



Dear DPO,

Thank you for your consultation under Article 46(d) of Regulation (EC) 45/2001 (the Regulation) regarding the publication of certain categories of personal data of the managers and staff members of your EU body on EU Whoiswho Directory on internet.

1. As to your first question regarding the adequate legal provision justifying the **lawfulness** of the processing activity under analysis:

***Article 5(a) of Regulation (EC) 45/2001 applies when a task is attributed to an EU institution/body/agency and in order to fulfil it***, personal data need to be processed. This provision requires that the processing operation is necessary and proportionate to achieve the task carried out in the public interest by the EU institution and that the task should be based on the EU Treaties or on other legal instruments adopted on the basis thereof.

The processing of personal data under analysis, aims to promote the transparency of the institutions and to enable European citizens and persons or organisations interested in European affairs to find contact persons (as the notification states). The processing can therefore be considered as necessary and proportionate to achieve this task of public interest. Moreover, it is based on a decision adopted on the basis of the EU treaties, i.e the Decision of the Publications Office on the creation of the official Directory

Therefore the requirements of Article 5(a) are fulfilled and the publication of personal data of the staff of your EU body on EU Whoiswho Directory is justified under Article 5(a) of the Regulation.

***As to Article 5(b), it applies in cases where a legal obligation requires EU institutions to process personal data without leeway in its implementation.*** This implies that EU institutions have no choice or discretion as to whether or not fulfilling the legal obligation but also that the obligation itself must be sufficiently specific as to the processing of personal data it requires. In addition, a legal obligation under Article 5(b) only exists for an EU institution if the processing of personal data is provided by a legal act of a higher order, for instance the TFEU, the Staff Regulations or the Founding Regulations of an agency.

For example, a processing is necessary so that an EU institution complies with an obligation to process data resulting from national law in the area of safety at work or occupational risks prevention. Another example is Article 11 of the Staff Regulations<sup>1</sup> that provides that any

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<sup>1</sup> 'Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the

new official must fill a declaration on conflicts of interest before his/her recruitment. This is not the case here. It follows that Article 5(b) of the Regulation is not the appropriate ground for the lawfulness of the processing operation under analysis.

2. Your second question concerns as to whether the staff members of your EU body should have the possibility to exercise **their right to object** under Article 18(a) of the Regulation.

Considering that the lawfulness of the publication of the EU body's staff's personal data is justified under Article 5(a) of the Regulation, in light of Article 18(a) of the Regulation, the staff members may indeed object at any time, on compelling legitimate grounds to the processing of their personal data.

The question is what would constitute an '*objection on compelling legitimate grounds*' in the context of the processing under analysis. The EDPS takes the view that your EU body should weigh up the compelling and legitimate interests that a staff member might evoke against the interests of transparency of the public mandate of the EU body. For instance, if a staff member is, because of his/her functions, subject to repetitive disturbance and to any kind of harassment from grantees or from any other external third party, this may be sufficient to justify his/her right to object to the publication of his/her personal contact details on EU Whoiswho Directory so as to avoid the repetition of such disturbances in the future.

3. Your third question concerns whether your EU body should implement any other **safeguards**.

In order to limit or to avoid requests for objection from the staff members, the EDPS recommends that only adequate, relevant and not excessive personal data are published on the EU Whoiswho Directory under Article 4(1)(c) of the Regulation. In concrete terms, your EU body could, as a rule, no longer publish the email address of the staff member and his/her direct lines and to publish only the name and function of the staff members, as well as the functional e-mail and the general phone number of the secretariat or of the unit to which the staff member is part of. This would be a proportionate measure to limit or to avoid repetitive harassment towards the EU body's individual staff.

The EDPS would also recommend that the EU body adequately inform all staff members in light of Articles 11 and 12 of the Regulation about the purpose and the lawfulness of the publication, the exact personal data to be published and their right to object on justified grounds.

We hope that this reply was useful to you. Please note that this is **informal advice at staff level**, without prejudice to a formal EDPS decision. Should you need a formal letter signed by the EDPS, we can arrange that as well, but please note that this might take longer.

Should you have any doubts, please do not hesitate to contact us.

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candidate, **using a specific form**, shall inform the appointing authority of any actual or potential conflict of interest.'

