



EDPS Guidelines

Personal data and Declaration of interests

Finding a balance between transparency and data protection

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Strategy

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Context

- EU institutions must act in an **independent** manner and **demonstrate** impartiality and objectivity

Demonstrating independence ⇒ influences **public trust**

- Independence, impartiality and managing conflicts of interest are enshrined in
 - Staff Regulations,
 - Rules on ethics and
 - other legislative instruments



Context

- The procedure of declaration of interests is **one** way to ensure independence



- BUT this includes the collection and the publication of personal data



Why publish DoI?

- Publication of DoI is necessary:
 - To ensure independence (external experts)
 - To foster public trust (MEPs)



Conflict of interests

- Definition:
 - A **conflict of interest** is a situation where persons deal in the performance of their duties for the EU institutions with a matter in which, directly or indirectly, they have a personal interest such as to impair their independence, and in particular, family and financial interests (Staff Regulations)
 - Other definitions exist e.g. OECD



Who is concerned?

- **Persons appointed to high/senior management and political posts and MEP** (Commissioners, Members of the Court of Auditors, Members of the Management Board of agencies, etc.)
- **Persons employed by EU institutions** (officials and other contract agents)
- External advisors working occasionally for EU institutions: **External experts**



Collection of DoI

- Either you have a Legal Obligation (Article 5(b) of the Regulation)
 - Founding Regulation for Political posts and external experts;
 - Article 11(3) of the Staff Regulations for persons employed by EU institutions,
- Or you have a “public interest” (Article 5(a) of the Regulation)
 - Then you need a **legal basis** for each category of person affected
 - And to make the **Necessity** test for each category of person affected



Publication of DoI



- Legal Obligation (Article 5(b) of the Regulation)
- Public interest (Article 5(a) of the Regulation)
 - Need for a **legal basis** for each category of person affected
 - **Necessity** test for each category of person affected (balance of interests at stake)
 - The public interest for transparency and the individuals' right to privacy and data protection;
 - This balance of interest assessment should be documented
- Consent (Article 5(d) of the Regulation) is not an option



What type of data can you collect?

- Sensitive data
 - consent is not a valid ground
 - Article 10(2)(b): data must be necessary for the purpose of complying with the specific rights and obligations of the controller in the field of employment law
- Adequacy, relevance and proportionality
 - Data should be limited to activities related to the competence of the EU institution
 - Data collected should be limited to a certain period (for e.g. the previous five years)
- Accuracy and timeliness
 - Persons affected have the possibility to review their DoI



What data can you publish/disclose?

- Sensitive data
 - Stricter standards for publication on the internet or a public register
 - Data must be necessary to comply with employment law.
 - A new version of the DoI should be redacted for publication, taking out such sensitive personal data
- Non sensitive data
 - Data published/disclosed should be limited to what is necessary to ensure transparency - no contact information



Data retention

- Will depend on the nature of the function and the sensitivity of the activity:
 - End of mandate or contract
 - Duration of the authorisation of a product where an expert is involved
 - Possible legal actions against decisions taken by an external expert
 - Audit and control purpose
 - Other



Right to be informed

- Information must be given to the persons at the time of the collection i.e. when they fill in the form
- Information must include the possible public nature of a DoI and the extent to which the processing might include its public disclosure
- Information must be explicit about his/her right to object on compelling legitimate grounds



Dols are not subject to prior checking

- No intention to evaluate the affected persons
- Objective assessment of the potential conflict in question
- An article 25 notification is necessary
- If your institution has a different approach and intends to evaluate the persons concerned, please explain it in a cover letter attached to the notification



Voilà

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