

██████████ submitted extensive copies of exchanges with the relevant Commission services.

Analysing this documentation, several issues were identified:

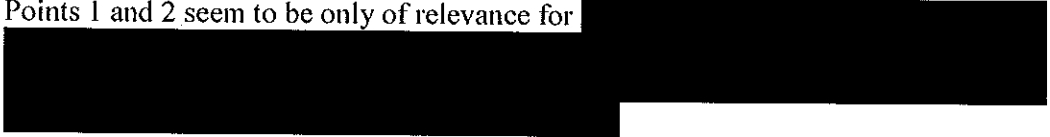
3. There are several unclear formulations in the Article 25 notification for external audits (DPO 3338.1 - last checked 24/01/13):
- a. The notification refers to the wrong legal basis. DG CNECT has acknowledged this, but has not yet changed the notification to include the correct references.
 - b. It does not mention that subcontractors are used.
 - c. It contains a misleading statement claiming that this processing operation was submitted to the EDPS for prior checking and that the EDPS concluded that the processing was not subject to prior checking. In fact, while similar processing operations were submitted to the EDPS for prior checking, with the result that they were not subject to prior checking, this specific processing operation was not submitted for prior checking. The Commission DPO has acknowledged this.
 - d. Contrary to a letter announcing an audit (supplied by [REDACTED]), the notification does not mention that in the course of the audit, the Commission might engage in 'open-source data mining', meaning the collection of information from publicly available sources.
 - e. The sections on recipients can be misconstrued to say that there are systematic data transfers to the EDPS and several other EU bodies (e.g. Ombudsman). In fact, these bodies would only receive personal data in the context of concrete investigations or inquiries (e.g. following a complaint). In accordance with Article 2(g) of the Regulation, they should thus not be seen as 'recipients'.

When audits are carried out, the audited contractor (usually a company) is informed about this. A privacy statement is to be annexed to this letter. While the version of this statement that is available in the DPO register (DPO-3338.1) also instructs the contractor to forward the statement to all concerned persons, [REDACTED]

5. The 'FP 7 guide to financial issues' contains, by way of example, a timesheet for reporting. This timesheet contains fields for the reasons of absences, which could include information on sick leave, triggering Article 10 of the Regulation. The requirements for reporting work done do not specifically mandate the collection of data on the reasons of absences. The Commission pointed out that using this form was not mandatory. While this is true, it stands

to reason that many contractors will use this form to be sure that their time reporting is compliant. COM DPO is aware of this and will bring it up with the relevant services.

Points 1 and 2 seem to be only of relevance for

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Points 3 to 5 could be relevant for a wider range of data subjects. The Commission DPO will be contacted for more information about these points.