental incompatibility with ExCo membership, temporary exclusion from a meeting, passive or active participation in a meeting.

With regard to attendance in the ExCo meetings, ExCo Members must spontaneously declare any conflict of interest at all times and the Chair of ExCo shall request at each meeting whether interests with specific items on the agenda exist. The outcome shall be recorded in minutes of meetings by the secretariat together with statements on interests declared.

The categories of data processed comprise data on the data subject's career, private interests and family, notably:

- name;
- position in ExCo;
- direct personal interests such as:
  - employment (including former employment during the last 5 years),
  - contracted work,
  - directorships,
  - board membership,
  - investments,
  - fees;
- financial benefits such as:
  - grants to an institution,
  - benefits;
- benefits arising from the professional activities of members of the family or household (e.g. spouse or partner and dependent children living in the household). However the names of family or household members and the nature of their relation do not need to be declared;
- interests arising from any membership role or affiliation in an organisation/body/club with an interest in the work of F4E;
- any other direct or indirect interest pertinent to the work of the F4E.

Only information of relevance to the tasks and activities of F4E must be provided in the declaration. Furthermore most of the information (notably on professional and intellectual interests) is limited to the last five years prior to the completion of the DoI.

All ExCo Members and the Chair receive (at the beginning of their term, and then on a yearly basis) the Decision of the Governing Board regarding the management of potential conflict of interest, which lays down the practical arrangements for managing potential conflicts of interest for members of the Executive Committee. Data subjects are informed about the processing via a Privacy Notice which is distributed to the ExCo Members, together with the Form of the annual DoI to be filled in.

The data subjects have the right to access their data declared in the annual DoI being processed by F4E. They have also the right to rectify their data that are inaccurate or incomplete. When a data subject contests the accuracy of his/her factual data, the relevant data are immediately blocked for a period necessary for verifying the accuracy and completeness of the data, not exceeding 15 working days.

Data subjects have also the right to obtain blocking or erasure of their data. When data subject requires data be blocked because s/he considers the processing unlawful or when s/he considers that data are no longer needed by F4E for the accomplishment of its tasks but have to be blocked for purpose of proof, F4E blocks the data as soon as possible and in any case not later than within 15 working days from the day the data subject's request reached F4E.

If data subject requests data to be erased for s/he considers their processing unlawful, F4E erases the relevant data from the DoI as soon as possible and in any case not later than within 15 working days from the day the data subject's request for erasure reached F4E.

The recipients of the personal data processed are according to the notification:

- the Secretary of the Executive Committee and assistant and the ExCo Secretariat;
- the Chair of the Executive Committee;
- the Chair of the Governing Board;
- the Vice-Chair of the Governing Board.

Also, if appropriate in the specific case, access may be given to:

- the Director;
- Internal Auditor and the Court of Auditors (for audit purposes);
- Legal Advisor of F4E;
- OLAF;
- European Ombudsman.

In this respect, F4E instructs recipients to process data only for purposes for which data are disclosed to them.

Furthermore the annual DoIs of ExCo Members are made public pursuant to paragraph 24 of Annex VI of the Governing Board Decision 2007 for transparency reasons. F4E clarified that the declarations are only made public upon public access request, but not published systematically (on the F4E website). There are no special procedures for this. Therefore personal data can also be disclosed to a wider public as recipients.

The personal data of ExCo Members in DoI are conserved up to five years after the expiry of mandate of an ExCo Member in case of later inquiries on the independence of an ExCo member.

F4E does not store any personal data from DoI for historical, statistical or scientific purposes.

[...]

### **3. Legal analysis**

#### **3.1. Prior checking**

In the frame of the practical arrangements for handling DoIs and Declarations of Independence and Commitment, as explained in the facts above, various personal data related to a particular individual are processed. Article 2(a) of the Regulation thus applies. The processing of personal data is carried out by F4E in its activity which falls under European Union law. Article 3(1) of the Regulation therefore applies. Annual DoIs and their updates are partly handled by electronically (by automatic means), and partly processed manually. The processing operation thus falls under Article 3(2) of the Regulation.

Article 27(1) of Regulation (EC) 45/2001 subjects to prior checking by the EDPS all "processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes". Article 27(2) of the Regulation contains a list of processing operations that are likely to present such risks, among which those processing operations intended to evaluate personal aspects relating to the data subject, including his/her ability, efficiency and conduct pursuant to Article 27(2)(b). The procedure of screening and detecting conflict of interests falls under this provision, as it relates to the assessment of the conduct of the data subjects.

The notification also mentions Article 27(2)(d) of the Regulation concerning processing operations "for the purpose of excluding individuals from a right, benefit or contract" as an additional legal basis for notification. However, as the purpose of the processing operations is to guarantee the independence of the ExCo Members, the possibility of their exclusion is arguably only the consequence of the evaluation of their independence and not the purpose of the processing. As an example, setting up a black list to exclude people "a priori" from a right, benefit or contract would typically qualify for Article 27(2)(d).

Since prior checking is designed to address situations that are likely to present certain risks, the Opinion of the EDPS shall be given prior to the start of the processing operation so the recommendations of the EDPS may be implemented before the launching of the new procedure. In the current case the processing operation has already been established. However, any recommendation made by the EDPS may still be adopted accordingly.

The notification of the DPO was received on 8 March 2013. According to Article 27(4) the present Opinion must be delivered within a period of two months. The prior checking procedure has been suspended for a period of 22 days (5 days for comments on the draft Opinion included). The Opinion should thus be rendered not later than 31 May 2013.

### **3.2. Lawfulness of the processing**

Personal data may only be processed if legal grounds can be found in Article 5 of Regulation 45/2001.

Article 5(a) of the Regulation permits the processing of personal data if it is "necessary for 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".

Two main activities can be differentiated in the present processing operation: (i) submission of DoIs and screening and (ii) making the DoIs public. The two activities must comply with Article 5 (a).

With regard to the submission and screening of DoIs, the notification quotes the following legal bases:

- Council Decision of 27th March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it 2007/198/Euratom ("**Council Establishment Decision**"), in particular Articles 6(3)(k) of the Statutes annexed to it;<sup>1</sup>

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<sup>1</sup> Article 6(3)(k) states that "The Governing Board shall make recommendations and take decisions on any questions, matters or issues within the scope of and in accordance with these Statutes. The Governing Board

- F4E Governing Board (GB) Decision of 28th June 2007 concerning management of potential conflicts of interest;
- Rule 12 of the Amended Rules of Procedure of the Executive Committee (as approved by the F4E Governing Board (GB) Decision of 11th December 2012, c.f. summary of decisions (F4E(12)-GB26-10.2 Amended Rules of Procedure for the Executive Committee adopted by the Executive Committee on 12th February 2013) according to which all members and other attendees shall comply with the rules of F4E concerning confidentiality, independence and conflicts of interest.

The purpose of the processing of the above described personal data (notably the screening of DoIs) is to ensure that ExCo Members have no conflict of interests which could interfere with their activities carried out for F4E clearly serves a public interest and is based on the Policy adopted by F4E in its Governing Board Decision 2007 based on Article 6(3)(k) of the Statutes of its Council Establishment Decision.

With regard to making the DoIs public upon public access request<sup>2</sup>, this processing operation is based on paragraph 24 of the Guidance contained in Annex II of Governing Board Decision 2007 which stipulates: "*With the prior consent of [with] the individual concerned, the Joint Undertaking should ensure that the annual declarations of interests are publicly available* Such processing by disclosure could thus be based on Article 5(a) of the Regulation provided that F4E carefully assessed the proportionality of this measure by balancing the need for ensuring independence of the ExCo of F4E with the necessity to protect data subjects' rights to the protection of their data.<sup>3</sup> Depending on the tasks of ExCo such publication could be justified to allow control by peers and the public and processing would thus be legitimate provided that the ExCo members are duly informed about the possibility of their personal data in the DoIs being made public and have the right to object pursuant to Article 18 of the Regulation.

The EDPS notes that the relevant provision in the F4E provides for prior consent for making a DoI public. However, in the EDPS' view it is not necessary to request the consent of data subjects in every case in which public disclosure of personal data is asked for and use consent pursuant to Article 5(d) of the Regulation as the legal basis. By requesting the prior consent of the data subject, transparency with regard to ExCo might be jeopardised given the fact that disclosure of DoI could be refused without any justification.

Therefore, pursuant to the proactive approach the EDPS has taken in its Paper "*Public access to documents containing personal data after the Bavarian Lager ruling*", an institution or body should assess the possible public nature of the DoI and make it clear to data subjects - before or at least at the moment they collect their data- the extent to which the processing might include its public disclosure. Consequently the data subject would need to be informed (see 3.9 below) before the personal data is disclosed for the first time and should have the right to object to disclosure on compelling legitimate grounds pursuant to Article 18 of the

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*shall in particular [...] (k) adopt and apply measures and guidelines to [...] manage potential conflicts of interest".*

<sup>2</sup> The EDPS understands that there is no special procedure provided for by F4E for making the DoIs public and thus any request would be based on the procedures F4E applies for requests for public access to documents pursuant to Article 15 TFEU.

<sup>3</sup> See the ECJ judgement of 9 November 2010, *Schecke and Eifert*, Joined Cases C-92/09 and C-93/09 and in particular, § 85: "*It is necessary to bear in mind that the institutions are obliged to balance, before disclosing information relating to a natural person, the European Union's interest in guaranteeing the transparency of its actions and the infringement of the rights recognised by Articles 7 and 8 of the Charter. No automatic priority can be conferred on the objective of transparency over the right to protection of personal data (see, to that effect, Commission v Bavarian Lager, paragraphs 75 to 79), even if important economic interests are at stake".*

Regulation (see section 3.8 below).<sup>4</sup> In addition, given the fact that currently no public register or publication of DoIs on the website exist for ExCo members of F4E, the disclosure of a DoI under a request would qualify as a transfer and thus needs to respect the conditions of Articles 8 or 9 of the Regulation, in particular a balance of interests taking into account the data subject's legitimate interests (see point 3.6 below).

The EDPS thus recommends that F4E reconsiders its approach with regard to the use of the **prior consent** of the data subject to allow the publication of DoIs. The participation of the data subject should preferably be ensured by being well-informed and enabled to invoke the right to object.

Furthermore, should also data concerning the spouse/partner or household member of the ExCo Member be made public, the same right to object shall apply to them. The same principles shall also be applied to the disclosure of spontaneous declarations of interests by ExCo members recorded during a meeting.

### **3.3. Processing of special categories of data**

Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and data concerning health or sex life is prohibited unless grounds can be found in article 10(2) and 10(3) for data relating to health.

The EDPS welcomes that in the DoI neither the names of spouses/partners and household members nor the nature of the relation need to be provided but only the professional activity of the household member. This avoids any treatment of sensitive data that could reveal the sexual orientation of an ExCo Member and his spouse/partner.

There seems to be no other processing operations of special categories of personal data, as only direct and indirect interests with regard to activities relevant to the work of F4E need to be provided in the form (and not for instance activities in a church or political group unrelated to F4E's activities).

The same shall apply to spontaneous declarations of interests recorded during meetings of ExCo.

### **3.4. Data Quality**

Personal data must be *adequate, relevant and non excessive in relation to the purposes* for which collected and/or further processed (Article 4(1)(c) of the Regulation).

Having examined the data requested by F4E in the declaration forms, the EDPS considers that in principle the requested information is adequate, relevant and not excessive for the purposes to see whether any conflict of interests which potentially could interfere with the work of the data subjects could appear. Notably the EDPS welcomes that information must only be given with regard to direct or indirect interests which are of relevance to the tasks and activities of the Joint Undertaking (which avoid processing of personal data which are not necessary for the assessment of a conflict of interest). Furthermore, professional and intellectual interests are limited to a period of the previous five years. For spouses/partners or household members

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<sup>4</sup> EDPS Background Paper "*Public access to documents containing personal data after the Bavarian Lager ruling*" of 24 March 2011, available on the EDPS website:  
[http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24\\_Bavarian\\_Lager\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24_Bavarian_Lager_EN.pdf).

neither the name nor the nature of the relation needs to be given, which also limits the data processed to the strictly necessary.

Personal data must be *accurate and where necessary kept up to date* (Article 4(1)(d) of the Regulation). The personal data are collected from the data subjects themselves and they have a right of access to their data (see below point 3.7 on "*Rights of access and rectification*"). This ensures that the data processed are accurate, complete and up to date in the sense of Article 4(1)(d) of the Regulation. ExCo Members need to update their DoI at least on an annual basis which ensures that data is kept accurate and up to date.

Personal data must be processed fairly and lawfully (Article 4(1)(a) of the Regulation). The lawfulness was addressed in part 3.2., fairness relates to the information supplied to the data subjects (see below point 3.9).

With regard to spontaneous DoIs made during meetings the same principles of data quality shall apply.

### **3.5. Conservation of data**

Personal data should be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data are collected or for which they are further processed (Article 4(1)(e) of the Regulation).

The primary purpose of the present processing operation is to ensure compliance with Article 6(3)(k) of the Statutes of Council Establishing Decision and the Governing Board Decision 2007 to follow up the independence of the concerned persons and make sure that conflicting interests do not prejudice one's independence in carrying out his/her task for F4E.

F4E informed that personal data relating to the DoIs of ExCo Members are held up to five years after the expiry of their mandate. According to F4E the contracts which ExCo decides on have a very long lifetime and situations may arise after the end of the mandate of an ExCo member calling into question the independence of a member.

The EDPS takes note of this and reminds F4E that the length of the conservation period needs to be justified by the purpose of the (initial or further) processing to be compliant with Article 4(1)(e) of the Regulation. The conservation period thus seems to correspond to that condition.

### **3.6. Transfer of data**

The personal data of the ExCo Members contained in the DoI will be disclosed to the recipients within F4E described above as well as to the Court of Auditors, OLAF or the European Ombudsman. Such transfer within F4E or to other EU institutions and bodies is only in line with Article 7(1) of the Regulation if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient. In this respect, the EDPS notes that the involvement of the Governing Board Chair in the assessment (as indicated in the Special Privacy Notice in the Section "Failure to provide data") of a conflict of interest is not provided for by the F4E's policy provided for in the Guidance on the Management of Conflicts of Interest (Annex VI of the Governing Board Decision 2007). In this respect the Privacy Notice also refers to the involvement of the Secretariat of the Governing Board which should then also be added to the list of recipients.

In this respect the EDPS welcomes the fact that F4E instructs recipients to process data only for purposes for which data are disclosed to them.

With regard to the possible making public of DoI to third parties upon public access request (which is not based on a register or by publication on the F4E website), such transfer would need to comply with the conditions of Article 8 or 9 of the Regulation (depending on the party requesting access to the DoI) taking also into account the legitimate interests of the data subject. The EDPS Paper on "*Public access to documents containing personal data after the Bavarian Lager ruling*" provides further guidance how such balance of interests should be made.<sup>5</sup> Pursuant to Article 8(b) of the Regulation, data subjects thus should be able to present their views so that the institution/body can take a well-informed decision. However this does not mean that they need to consent to the transfer. Such an interpretation would make the required balance of interests of Article 8(b) of the Regulation devoid of substance. Nevertheless, the data subject should in any event be informed about an envisaged transfer, which enables the data subject to invoke his/her right to object as laid down in Article 18 of the Regulation (see point 3.8 below)

### **3.7. Rights of access and rectification**

Article 13 of the Regulation provides for a right of access and arrangements for exercising it upon request by the data subject. Data subjects have a right to rectify their inaccurate or incomplete personal data under Article 14 of the Regulation without delay.

The data subjects can exercise their rights of access and rectification to the data they have supplied themselves in their DoIs in writing to the controller (F4E, represented here by the Director), directly.

With regard to spouses/partners and household members whose personal data are processed by F4E, the same rights must be guaranteed.

### **3.8. Right to object**

Article 18(a) of the Regulation provides that the "*data subject shall have the right to object at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of personal data relating to him or her, except in the cases covered by Article 5(b), (c) and (d). Where there is a justified objection, the processing in question may no longer involve those data*".

According to the EDPS, since the disclosure of the DoIs to the public is based on Article 5(a) of the Regulation, the data subjects might use their right, on compelling and legitimate grounds, to request that their DoIs or parts of the DoI are not made public. The EDPS recommends that the reference to the data subject's right to object is included in the Specific Privacy Notice" (see point 3.9 below). If such a case occurs, F4E will need to take the necessary measures in order to weigh the compelling and legitimate interests that the data subject might invoke against the interests of transparency of the DoI.

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<sup>5</sup> See Chapter IV of the EDPS Background Paper under footnote n. 4.

### **3.9. Information to the data subject**

Article 11 of the Regulation provides for a list of mandatory items of which data subjects should be informed of at the time of collecting the data, except where the data subjects already have the information if the data was obtained from the data subject. Article 12 of the Regulation prescribes the information to be supplied to the persons concerned, where the data was not obtained from the data subject.

In the current case, the persons concerned declare all the interests listed in the respective declaration forms themselves. Article 11 should thus be respected. However, in the processing during the screening of DoIs by the relevant bodies (notably the ExCo Chair and the Governing Board's Chair), the assessment of a conflict of interests could possibly also be carried out based on information obtained from other sources. Article 12 could therefore also apply to the processing operation.

With regard to the information to be provided with regard to the processing of personal data of ExCo Members which were received from other sources, the information pursuant to Article 12 of the Regulation must be given at the latest when the data are first disclosed.

The EDPS takes note that a Special Privacy Notice shall be distributed by F4E together with the relevant forms to the ExCo Members. F4E should make sure that all ExCo Members receive the Special Privacy Notice as soon as possible (and not necessarily only when filling in the next annual DoI).

The EDPS carefully analysed the Special Privacy Notice provided by the F4E which covers most of the requirements of Article 11 of the Regulation.

However, although the Notice describes the processing of the data and the recipients, it does not mention the fact that DoIs can be made public. This should be added and emphasised for reasons of fairness vis-à-vis the data subjects (see notably point 3.2 above on lawfulness). In this respect it is also important to clarify in the Note that the rights of the data subjects to object to such disclosure to the public (or prior consent as currently indicated in the Annex to the Governing Board Decision 2007). As described in more detail above, such proactive approach would be also in line with the EDPS approach developed in his Paper on "*Public access to documents containing personal data after the Bavarian Lager ruling*"<sup>6</sup>. As stated in section 3.2, the EDPS encourages institutions and bodies to assess the possible public nature of personal data at the moment of their collection. Data subjects must then be properly informed about the possible disclosure and their right to object should be ensured and elaborated in the Specific Privacy Notice. This pro-active information of the data subject should contain information about his right to object to guarantee fair processing in respect of the data subject.

Furthermore, with regard to the conservation of the personal data, information is missing as to the period for which the data shall be stored.

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<sup>6</sup> See EDPS Background Paper under footnote n. 4..

The EDPS also requests F4E to reconsider the reference to the assessment of the Governing Board Chair in the Special Privacy Statement as involvement of that Governing Board does not seem to be provided for by the relevant F4E Policy (see point 3.6 above). Furthermore the Secretariat of the Governing Board would need also to be added to the list of recipients as both secretariats would according to the Privacy Notice decide on appropriate action. With regard to the list of recipients in the Notice, the role of the Director could also be clarified and it should be reconsidered if the F4E Director should not be included in the list of recipients to which information is disclosed given the fact that the ExCo Secretariat act under his responsibility in the assessment of conflicts of interests. Finally the reference to the Secretariat vs. the Secretary of ExCo could be clarified in the list of recipients.

Finally, as mentioned in point 3.9 above, the deadlines within which F4E shall respond to requests for rectification or access could be mentioned also in the Special Privacy Notice.

In addition to personal data of ExCo Members, F4E possibly also processes personal data of their spouses/partners or household members. Therefore spouses/partners and household members concerned must also be informed about the processing of their personal data pursuant to Article 12 of the Regulation. This could be either done by sending a Privacy Notice directly to them or alternatively possibly -in case of a high number of persons concerned and a disproportionate effort- by a Privacy Notice on the F4E website.<sup>7</sup>

### **3.10. Security measures**

[...]

## **4. Conclusion:**

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations are fully taken into account. In particular F4E should:

- reconsider the approach with regard to requesting the prior consent of the data subject to make his/her declarations of interests public and the rights of data subjects in this respect;
- ensure that any transfer of personal data when declarations of interests are made public is in line notably with Article 8 or 9 of the Regulation;
- guarantees the rights of data subjects (notably of access, rectification and information) also to spouses, partners or household members of the ExCo Members if their personal data is contained in the declaration of interest;
- clarify the Special Privacy Notice notably to inform data subjects about the possibility of making their personal data contained in the declaration of interests public and the procedures to object to such publication;
- indicate the period of conservation in the Special Privacy Notice;
- revise the list of recipients in the Special Privacy Notice;
- [...].

Done in Brussels, 30 May 2013

**(signed)**

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor

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<sup>7</sup> In this respect see the EDPS recommendations given in Case 2007-0419, EDPS Opinion of 6 December 2007, page 8.