

Opinion on the notification for prior checking from the Data Protection Officer (DPO) of the European Parliament regarding the "Camed-Brussels" dossier.

Brussels, 14 June 2007 (Case 2004-205)

1. Procedure

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 concerning the "Camed-Brussels" dossier was sent by Mr Jonathan STEELE, the Data Protection Officer (DPO) of the European Parliament on 23 May 2006.

By e-mail of 30 May 2006 questions were put to the Data Protection Officer of the European Parliament. On 12 July 2006 a series of replies was provided but the European Data Protection Supervisor (EDPS) considered that these replies were insufficient for establishing the facts. In order to provide further information as required by the EDPS, a meeting was held at the Medical Service of the European Parliament in Brussels on 3 May 2007 between Ms Sophie LOUVEAUX of the EDPS and Dr Giampiero DI PAOLANTONIO in the presence of Mr Jonathan STEELE.

The EDPS sent a further request for information on 10 May 2007. An answer was given on 21 May 2007. On 31 May 2007, the DPO was given 11 days in which to comment on the draft EDPS opinion.

The controller's comments were forwarded at a meeting between Ms Sophie LOUVEAUX of the EDPS and Dr Giampiero DI PAOLANTONIO which took place on 4 June 2007, and by e-mail from the DPO on 6 June 2007.

2. Facts

The subject of prior checking concerns the activities of the Medical Service in Brussels – CAMED. The same service is also responsible for providing medical care during the Strasbourg sessions¹.

The data subjects are officials and other staff, but also visitors who have had a medical incident during a visit to the EP.

The Medical Office provides medical follow-up at work, an emergency service on the premises, preventive health care and a range of consultations.

¹ The medical service in Luxembourg is the subject of another dossier. See Case 2004-203.

The follow-up activities include pre-recruitment examinations, annual check-ups, occupational medicine (vaccinations, advice, opinions...), medical advice required for certain missions, the issue of certificates on the interruption of work when accidents and illnesses occur during a mission, and the issue of the first certificate describing the injuries and the first aid administered if an accident happens at the workplace or during a mission.

The emergency service covers emergency medical care as such, medical prescriptions in an emergency or if the GP cannot be consulted, and prescriptions for a limited number of sessions of physiotherapy in acute cases.

Preventive medicine consists of a variety of consultations carried out on appointment.

The service also monitors the health of staff by providing nursing care and is supported by consultant specialists in psychology and dietetics. The institution's doctors are responsible for the work of the dispensary: the administration of medicines, blood tests, vaccinations

The pre-recruitment medical examination

Article 33 of the Staff Regulations provides that "*Before appointment, a successful candidate shall be medically examined by one of the institution's medical officers in order that the institution may be satisfied that he fulfils the requirements of Article 28(e)...*". By virtue of the latter provision, "*An official may be appointed only on condition that he is physically fit to perform his duties*".

On this basis all candidates receive a letter of invitation to a pre-recruitment medical examination. All candidates are required to fill in a form and hand it to the doctor during the examination. Candidates undertake to provide truthful information, otherwise the pre-recruitment examination is declared void. This document is placed in the official's medical file.

The document contains administrative data: name, first name, personnel number, date and place of birth, nationality, mother tongue, sex, marital status, contact details (postal address, electronic address, telephones). There are questions on the position applied for (nature of work, competition number, category) and on the place of employment. The form also asks candidates to state whether they have already undergone a medical examination for another European institution and whether they have already worked for a European institution and, if so, to state the dates, the position held and their status.

They are also asked about their personal medical history, but also that of members of their family (father, mother, brothers, sisters, children, spouse). Candidates must also provide information on instances of physical or mental illness in their family.

They are also required to indicate whether they have ever been absent from work for more than one month because of illness, and if so, to state the dates and the illness; whether they have had a permanent partial incapacity for work following an accident or an illness and, if so, to state how long they have had the incapacity for and the nature of the disability; whether they have ever been hospitalised and if so, to provide the dates, the place and the reason; whether they have ever undergone surgery and if so, what kind and when; whether they have ever consulted a neurologist, psychiatrist, psychoanalyst or psychotherapist and, if so, the reasons for the consultation and the date. They must also state whether they have undergone radiological or nuclear medicine examinations (if so, which ones?).

The questionnaire also includes some questions on the person's lifestyle, in particular any medication taken on a regular basis, dietary habits (consumption of beer, alcohol, wine, tobacco), drug use (treatment for addiction) and sports.

They must also state whether they have ever been turned down for a job for health reasons, and if so, what the reasons were, and whether they have ever been declared unfit for military service on medical grounds.

Candidates are asked to give details of their current professional activities, to state whether they have ever had an industrial accident or suffered from an occupational disease and, if so, whether they suffered any after-effects, and to list any occupational hazards to which they have been exposed.

Female candidates are asked whether their periods are regular and are painful; and to give the date of their last period; and to say whether they are taking a contraceptive pill and, if so, for how many years.

The Medical Service then carries out an objective examination which gives rise to a series of additional examinations. The doctor fills in a form to that effect, including the results of the direct medical examination: medical history, objective examination, results of the laboratory examinations, X-rays, results of any other medical examinations (ophthalmology, audiometry, ECG etc) as required by the individual. For the pre-recruitment examination, blood samples are analysed outside the service by the Parc Léopold Clinic. There is a specific document for that purpose, stating the type of analysis to be performed. The same applies for the X-ray of the thorax. If this X-ray shows up any abnormalities, the clinic has to contact the EP Medical Service to obtain its consent to carry out a scan of the thorax. The clinic is obliged to send the results to the EP Medical Service as well as the receipt stating the person's name and the date of the examinations.

The doctor enters a summary of the examination and the conclusions in the medical questionnaire. The document is signed by the doctor conducting the examination and the fitness for work is certified by the institution's Medical Officer². The doctor then sends the department concerned a declaration on the person's fitness/unfitness for work.

The EP's pre-recruitment examination does not include an HIV test.

The results of the pre-recruitment examination are not necessarily communicated to the data subject if they fall within the normal range. However, candidates are notified of any abnormalities by post (via an external doctor if necessary) so that they can make arrangements for their own medical follow-up.

The annual medical check-up

Under Article 59(6) of the Staff Regulations, the annual medical check-up is an administrative requirement for all officials and other staff in active employment. The Medical Office keeps track of these examinations by means of an Excel file containing the dates of the last check-up. A standard letter is drawn up inviting the data subject to have their medical check-up.

² In the majority of cases, the doctor conducting the examination and the institution's Medical Officer are one and the same person.

The check-up includes laboratory examinations (blood and urine analyses); a clinical examination comprising a medical questionnaire for optional completion by the person to be examined and an objective clinical examination; a resting electrocardiogram and, from age 45 onwards, an electrocardiogram with echography and/or stress test; a "low dose" spiral scan of the thorax; an ophthalmological examination every three years for persons working on screen and every year when the person has diabetes, high blood pressure or glaucoma; a gynaecological test including a smear test and, if necessary, an HPV test, a mammography and echography of the breasts from age 40 onwards and an echography of the lower abdomen; a urology test from age 50 onwards comprising a clinical examination and an echography of the lower abdomen, if necessary; an echography of the upper abdomen; a bone density scan (osteoporosis test); and a total colonoscopy (recommended between age 45 and 50 years). For certain examinations, the frequency depends on the risk factors and the examination (the colonoscopy, for example) is not necessarily carried out each year.

The blood samples are taken by the nurses of the European Parliament's Medical Service and the analyses performed outside of the service by the medical analysis laboratories of Dr Hermans Boveroulle and Dr Lesenne. There is a special form for that purpose.

The medical questionnaire to be filled in during the annual check-up is more or less identical to the one used for the pre-recruitment examination. However, it is not obligatory. But it is nonetheless recommended that staff fill it in for reasons of prevention. Certain headings, such as medical history, which were completed during a previous examination, do not have to be completed systematically. The person is, however, invited to give details of any illnesses, operations and changes in their lifestyle and state of health that have occurred since their last medical visit.

In addition, he or she can ask for an HIV test to be carried out as part of the blood test for the annual medical check-up. The data subject is asked to give their explicit agreement in writing to that effect.

The annual medical check-up may be performed by one of the EP's medical officers, or by a doctor chosen by the data subject. In the latter case, the doctor has to forward to the Medical Service as swiftly as possible the report on the medical examination and the results of any other examinations carried out. In addition, the invoices for examinations carried out as part of the annual check-up from the doctor who performed the check-up should be sent to the Medical Service together with an application form for reimbursement in order to obtain the full reimbursement of these expenses (up to the maximum amounts provided for). The Medical Service verifies that the receipted invoices correspond to the examinations authorised under the programme, adds "certified as correct" and sends Annex 5 of the check-up documentation (application form for the reimbursement of medical examinations carried out as part of the annual medical check-up), together with the receipted invoices, to the budgetary authority.

Only the examinations provided for can be carried out and reimbursed in the framework of the annual check-up.

In the course of the check-up, the data subject is informed of the results of the analyses that were carried out, if these are available (which is almost always the case since the blood sample is taken 1 or 2 days before the medical examination). If the results are not known on that day, data subjects subsequently receive a form informing them either that the results are normal, or that they can contact the Medical Service for information and advice on the abnormalities, or that they can contact their own GP. In addition, the form relating to the annual check-up provides that

the EP's doctor has to sign a clause confirming that he or she has informed the official or temporary agent of the results of the check-up.

When the check-up is carried out by an external doctor, this doctor has to inform the person of the results of the examination and tick a box to that effect on the form to be sent to the EP Medical Service. If the "NO" box has been ticked, the EP doctor is obliged to inform the person before signing the clause in the previous paragraph.

The European Parliament's Medical Service does not deal with absences due to illness because these are covered by a specialised department.

Generally speaking, a doctor from the Medical Service sits on the Invalidation Committee as the doctor designated by the institution. This committee is run under the conditions set forth in the Staff Regulations.

CLINIDOC

CLINIDOC is an electronic application which makes it possible to track medical acts and consultations in connection with persons who have had contact with the Medical Service. In particular, it allows the Medical Service to follow up cases during the sessions because it can also be accessed from Strasbourg.

The application contains a series of standard administrative data. These are collected from the ARPEGE database. They include the person's surname and first name, sex and date of birth. The database also contains the data subject's private address and, if necessary, their private telephone number. Data relating to visitors to the institution who have had to consult the Medical Service during their visit are entered by the Medical Service.

When the application is opened, a pop-up appears with the schedule of medical acts relating to the person (completed or still to be done) and a record of the consultations. With regard to the latter, any allergies and intolerances appear immediately. The doctor responsible for the consultation states the reason for it, the diagnosis and any medication or care to be administered.

The doctor or nurse can also enter certain values in relation to the person (height, weight, blood pressure).

The application allows for a follow-up of vaccination programmes and for the issue of vaccination cards.

CLINIDOC provides a schedule of the Medical Service's activities.

The CLINIDOC application does not contain any medical reports as such, nor any information deemed to be particularly sensitive. Results of blood analyses are not included in CLINIDOC.

Information

An information note on the protection of personal data was adopted in July 2004. This note is posted up in the waiting rooms of the Medical Office. It states the aims of the medical file; refers to the existence of a medical questionnaire that has to be completed for the pre-recruitment

examination; states the recipients of the data contained in the medical file, the period for which data is stored, the identity of the controller; and the existence of and procedures relating to a right to access, and a right to rectify data, and a right to have recourse to the EDPS.

Rights of the data subject

All data subjects can access their medical file by submitting a request to the Head of the Medical Service.

Article 26a provides that "all officials shall have the right to acquaint themselves with their medical files, in accordance with arrangements to be laid down by the institutions." By virtue of a decision by the Board of Heads of Administration of 19 February 2004 (Conclusion 221/04), officials and temporary staff shall have the widest possible access to their medical files, under the following conditions:

- "the file must be consulted on the premises of the Medical Service of the institution, in the presence of a person designated by the Medical Service;
- the official or other servant can have access to any psychiatric/psychological reports concerning him or her, through the intermediary of a doctor appointed by him or her;
- the official or other servant may not have access to the personal notes of doctors if, under the terms of Article 20(1)(c) of Regulation No 45/2001 and on the basis of a case-by-case examination, this is necessary to guarantee the protection of the data subject or the rights and freedoms of others."

When a person asks to access their file, the Medical Service representative fills in a form stating the details of the person seeking access and the identity of the representative who can give such access. This form must be signed by the doctor. In addition, once data subjects have had access to their medical file under the restrictions set out above, they have to sign an acknowledgement of receipt stating that they have acquainted themselves with the medical file on the premises of the Medical Service, in the presence of a such and such a service representative and that they have made so many copies.

A right to rectify data is not mentioned.

Data recipients

The data recipients are the doctors appointed by officials or by the institution and, in the event of a transfer, by the medical services of the other institutions.

Medical opinions are not transferred to the data subject's personal file, except for the document on that person's fitness (or fitness with reservations or unfitness) for work.

Conservation of data

Medical data are stored by the Medical Service for an unlimited period of time.

Security measures

The following security measures apply: Medical Service staff are subject to the obligation of medical secrecy. As for the security of paper files, these are kept in locked cupboards in the

Medical Service, which is also locked. With respect to electronic documents, the computers are protected by username and password. The server is located in a locked office reserved for the LSA team of DG V. A back-up is made every night on a streaming tape in Luxembourg. The tape is then kept in a fireproof safe.

3. Legal aspects

3.1. Prior checking

The notification received on 22 May 2006 constitutes processing of personal data ("any information relating to an identified or identifiable natural person" – Article 2(a)). The data processing in question is carried out by an institution in the exercise of activities which fall within the scope of Community law (Article 3(1)).

Files under scrutiny are processed manually, but the processed data are contained in a file. Moreover, in CLINIDOC the processing of certain data is automated. Article 3(2) is thus applicable in this case.

The processing therefore falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 requires prior checking by the EDPS of 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".

Processing is also subject to the provisions of Article 27(2)(a): "The following processing operations are likely to present such risks: processing of data relating to health ...", which is the case here, since the data undoubtedly fall within the scope of "data relating to health"³ and medical data.

The notification also mentions Article 27(2)(b) insofar as the doctor of the institution is required to draw up an opinion on the medical aspects of the condition and conduct of staff in the context, for example, of invalidity committees and other areas concerning their fitness for work in general or for a specific post. In the EDPS's view, however, this particular assessment is only relevant for the pre-recruitment examination.

In principle, checks by the EDPS should be performed before the processing operation is implemented. In this case, as the European Data Protection Supervisor was appointed after the system was set up, the check necessarily has to be performed ex-post. This does not alter the fact that it would be desirable for the recommendations issued by the European Data Protection Supervisor to be implemented.

This prior checking procedure is confined to the activities of the European Parliament's Medical Service in Brussels (including activities in Strasbourg); the activities of its counterpart in Luxembourg are the subject of a separate prior check (2004-203). Furthermore, the participation of a doctor from the Medical Service in the Invalidity Committee as provided for in the Staff Regulations must undergo a specific prior check regarding the Committee's procedure.

³ Judgment of the Court of Justice of the European Communities of 6 November 2003, Lindqvist, C-101/01, ECR p. I-0000.

The notification from the Parliament's Data Protection Officer was received on 23 May 2006.

Under Article 27(4) of the Regulation, the European Data Protection Supervisor had to deliver his opinion within two months. On account of the 41 + 294 + 10 + 6 days' suspension, the European Data Protection Supervisor had to deliver his opinion by 29 June 2007 at the latest, as laid down in Article 27(4) of the Regulation.

3.2. Lawfulness of the processing

The lawfulness of the processing operations must be examined in the light of Article 5(a) of Regulation (EC) No 45/2001, which provides that processing must be "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities ... or in the legitimate exercise of official authority vested in the Community institution*".

Therefore the task lies in determining on the one hand whether the processing operation has been carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal acts, and, on the other hand, whether the operation is necessary in order to perform that task. In this regard, recital 27 of the regulation also states that "Processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies". All things considered, the pertinent issue is therefore that of determining whether the processing operation is necessary for the management and functioning of the tasks set out in detail in the Staff Regulations.

Most of the data in the medical file is collected and processed in line with the provisions of the Staff Regulations of officials adopted in the form of a Regulation which, in turn, is based on the Treaties establishing the European Communities (the Staff Regulations). The same is true for the pre-recruitment examinations (Article 33 of the Staff Regulations and Article 1 of Annex VIII thereto) and for the annual check-ups (Article 59(6)).

The pre-recruitment examination is based on Article 33 of the Staff Regulations. The primary purpose of the pre-employment examination is to ascertain whether a candidate is fit to perform his/her duties (Article 28(2)). The medical examination performed by the institution's Medical Officer is designed precisely to guarantee the candidate's fitness for work.

Furthermore, Article 1 of Annex VIII to the Staff Regulations stipulates that, where the medical examination made before an official takes up his duties shows that he is suffering from sickness or invalidity, the appointing authority, in so far as risks arising from such sickness or invalidity are concerned, may decide to admit that official to guaranteed benefits in respect of invalidity or death only after a period of five years from the date of his entering the service of the Communities. The official may appeal against such decision to the Invalidity Committee⁴. Thus the pre-recruitment medical examination further serves to determine benefits in respect of invalidity or death.

The Staff Regulations do not stipulate that the pre-recruitment medical examination serves preventive purposes as well. That said, the EDPS acknowledges that data collected during the pre-recruitment examination which might prove useful to candidates in alerting them to an issue

⁴ In the event of the data subject being declared unfit for work, an appeal before a medical committee composed of 3 doctors chosen by the Appointing Authority from among the institution's medical officers is also provided for (see Article 33 of the Staff Regulations).

regarding their health should also be used for preventive purposes. This does not mean, however, that additional data which is not needed should be collected during the examination for preventive purposes. This point will be taken up again later (point 3.4 Data Quality).

Regulation 45/2001 establishes that personal data must be "collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes." If medical data are collected during a pre-recruitment examination for other purposes than to ascertain that the data subject is physically fit, it will be very difficult to establish that these data are not used for discriminatory ends as well. In this regard the EDPS recommends that no data should be collected other than those needed to determine fitness (or to limit guaranteed benefits as provided for in Article 1 of Annex VIII to the Staff Regulations). Once data have been collected for such ends, they could then be used for preventive purposes, provided that the data subject is clearly notified of this.

The annual medical check-up stems from Article 59(6) of the Staff Regulations, by virtue of which officials are required to undergo a medical check-up every year either by the institution's medical officer or by a medical practitioner chosen by them. The Staff Regulations do not, however, allude to the purpose of the annual check-up. It can automatically be construed from this vagueness as to the desired aim that the annual medical check-up does not seek in the same way as the pre-recruitment medical examination to establish the fitness of officials and other staff to perform their duties. Moreover, contrary to established procedure for the pre-recruitment examination, no review procedure has been put in place for instances in which an annual medical check-up determines that the data subject is unfit to work. What is more, the data required for annual medical check-ups are more restricted, thereby pointing to a different purpose.

Therefore, although the purpose of the annual medical check-up is not to check the fitness of the data subject, the processing operation may nonetheless be considered necessary – and, by extension, lawful – for other purposes, including establishing a joint sickness insurance scheme (Articles 72 and 73 of the Staff Regulations). A medical service at the workplace may be considered beneficial to the employer insofar as it makes for staff in a better state of health. At the same time, employees enjoy the benefits of a health-care service offered to them.

In order to maintain a suitable balance between these two interests, it is important that interference in each individual's personal choices regarding his/her health be kept to a minimum. Broadly speaking, therefore, once data subjects have received their medical results, it is for them as individuals to decide on the course of action they wish to take. No information regarding these choices should be forwarded to human resources staff or to any third party outside the Medical Service.

Furthermore, in the interests of suitable medical follow-up, anyone who receives the results of medical tests ought also to receive further information, where necessary, in order to be able to interpret them.

On this basis, the EDPS is satisfied that as far as the annual medical check-up is concerned, either the external doctor or the EP's doctor is required to inform the data subject of the results thereof.

The legal bases for the processing operations are Articles 28e and 33 (Appointment of the official on condition of being physically fit), 59 (preventive medical examination), 72 and 73 (JSIS) of the Staff Regulations⁵.

⁵ The same applies to Articles 12(2)(d), 13 and 16 (concerning temporary staff), Articles 55(1)(d) and 59

Parliament is therefore entitled to set up a system for compiling personal medical files. The legal basis found in the Regulations and rules applicable to officials and other servants of the European Communities is thus consonant with and supports the lawfulness of the processing operation.

With regard to visitors and treatment administered to them in medical incidents during visits to the EP, the legal basis must be found in the Belgian Code of Professional Conduct as drawn up by the National Council of the Order of Physicians, Article 3 thereof provides that all physicians "shall, in all circumstances, attend to the health of individuals and of the community". Article 6 of the Code stipulates that "all physicians shall, irrespective of their function or area of specialisation, provide emergency aid to a sick person in immediate danger". Since the doctors of the Medical Service of the EP in Brussels are subject to the Code, they are bound by these obligations.

The processing operation is therefore considered as lawful.

Moreover, data relating to health are among the data which Article 10 of Regulation (EC) No 45/2001 classes as "special categories of data" and on this basis any processing of this data must comply with Article 10.

3.3. Processing of special categories of data

Under Article 10 of the Regulation, the processing of personal data concerning health is prohibited unless grounds can be found in Article 10(2) and (3) of Regulation (EC) No 45/2001. The case under consideration very clearly relates to the processing of personal data on health and therefore Article 10 applies.

Article 10(2)(b) applies in this case because Parliament is acting as an employer in meeting the obligations laid down by the Staff Regulations. Thus Article 10(2)(b) provides that: "*Paragraph 1 [prohibition of the processing of data concerning health] shall not apply where processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof ...*".

As an exception to the principle of the prohibition of data processing, Article 10(2)(b) must be interpreted narrowly. On the one hand, the rights and obligations of the controller must be "specific".

Consequently, the processing of sensitive data is not allowed unless of relevance in relation to the purposes set out above (see section 3.2). On the other hand, the requirement that processing be "necessary" for this purpose introduces additional constraints with regard to data quality (see section 3.4 below).

The Medical Service also provides care and medical follow-up. Article 10(3) of Regulation (EC) No 45/2001 on the processing of special categories of data applies in the case in point. It provides that "*Paragraph 1 [prohibition of the processing of data concerning health] shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional*

(concerning auxiliary staff) and, lastly, Articles 82(3)(d), 83 and 91 (concerning contract staff) of the Conditions of Employment of other servants (CEOS).

secrecy or by another person also subject to an equivalent obligation of secrecy". By virtue of their work, the doctors are bound by confidentiality. As for the other members of the Medical Service, they are bound by an equivalent professional obligation. In this instance, Article 10(3) of the Regulation is duly complied with.

3.4. Data Quality

3.4.1. Adequacy, relevance, and proportionality.

The data must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*" (Article 4(1)(c) of Regulation (EC) No 45/2001).

A) Pre-recruitment medical examination

The primary purpose of the pre-recruitment examination is to establish whether or not the candidate is fit to perform his/her duties. Thus, the main issue is which health-related data are likely to have an impact on the employee's performance of his/her duties. If the data subject is fit for service only subject to certain accommodations made at the workplace, then the medical check-up may also help determine the accommodations required.

The second purpose of the pre-employment medical examination is to determine whether, on account of risks arising from sickness or disability, invalidity or death benefits should only be granted at the end of five years starting from the date of the official's entering the service of the Communities. That is why any information requested during the pre-recruitment examination ought to serve the two aforementioned objectives alone.

To minimise the risks of discrimination based on family health conditions or lifestyle, as discussed in section 3.2 (lawfulness of the processing), the EDPS recommends that no data should be collected for preventive purposes in the course of the pre-recruitment medical examination.

The principles of adequacy, relevance and proportionality must be upheld with respect to all categories of data collected at each stage of the procedure for pre-recruitment medical examinations.

Pre-recruitment medical examination questionnaire:

First, a check must be made to ensure that this medical history questionnaire, which candidates complete at the pre-recruitment medical examination, does not collect irrelevant or excessive data. In this respect, the EDPS is satisfied that HIV tests are not carried out at the pre-recruitment examination. Indeed, not only is there a need to demonstrate the need for this test in connection with the purpose of the pre-recruitment examination, but the value of the data subject's consent is also questionable in the context of an examination prior to recruitment.

The EDPS nonetheless questions the relevance and proportionality of certain data requested at the pre-recruitment examination.

Family history: the medical history of a spouse or adopted children, lacking any genetic link, has no place on the medical questionnaire. Although the state of health of parents and children as blood relations may indicate predisposition to certain genetic disorders or an increased probability of developing certain conditions in the future (e.g. cancer, cardiovascular problems or

certain mental illnesses), the information thus obtained is not a legitimate tool for determining fitness for service⁶. Moreover, the answers to such questions may disclose sensitive data without the person having been able to give their consent. That is why the EDPS recommends that these questions be removed completely. If these questions as to the state of health of parents and children as blood relations were considered useful for preventive purposes, they could be posed during the annual medical check-up, provided that it is made clear that they are optional and used solely for preventive purposes⁷.

Contraception: Article 1d of the Staff Regulations prohibits discrimination on any ground, including sex. This extends to discrimination against a current or future female employee on grounds of pregnancy. The scope of the ban on discrimination also covers circumstances in which a future female employee is asked during an interview whether she uses a means of contraception (impact on potential pregnancy) and, for the same reasons, presents no bar to her recruitment.

Such information relating to means of contraception and the menstrual situation is requested on the medical questionnaire. In particular, candidates are required to answer a question on their menstrual situation, the date of their last period, whether or not their periods are painful, and whether they use a contraceptive pill.

Given the highly sensitive nature of this information and its discriminatory potential, the EDPS recommends that Parliament reconsider whether or not there is a real need, for medical purposes, for medical files to state whether the data subject uses a means of contraception and to mention her menstrual situation, since this cannot be deemed to be an argument against recruitment. This evaluation should go beyond the simple mention of the fact that some forms of contraception (in particular, oral contraception) constitute pharmacological treatment. The assessment should show a genuine need for or benefit derived from collecting this type of information in the context of the pre-recruitment medical examination⁸.

⁶ In cases T-121/89 and T-13/90, the Court of First Instance found that "the medical officer of the institution may base his finding of unfitness not only on the existence of present physical or psychological disorders but also on a medically justified prognosis of potential disorders capable of jeopardizing the normal performance of the duties in question in the foreseeable future". Even though the ruling was subsequently annulled by the Court (C-404/92), this interpretation of the concept of "fitness" was not challenged. While terms such as "potential disorders" and "foreseeable future" are vague in terms of data protection, the relevance of the data with respect to the normal performance of duties must be proven. It is necessary to prove that there is a link between the potential disorder and the unfitness to perform the duties envisaged. In particular, the collection of genetic information or examinations regarding family history with a view to identifying potential hereditary diseases that the candidate might develop in the future with a lesser or greater degree of probability, appears to be problematic.

⁷ This does not prevent Parliament from discussing the health conditions of blood relatives during the annual medical check-up, for purposes of prevention, provided that this information is not registered in the medical files and that the staff member also remains free not to disclose such information at all. To protect the privacy of family members, consideration ought also to be given to whether the detailed information obtained orally during the consultation regarding the state of each family member could be registered in the medical files in an aggregate form, without directly and personally identifying the individual family members. For example: "indication of several cases of high blood pressure and obesity in family history".

⁸ Should Parliament's assessment conclude that collecting information on contraceptive pills is necessary, the EDPS notes in this respect that there is a question on the medical history form which asks what medication the candidates take on a regular basis. It might be appropriate to reformulate the question thus: "Do you regularly take any medication (including contraceptive pills)?"

Lifestyle. The questions on lifestyle concerning the amount of alcohol or tobacco consumed or physical exercise taken, while potentially of use for preventive purposes, appear excessive for establishing a candidate's fitness or work⁹. The EDPS therefore recommends that the presence of such questions in the medical questionnaire be examined. If they are found to be useful for preventive purposes, the questions could be answered during the annual medical check-up, provided they are clearly marked as optional and that it is stated on the questionnaire that data obtained in this way will be used solely for preventive purposes.

Refusal of employment on health grounds: Lastly, except in the case of certain specific jobs, on principle the EDPS does not see the benefit of asking candidates if they have been refused a job on health grounds. Therefore, the EDPS recommends that this question be reassessed.

Consultation of a neurologist, psychiatrist, psychoanalyst or psychotherapist: The same applies to questions regarding consultation of a neurologist, psychiatrist, psychoanalyst or psychotherapist, and to the need to provide the relevant contact details.

The EDPS thus recommends that the data in the medical history questionnaire be reassessed in the light of the principles of adequacy, relevance, and proportionality for the purposes of judging fitness for service.

B) Annual medical check-up

In addition, these principles of adequacy, relevance and proportionality must also apply to data collected during the annual check-up. The purpose of the visit is preventive. This should not, however, impinge upon employee self-assessment or include excessive data collection. As a matter of good practice, the EDPS recommends that, during the annual medical check-up, in cases where the proportionality of the collection of certain data remains doubtful, and if there is a real risk of discrimination based on health conditions or the need to care for family members or on lifestyle, or if the data provide only limited preventive benefits, the questions should be fully reassessed.

Should Parliament decide, for medically justified occupational health reasons, to collect some such data during the annual medical check-up, the candidate should be offered the choice whether or not to provide the information. Collection of such data is permissible only if the employee gives his/her informed consent with a clear understanding that (i) the provision of the information is entirely optional, and (ii) the data so obtained will only be used for purposes of prevention, that is, for alerting the candidate to any possible health problems or recommending a course of action, and will have no effect on the determination of the data subject's permanent employment.

Medical questionnaire relating to the annual check-up: the questionnaire to be filled in during the annual medical check-up is more or less identical to the one used for the pre-recruitment examination. However, it is not obligatory. But it is nonetheless recommended that staff fill it in for reasons of prevention. The EDPS welcomes this possibility, which allows data subjects to judge themselves which health-related data should be disclosed for prevention purposes.

⁹ The EDPS notes that this opinion does not address the question of whether, and to what extent, data can be collected in cases where there is an increased risk to public security if drug or alcohol addicts are employed (for example, the opinion does not address the examination of which pharmaceutical products are consumed by armed security guards).

The data subject can also ask for an HIV test to be carried out as part of the blood test for the annual medical check-up. The person concerned is asked to give their explicit agreement in writing to that effect. The EDPS also welcomes the fact that this data is by no means obligatory.

Clinical examinations and results of the blood and urine tests: the medical form which states the results of the physical examination and the list of examinations required (including a detailed description of the blood and urine analyses) must also be evaluated in the light of the principles of adequacy and proportionality.

Medical check-up performed by a GP: Article 59(6) of the Staff Regulations provides that the annual medical check-up can be carried out by a medical practitioner chosen by the official. In the latter case, the practitioner's fees are reimbursed by the institution up to a maximum amount.

When a European Parliament official or servant chooses to have the medical examination performed by a practitioner of his/her choice, that practitioner is required to forward the report on the examination and the results of any other examinations carried out as soon as possible.

In this context, the EDPS recommends that the European Parliament assess whether or not the Medical Service should receive from the practitioner chosen by the employee the results of the examinations carried out or any other information concerning their health. While the Staff Regulations (Article 59(6)) provide that the medical check-up may be carried out by a practitioner chosen by the data subject, there is absolutely no provision for the results of this check-up to be communicated to the institution. Furthermore, the reimbursement of expenses advanced for this examination as provided for by the Staff Regulations does not justify communication of the results.

The EDPS considers that the preventive purpose of the annual check-up can be served by a declaration by the doctor confirming that the examinations were carried out. If necessary, the declaration could specifically mention the fact that a person needs special accommodations.

The EDPS therefore recommends as a good practice that results should not be communicated to the Parliament's medical service without the employees' freely given and informed consent. Some employees may decide to give consent whilst others may prefer health data to be kept by the doctor of their choice.

3.4.2. Accuracy and updating of data

In accordance with Article 4(1)(d) of the Regulation, personal data must be "accurate and, where necessary, kept up to date" and "every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified".

In this case, these are data such as the results of medical examinations or notes taken by a doctor. It is not easy to guarantee or assess the accuracy of these data. Nevertheless, the EDPS stresses the need for the Parliament to take all reasonable measures to obtain up-to-date and relevant data. As an example, other medical opinions submitted by the person concerned must be kept in the medical file so that the file is complete. Moreover, the EDPS emphasises that in the parts of the

medical questionnaire to be filled in by the person concerned, no addition or comment may be inserted subsequently by the doctor or by any other person¹⁰.

In this case, there is compliance with Article 4(1)(d) of the Regulation. The person concerned has the right of access and rectification in order to make the file as complete as possible.

3.4.3. Fairness and lawfulness

The data must be *processed fairly and lawfully* (Article 4(1)(a) of Regulation (EC) 45/2001). Lawfulness has already been examined. Fairness should be the subject of special attention in the context of such a sensitive subject. It is linked to the information that must be transmitted to the person concerned (see point 3.8. above).

3.5. Storage of data

Article 4(1) of Regulation (EC) 45/2001 establishes the principle that data must be "*kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed*".

In this case, the Medical Service keeps medical data for an unlimited period.

We must therefore consider to what extent and for what purposes it is necessary to keep, throughout an official's career, and even after it, the contents of a medical file which includes data such as the results of medical examinations and medical certificates.

The EDPS recognises the importance of keeping data, even after the death or retirement of the person concerned, because in certain cases this data can play a role in discovering information linked to the cause of death or disease (asbestos, for example). However, in the light of Regulation (EC) No 45/2001, it seems that the institution is obliged to set a maximum period for storage.

In this context, the EDPS would draw the European Parliament's attention to the recommendations he issued on 26 February 2007 in response to the consultation with the Board of Heads of Administration concerning the latter's proposal for a 30-year storage period for medical documents¹¹. In its recommendations the EDPS calls on the Board to examine the various types of medical document in the light of the limited storage principle set out in Article 4 of Regulation (EC) No 45/2001 and to draw up specific rules, depending on document type and storage purpose.

There is also the question of the storage of results of medical examinations performed on candidates who, having undergone the medical examination, have not been recruited, be it for medical or other reasons. Data relating to these candidates which are obtained in the context of the medical examination provided for under Article 33 of the Staff Regulations should not be kept indefinitely. The EDPS considers that such data should be kept for only a certain period of time; this could be the same length of time as that during which the data, or a decision taken on the basis of such data, can be contested. The EDPS recommends setting a data retention period for non-recruited candidates.

¹⁰ For rights of access and rectification, see point 3.9 below.

¹¹ Opinion published on the EDPS website.

Similarly, the storage of data concerning persons from outside (visitors, for example) who consulted the Medical Service should be considered in the light of the purpose of such storage.

3.6. Change of purpose/compatible use

Data are retrieved from the ARPEGE database for entry into CLINIDOC. The processing operation being reviewed involves no general change of the specified purpose of staff databases and is not incompatible with that purpose. Accordingly, Article 6(1) of Regulation (EC) No 45/2001 does not apply in this instance and the conditions of Article 4(1)(b) of the Regulation are fulfilled, given that the purposes are compatible.

3.7. Transfer of data

Medical files are transferred to other institutions in the event of the transfer of the person concerned. This transfer must therefore be examined in the light of Article 7(1) of Regulation (EC) No 45/2001. Personal data may in fact be transferred within or to other Community institutions or bodies only if it is "*necessary for the legitimate performance of tasks covered by the competence of the recipient*". There is full compliance with this aspect with regard to sending a medical file on the occasion of the transfer of a member of staff.

Article 7(3) of Regulation (EC) No 45/2001 provides that "*the recipient shall process the personal data only for the purposes for which they were transmitted*". There should be explicit assurance that any member of Parliament's Medical Service receiving and processing data may not use them for other purposes. Accordingly, the EDPS recommends that, in the case in point, Parliament should specify that the persons responsible for the medical files may not use those data for any other purpose.

The EDPS welcomes the fact that no part of the medical file is placed in the personal file apart from the declaration stating that the person is fit (or fit with reservations or unfit) for work.

Moreover, as has been stipulated in practice, if a person decides to have his annual check-up carried out by a doctor of his choice, he is obliged to forward to the Medical Service a copy of the results of the examinations and the bill in order to obtain reimbursement of the expenses. The information given on the form for reimbursement is then forwarded to the EP's budget authority. In the light of the principle as stipulated by Article 7 and pursuant to which transfers of data can take place only if they are "*necessary for the legitimate performance of tasks covered by the competence of the recipient*", the EDPS calls into question the forwarding to the budgetary authority of all the data contained in Annex 5 to the annual check-up form. Once the examinations have been validated by the Medical Service, it does not seem necessary for the budgetary authority to receive details of the examinations carried out. The EDPS would therefore like to be given justification for forwarding all the data in Annex 5 to the budgetary authority.

Furthermore, data may be transferred to external doctors appointed by the data subject. If these doctors are nationals of countries whose national law was adopted pursuant to Directive 95/46/EC, the data transfer will be examined in the light of Article 8 of Regulation (EC) No 45/2001. The transfer is covered by Article 8(b), which stipulates that data may be transferred if "*the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced*".

In the case in point, the transfer may take place not if the recipient doctor proves that it is necessary, but at the data subject's request. Such a request from the data subject is proof of the necessity. Furthermore, it is self-evident that this does not prejudice the data subject's legitimate interests.

Lastly, transfers to recipients who do not come within the scope of Directive 95/46/EC (if the external doctors are nationals of a country whose legislation not based on Directive 95/46/EC) need to be examined in the light of Article 9 of Regulation No 45/2001. Article 9 states that: *"personal data shall only be transferred to recipients, other than Community institutions and bodies, which are not subject to national law adopted pursuant to Directive 95/46/EC, if an adequate level of protection is ensured in the country of the recipient or within the recipient international organisation and the data are transferred solely to allow tasks covered by the competence of the controller to be carried out"*.

If the country of the recipient does not ensure an adequate level of protection, the exceptions provided for in Article 9(6) and (7) may apply. In the case under examination, Article 9(6)(a) and (e) would be particularly relevant: *"By way of derogation from paragraphs 1 and 2, the Community institution or body may transfer personal data if: (a) the data subject has given his or her consent unambiguously to the proposed transfer; or (...) (e) the transfer is necessary in order to protect the vital interests of the data subject (...)"*.

If health-related data is transferred to third parties other than the Medical Service, compliance with Article 10 must also be ensured. Medical files may also be transferred to external doctors appointed by the data subject, or to other Community institutions or bodies in the event of a change or transfer of post. As the data is transferred to comply with labour-law obligations arising from the Staff Regulations, Article 10(2) of the Regulation is fully complied with. As regards the last hypothesis (other institutions), however, it would seem necessary to specify that the data should be transmitted only to persons authorised to have access to them – i.e. persons who are subject to professional secrecy.

The European Data Protection Supervisor recommends that, in the context of transfers to other institutions, only persons authorised to have access to data relating to health, and who are subject to professional secrecy, receive medical files.

3.8. Processing including the personnel or identifying number

Parliament uses the personnel number for processing operations subject to prior checking. While the use of an identifier is, in itself, no more than a means (and a legitimate one in this case) of facilitating the task of the personal data controller, its effects may nevertheless be significant. This is why the European legislator decided to regulate the use of identifying numbers under Article 10(6) of the Regulation, which makes provision for action by the European Data Protection Supervisor.

In the case in point, use of the personnel number may allow the linkage of data processed in different contexts. Here, it is not a case of establishing the conditions under which Parliament may process the personnel number, but rather of drawing attention to this point in the Regulation. In this instance, Parliament's use of the personnel number is reasonable because it is a means of facilitating the processing task.

3.9. Right of access and rectification

Article 13 of Regulation (EC) No 45/2001 makes provision, and sets out the rules, for right of access at the request of the data subject. Under Article 13 of the Regulation, the data subject has the right to obtain from the controller, without constraint, communication in an intelligible form of the data undergoing processing and any available information as to their source.

Article 20 of the Regulation provides for certain restrictions on this right, notably where such a restriction constitutes a necessary measure to safeguard the protection of the data subject or of the rights and freedoms of others. The EDPS wishes to draw attention to the fact that the rule provided for in the Regulation is intended to enable the data subject to access his or her personal data. Accordingly, this right may not be subject to limitations pursuant to Article 20, except under strict conditions.

The procedure under which officials and other staff may access their medical file is laid down in Conclusion 221/04 of the Board of Heads of Administration of 19 February 2004. By virtue of this decision, the file must be consulted on the premises of the Medical Service of the institution, in the presence of a person designated by the Medical Service. The indirect access provided for in the decision applies to psychiatric and psychological reports, where direct access might prove harmful to the data subject. Therefore, to that end indirect access by a doctor appointed by the data subject is provided for.

The official or servant may not have access to doctors' personal notes if, under the terms of Article 20.1(1)(c) of Regulation 45/2001 and on the basis of a case-by-case examination, this is necessary to guarantee the protection of the data subject or the rights and freedoms of others. The EDPS welcomes the fact that this is subject to examination on a case-by-case basis in accordance with the principle of proportionality. The above limitation must not be allowed to result in a general refusal of access to the personal notes of doctors in the medical file.

The access procedure covers officials and other staff. The EDPS would welcome the introduction of a procedure for non-recruited persons or other persons (visitors, parliamentary assistants, freelance staff, staff of external companies, etc.) in respect of whom medical information has been recorded and who are also entitled to access under Article 13 of Regulation (EC) No 45/2001.

Article 14 of Regulation (EC) No 45/2001 allows the data subject the right of rectification. In addition to being given access to their personal data, data subjects may also have the data amended if necessary. This right is somewhat limited as regards medical data, in that it is difficult to guarantee the accuracy or completeness of medical data. It may, however, apply to other types of data contained in medical files (administrative data, for example). Furthermore, as mentioned above (see section 3.4, Data quality), the data subject may request that his or her medical file be complete – i.e. he or she may request that information such as counter opinions by another doctor or a Parliament decision on an element of the medical file be placed in his or her file so as to ensure it contains up-to-date information.

3.10. Information to be given to the data subject

Regulation (EC) No 45/2001 provides that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided. In the present case, some of the data are collected directly from the data subject and other data from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on the information to be given to the data subject applies in this case insofar as officials themselves provide the information during medical visits.

The provisions of Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) on information to be given to the data subject also apply in this case because information is obtained from the various parties involved in the process (external doctors, for instance).

3.10.1. Timing of information provision

Article 11 stipulates that where the data have been obtained from the data subject, the information must be given when the data are collected. Where the data have not been obtained directly from the data subject, Article 12 stipulates that the information must be supplied when the data are recorded or, at the latest, when they are first disclosed.

The EDPS is satisfied with the posting of a notice in Medical Service waiting rooms to inform data subjects of the processing operations performed on their personal data. He recommends, moreover, adding information, including a reference to the European Parliament's Intranet site. In addition, this notice could be enclosed with the letter of invitation to the pre-recruitment examination or annual check-up.

3.10.2. Content of the notice

Articles 11 and 12 of the Regulation provide a detailed list of information to be provided to data subjects. In basic terms, the controller must state the identity of the controller, the purposes of the processing operation, the recipients of the data, whether replies are obligatory or voluntary, and the possible consequences of failure to reply. The information must also cover the right of access and rectification. Further information, including the legal basis of processing, the time limits for storing the data, and the right of recourse to the EDPS at any time must also be provided insofar as the specific circumstances in which the data are collected make it necessary to do so in order to guarantee fair processing.

Both Articles 11 and 12 allow for exceptions from the notification requirement where the data subject is already in possession of the information. Article 12 allows for further exceptions in a limited number of cases, including where Community legislation expressly provides for data to be registered or communicated, or where the provision of information proves impossible or would involve disproportionate effort.

As regards information on the purposes of the processing operation, the notice must clearly state the purpose of the pre-recruitment examination. The fact is that, although the Staff Regulations specify the pre-recruitment medical examination and its purposes, recruitment candidates are not necessarily familiar with that information, which ought, therefore, to be provided to them in the interests of fair processing. This information ought to cover not only the purposes of the examination to test fitness for service pursuant to Articles 28 and 33 of the Staff Regulations, but also the limitation of guaranteed benefits by virtue of Article 1 of Annex VIII to the Staff Regulations and Article 32 of the Conditions of Employment of other servants.

As regards the information to be supplied at the time of the pre-recruitment medical examination, the EDPS also recommends that Parliament refer in its notice to Article 1d of the Staff

Regulations (ban on discrimination) and that disabilities or other medical conditions should not act as a bar to candidates, as long as they are able to perform their duties when reasonable accommodation is made.

Article 59(6) of the Staff Regulations stipulates that the annual medical check-up may either be carried out by the institution's medical officer or by a medical practitioner chosen by the staff member. Although this right is set out in the Staff Regulations, the EDPS recommends that employees be informed of their entitlement to choose the doctor who will perform their annual medical check-up and of the practical steps they must take to have the check-up carried out by a doctor of their choice. The information ought to encompass the rules on reimbursement (including ceilings) and the rules on certifying that the check-up has been performed. It should also be made clear whether the chosen medical practitioner will need to forward the results of the medical examinations to Parliament, and if so, for what purpose.

The medical form to be filled in at the pre-recruitment medical examination mentions that any inaccuracy or omission in the questionnaire could result in the medical opinion on fitness for service being withdrawn. Furthermore, this information ought to be included in the notice and in the letter of invitation to the examination. The medical questionnaire for the annual check-up also states that the information to be given on the form is not obligatory but that completing the questionnaire is recommended. This information could also be included in the notice.

The notice refers to access rights pursuant to Article 26a of the Staff Regulations. However, there is no mention of the procedures for exercising those rights as provided for in the decision of the Board of Heads of Administration. The rights pursuant to Article 26a also apply only to officials and other staff and not to visitors in the event that they request access to their medical file. The procedures for obtaining access could therefore be specified in the notice.

The notice refers to the possibility of lodging an appeal with the EDPS. An addition should be made here to the effect that such an appeal may be made "at any time".

Lastly, the notice does not mention the existence of the CLINIDOC database. The EDPS recommends that data subjects be informed of the existence of CLINIDOC, its functionalities and the data it contains.

3.11. Processing carried out on behalf of the controller

Where a processing operation is carried out on its behalf, the controller is required to choose a processor providing sufficient guarantees in respect of technical and organisational security measures. The controller must also draw up a contract or legal act stipulating in particular that the processor shall act only on instructions from the controller.

The Medical Service calls upon persons from outside to carry out certain examinations. Blood tests and chest X-rays are therefore carried out outside the EP's Medical Service by the Clinique du Parc Léopold for the pre-recruitment examination. The same applies for blood tests for annual check-ups which are carried out by the medical analysis laboratory of Dr Hermans Boveroulle and Dr Lesenne.

These persons from outside should be considered as processors pursuant to Article 23 of the Regulation. A contract or other legal act binding the processor must therefore be drawn up, specifying that the processor shall act only on the instructions of the Medical Service.

Moreover, as the Clinic is subject to Belgian national law transposing Directive 95/46/EC, the processor is bound by the obligations of security and confidentiality as laid down by that law.

3.11. Security

In accordance with Article 22 of Regulation (EC) No 45/2001 on security of processing, "*the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected*".

As stated above, Medical Service staff are bound by medical confidentiality; the presence of departmental staff provides physical security for paper and electronic files during working hours, and these files are then locked away outside working hours. With regard to security measures for electronic documents, the computers are protected by a user's name and password. The server is in a locked room reserved for DGV's LSA team. Every night, a back-up is made on a streaming tape in Luxembourg. The tape is then stored in a fireproof safe.

The EDPS considers that the security measures adopted by Parliament are adequate in the light of Article 22 of the Regulation, provided that confidentiality of communications is guaranteed when information is transferred between Medical Service and other staff at Parliament. In this respect, the EDPS recommends that, in the interests of good practice and as an appropriate measure, envelopes containing medical information ought to be marked "CONFIDENTIAL" and "TO BE OPENED BY THE PERSON CONCERNED ONLY".

Conclusion

The proposed processing operation does not appear to infringe the provisions of Regulation (EC) No 45/2001, subject to the comments made above. This implies, in particular, that the European Parliament should:

- not collect any other data than is necessary to determine fitness for service or to limit guaranteed benefits at the pre-recruitment medical examination;
- in general terms undertake a thorough reassessment of the questions put in the questionnaire for the pre-recruitment medical examination and annual medical check-up in the light of the principles of adequacy, relevance and proportionality, for the purposes of judging fitness for service, focusing in particular on the following:
 - in order to minimise the risks of discrimination based on family health conditions or lifestyle, no data should be collected for prevention purposes during the pre-recruitment medical examination;
 - fully reassess the need for the questions in relation to the annual medical check-up, in cases where the proportionality of the collection of certain data remains doubtful, and if there is a real risk of discrimination based on health conditions or the need to care for family members or lifestyle, or if the data provide only limited preventive benefits;
 - questions relating to the state of health of individuals with no genetic link to the data subject should be completely removed. If questions as to the state of health of parents and children as blood relatives were to be considered useful for preventive purposes, they could be posed during the annual medical check-up, provided that it is made clear that they are optional and used solely for preventive purposes;

- completely remove questions on the use of means of contraception and menstrual situation, unless such questions are necessary in the context of specific duties;
 - assessment of the presence of lifestyle questions, especially with regard to alcohol and tobacco consumption and physical exercise. Were these questions to be considered useful for preventive purposes, they could be raised during the annual medical check-up, provided that it is made clear that they are optional and that the data obtained from them will be used solely for preventive purposes;
 - assessment of the questions relating to absence on medical grounds, psychiatric consultation and refusal of employment on health grounds,
- assess the medical form containing the results of the physical examination and the list of examinations necessary (including the detailed description of the blood and urine analyses) in the light of the principles of adequacy and proportionality;
 - ensure that, in the parts of the medical question to be filled in by the person concerned, no addition or comment is entered subsequently by the doctor or any other person;
 - consider the period of storage of medical data in the light of the recommendations made by the EDPS on 26 February 2007 in response to the consultation with the Board of Heads of Administration concerning the latter's proposal for a 30-year storage period for medical documents; and in particular:
 - provide for a limited period for storage of data concerning candidates who are not recruited;
 - assess the period of storage of data concerning persons from outside (visitors, for example) who consulted the Medical Service, in the light of the purpose of such storage;
 - assess the need to forward all the data in Annex 5 to the annual check-up form to the budgetary authority for the purpose of reimbursement of the medical examinations carried out by a doctor chosen by the person concerned;
 - ensure that, in the context of transfers to other institutions, only persons authorised to have access to data relating to health, and who are subject to professional secrecy, receive medical files;
 - introduce a procedure for non-recruited person or other persons (visitors, parliamentary assistance, freelancers, staff of outside firms, etc.), so that they too have a right of access under Article 13 of Regulation (EC) No 45/2001;
 - supplementing the information provided in the waiting rooms, in particular by giving details on the European Parliament's Intranet site. In addition, a note could be enclosed with the letter of invitation to the pre-recruitment examination or annual check-up;
 - review the notice to data subjects and in particular:
 - state clearly the purposes of the pre-recruitment examination;
 - refer in its notice to Article 1d of the Staff Regulations (ban on discrimination) and to the fact that disabilities or other medical conditions do not act as a bar to candidates, as long as they are able to perform their duties when reasonable accommodation is made,

- inform employees of their entitlement to choose the doctor who will perform their annual medical check-up and of the practical steps they must take to have the check-up carried out by a doctor of their choice,
 - indicate in the letter of invitation to the examination or check-up that any inaccuracy or omission in the questionnaire could result in the medical opinion on fitness for service being withdrawn,
 - inform the persons concerned of the existence of CLINIDOC and its functionalities and the data that it contains.
- draw up a contract or other legal act binding the processor, specifying that the processor shall act only on the instructions of the EP's Medical Service.

Done at Brussels, 14 June 2007

Peter HUSTINX
European Data Protection Supervisor