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GB/BR/sn/1127 C 2013-1275, 2013 -1277,
2013-1278, 2013-1279, 2013-1280, 2013-1281,
2013- 1282

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**Subject: Notifications in cases 2013-1277 and 2013-1282 and updates in cases
2013-1275, 2013-1278, 2013-1279, 2013-1280 and 2013-1281**

Dear Mr Renaudière,

We refer to your letter of 14 November 2013 and to the following prior checking notifications
and updates appended thereto.

Updated notifications:

- **Selection of senior staff** in the Commission and in the Agencies - Opinion of 17
September 2007 (Case 2013-1275 - update of 2007-0193)¹;
- *Procédure de sélection relative aux vacances d'emploi hors encadrement* - Opinion
of 22 May 2012 (Case 2013-1278 - update of 2012-0276)²;
- **Selection procedure for middle management staff** - EDPS Opinion of 17 June 2009
(Case 2013-1279 - update of 2008-0751)³;
- *Traitement des documents fournis par le candidat lors du recrutement* - Opinion of 5
June 2009 (Case 2013-1280 - update of 2008-0755)⁴;
- *Procédure de sélection des agents contractuels* - Opinion of 11 November 2011 (Case
2013-1281 - update of 2011-0820)⁵.

¹ DPO-920.7.

² DPO 2392.3.

³ DPO 2664.3.

⁴ DPO 2667.2.

⁵ DPO 3462.2.

New notifications:

- *Traitement des demandes de **congé de convenance personnelle** - personnel hors encadrement* (Case 2013-1277);
- *Traitement des demandes de **congé de convenance personnelle** - personnel d'encadrement* (Case 2013-1282).

I. GROUNDS FOR PRIOR CHECKING

As highlighted in your letter, these notifications and updates were triggered by the new Article 11 of the Staff Regulations, into force since 1 January 2014, which requires from the appointing authority to collect **declaration of conflicts of interest** ("DcI") before recruiting any official and when an official returns from leave on personal grounds. We take note that you do **not** mention **any other modifications** which alter the nature of the data processing operations.

As you know, the EDPS recently issued Guidelines concerning the processing of personal data with regard to the management of conflicts of interest (the "**Guidelines**")⁶. In Section 9 of the Guidelines we clarify the conditions under which processing in the area of conflicts of interest are subject to prior checking. The Guidelines conclude that in general processing operations in this field are not subject to prior checking. In particular the Guidelines state that **Article 27(2)(b)** of Regulation 45/2001 (the "**Regulation**") is not a valid basis for notification as the processing of DcI is not intended to evaluate personal aspects relating to the data subject. On the contrary, the purpose of the processing is an objective assessment of the potential conflict in question, i.e. an evaluation of the nature of certain activities or situations and their compatibility with the position of the data subject within the EU institution or body.

The above-mentioned notifications also mention **Article 27(2)(d)** of the Regulation concerning processing operations "*for the purposes of excluding individuals from a right, benefit or contract*", as a legal basis for notification. However, such exclusion is only a possible consequence of the assessment of the external activities and not the purpose of the processing. As an example, setting up a black list to exclude people a priori from a right would typically qualify for Article 27(2)(d).

Therefore, **the collection and further assessment of DcI by the Commission do not trigger in themselves the need:**

- **for an Opinion** as regards cases 2013-1277 and 2013-1282;
- **for a revised Opinion** as regards cases 2013-1275, 2013-1278, 2013-1279, 2013-1280 and 2013-1281

Nevertheless, the updated notifications 2013-1275 (selection of senior staff) and 2013-1279 (selection of middle management staff) require a recommendation (Section II below). Moreover, we take this opportunity to provide some recommendations on the DcI forms, in line with the Guidelines (Section III below).

⁶ <https://secure.edps.europa.eu/EDPSWEB/edps/Supervision/Guidelines>

II. SCOPE OF UPDATED NOTIFICATIONS

As to the scope of some updated notifications, the EDPS notes that:

- the updated notification on the **recruitment process after selection** (Case 2013-1280 - update of 2008-0755) does no longer cover all new staff hired by the Commission, but only covers non-management staff;
- the updated notification on the **selection of senior staff** (Case 2013-1275 - update of 2007-0193) now also includes the data processed for recruitment; however, it is incomplete in this respect (no details about the modalities of this additional processing and the information of the data subjects, privacy notice not adapted so as to include the data processing at recruitment);
- unlike the notification on senior staff, the updated notification on the **selection of middle management staff** (Case 2013-1279 - update of 2008-0751) does not include the recruitment process (except for the processing of DcI)⁷.

As a consequence:

- the data processing for the recruitment of middle management staff is no longer covered by any notification;
- the data processing for the **recruitment** of senior staff is not adequately covered by notification 2013-1275, which mainly deals with the **selection** of senior staff.

We understand that the dissociation of the recruitment process between non-managers and managers lies in the fact that two different units (respectively HR A2 and HR B2) are in charge of the recruitment of these respective categories⁸. We also understand that most senior and middle management staff members are selected amongst EU officials and do not need to be recruited once selected. However, as some of them are still selected from the outside, a notification should cover the processing operations in this respect.

Recommendation: the Commission should complete both the notification on middle management staff and the notification on senior staff so as to fully include the recruitment process and adapt the privacy notice accordingly. In doing so, the Commission should make a clear distinction in each section of the notification, as well as in the privacy statement, between the two processes (selection and recruitment).

III. OBSERVATIONS ON THE DcI FORMS

The DcI forms (recruitment of managers, recruitment of non-managers, reinstatement of managers after leave on personal grounds and reinstatement of non-managers after leave on personal grounds) are generally in line with the Regulation as further outlined by the Guidelines. We will therefore only address the few practices which do not seem to be fully compliant in this respect.

⁷ See pp. 11, 26 and 33 of the minutes of the inspection dated 1 April 2015.

⁸ This question was discussed incidentally during the inspection that took place at DG HR in January-February 2015.

1. Data quality

As to the personal details to be provided by the person, it is not necessary to request that the person provides his/her the 'home' telephone number.

Recommendation: the Commission should modify the DcI form as follows:

- remove the reference to the "home" telephone number;
- replace it with a "contact" phone number (mobile or other) 1.

2. Retention period

We understand that DcI of any newly recruited person, although only temporarily kept by the services in charge of the selection/recruitment⁹, is filed in his/her personal file where it is kept in line with the retention period applicable to personal files¹⁰.

However, the fact that DcI become part of the personal file does not mean that the same retention period as for the personal file should apply to the DcI. Indeed, as the relevance of a DcI at the entry into service might be limited in time, only a shorter retention period seems to be justified¹¹.

Therefore, the EDPS recommends considering a shorter conservation period for DcI and adapting the notification on personal files accordingly;

3. Information

If the selected candidate has "family interest" to report on the DcI, he/she may provide information on his/her spouse, partner or household members. It would constitute a disproportionate effort to request from the Commission to inform these persons individually. Nevertheless, the Commission needs to ensure that the persons mentioned on DcI forms are duly informed about the processing of their personal data in accordance with Article 12 of the Regulation.

Recommendation: The Commission should:

- publish a privacy notice on the Commission's website in this respect;
- include in the DcI form instructions to the selected candidates to inform, if the case arises, their relatives that the Commission will be processing data about them and that further information is available on the Commission website¹².

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⁹ For non-management posts, the DcI is collected by the recruiting DG and transferred to the HR B2 together with the recruitment file. For management posts, the DcI is collected by HR A2 in the course of the recruitment process.

¹⁰ In this respect, the DPO 230-3 notification (*gestion des dossiers personnels*) provides that: "*Le dossier numérisé est conservé jusqu'à l'extinction des droits du fonctionnaire et de ses ayants droit, et des possibilités de recours*".

¹¹ See p. 19 of the Guidelines.

¹² See p. 21 of the Guidelines.

In view of the above:

- we are **closing**

- cases 2013-1277 (*congé de convenance personnelle - hors encadrement*) and 2013-1282 (*congé de convenance personnelle - encadrement*) (non-prior checks);
- 2013-1278 (*sélection hors encadrement*) 2013-1280 (*recrutement hors encadrement*) and 2013-1281 (*sélection agents contractuels*); please note that the updated notifications will be published along with the original notifications in the EDPS public register of processing operations;

- we kindly ask you to:

- **file revised updated notifications** regarding cases 2013-1275 (selection of senior staff) and 2013-1279 (selection of middle management staff) in line with the above-mentioned recommendation; please use these EDPS reference numbers when doing so;
- implement the above-mentioned **recommendations regarding the DcI forms**.

Please inform the EDPS of the measures taken based on the recommendations of this Opinion **within four months**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: - Mr Christian ROQUES, Data Protection Coordinator of DG HR
 - Ms Martine LEVEQUE, Head of Unit HR A2
 - Mr Roberto CARLINI, Head of Unit HR B2
 - Ms Thinam JAKOB, Head of Unit HR B1