

## **Opinion on the notification for prior checking from the Data Protection Officer of the European Parliament regarding the "Medical Files – Luxembourg" case**

Brussels, 14 June 2007 (case 2004-203)

### **1. Proceedings**

Notification within the meaning of Article 27(3) of Regulation (EC) No 45/2001 concerning the "Medical files – Luxembourg" case was given by Mr Jonathan STEELE, the Data Protection Officer of the European Parliament, on 23 May 2006.

By e-mail of 7 June 2006 questions were put to the Data Protection Officer of the European Parliament. Additional questions were put on 22 June 2006. Answers were given in a letter received on 16 January 2007. Additional questions were put on 6 February 2007. Answers were given in a letter on 30 March and by e-mail on 2 April 2007. Additional questions were put on 12 April 2007, and answers thereto were given on 20 April 2007. On 20 April the EDPS decided to extend the deadline by one month, owing to the complexity of the case. The DPO was given 11 days in which to comment on the draft EDPS opinion.

### **2. Facts**

The processing operation refers to the compilation of a personal medical file. The data subjects are officials and other staff<sup>1</sup>.

The data are as follows: identifying numbers, data relating to health, family, private sphere, contracts/recruitment, and data used to assess certain aspects of one's personality.

The established procedures are as follows:

The Medical Service deals with medical emergencies at the workplace, pre-recruitment medical examinations and annual medical check-ups for officials and other staff. The Medical Service acts as a health advisor to the Administration and staff.

The Medical Service seeks to provide effective occupational health services focusing primarily on prevention. To that end it monitors the staff's health through annual check-ups, consultations and nursing care, and is supported by consultant specialists in cardiology, ophthalmology, psychology and dietetics.

The annual medical check-up is an administrative requirement for all officials and other staff in active employment. The Medical Service ensures that they fulfil this requirement. The Medical Service uses administrative follow-up files for medical files to keep track of annual medical check-ups. Only hard copies of these follow-up files are kept. The only automatic aspect of this

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<sup>1</sup> The Medical Service in Brussels is the subject of another case. See case 2004-205.

process relates to the frequency of check-ups, for which related cards are kept. A yellow card corresponds to an annual medical check-up by the Parliament's Medical Service, a green card to an annual check-up performed by a GP, a blue card to a pre-recruitment examination, and a pink card to a check-up at an outside clinic.

In addition, a specialised department at the European Parliament deals with absences on medical grounds. This department handles absences from the workplace on grounds of illness.

The Medical Service as a unit also operates in the following two spheres:

- a social activities unit is also available, with welfare officers (who, by definition, are not doctors), whose activities are subject to separate checking<sup>2</sup>. This department handles requests under budget heading 1640, requiring a medical certificate made out by a GP and sent to the institution's Medical Officer for an opinion.
- the individual entitlements department deals with double dependent child allowances, for which a medical certificate made out by a GP and sent to the institution's Medical Officer for an opinion is also required. In addition, the Medical Officer is asked for an opinion on certificates submitted by officials when applying for leave for family reasons.

The Invalidity Committee is run under the terms and conditions laid down in the Staff Regulations, with the institution and the person concerned each represented by a doctor; these two doctors then agree on a third. The doctor representing the person concerned signs an undertaking to abide by the procedure.

#### Data on the form concerning the pre-recruitment medical examination

All candidates are required to fill in a form and hand it to the doctor during their pre-recruitment examination. Candidates undertake to provide truthful information under penalty of the pre-recruitment medical examination being regarded as void. This document is placed in the official's medical file.

The document contains administrative data: surname, first name, personnel number, date and place of birth, nationality, mother tongue, sex, marital status, children, contact details (postal address, e-mail address, telephone numbers), name of GP, training, language ability, post sought and type of contract. Candidates are asked about the activities they undertake and the nature of the job they are seeking. They are also asked whether or not they have already worked for a European institution and, if so, whether they have already undergone a medical examination for another such institution.

They are also asked about their personal medical history and that of members of their family (father, mother, brothers, sisters, children, spouse). Candidates must also provide information on instances of invalidity, disability or mental illness in their family, any allergies or intolerances, contraception methods used and pregnancy. The questionnaire also includes some questions on the person's lifestyle, including medicines taken on a regular basis, dietary habits (consumption of beer, spirits, wine, tobacco), drug use (treatment for addiction) and sports.

Candidates are also required to state whether they have ever been turned down for a job for health reasons or have suffered from an occupational illness; whether they have consulted a

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<sup>2</sup> See EDPS opinion of 30 April 2007, case 2006-269.

psychiatrist, and if so, when and for what reason; and whether they have ever been absent from work for more than one month on medical grounds, and if so, when and because of what illness.

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 other necessary medical examinations (eye test, hearing test, ECG etc), depending on the individual.

The doctor enters a summary of the examination and the conclusions. The document is signed by the doctor conducting the examination and the institution's Medical Officer. The doctor then sends the department concerned a declaration stating that the person is either fit or unfit to work.

#### Data on the form concerning the annual medical check-up

There are three options available for undergoing the annual check-up:

- to have the annual check-up at the Medical Service at one's place of work;
- to have the check-up performed by one's GP; or
- to opt for the JSIS preventive medicine programme.

Forms to be filled in are sent to the persons concerned. A white questionnaire is used for annual check-ups with a GP. A yellow form is used for annual check-ups at the institution's Medical Service.

Regardless of whether it is performed at the Medical Service, by a GP or during a hospital check-up, the annual check-up is thorough and above all preventive in nature. It consists of:

1) basic examinations:

- blood and urine tests, which thoroughly investigate the main physiological functions (liver, kidneys, thyroid, etc.),
- a clinical examination,
- an ECG (electrocardiogram) test,
- for women, a consultation with the gynaecologist of her choice, a vaginal smear and, where necessary, an HPV test;

2) screening tests authorised under the programme and reimbursed by the Medical Service as part of the annual check-up;

3) a hearing test;

4) if need be, a spirometric examination (to test respiratory functions);

5) an eye test. This test can be taken by appointment at the Medical Service or with a private ophthalmologist.

There is a form to be completed by the individual (in addition to certain personal administrative data of a general nature, this first form contains a list of ailments from which the individual may have suffered since the previous visit), together with a second form, to be filled in by the doctor and containing data on the individual's working life (workstation, work performed on screen), his or her lifestyle (alcohol, tobacco, sport), and his or her medical history. The form then takes up the results of the examination carried out by the doctor (covering 18 different areas), together

with the conclusions. If filled in by a GP, the form ends with the following sentence: "I hereby certify that the patient has been informed of the conclusions and results of his/her annual check-up YES - NO". The doctor must then sign and date the form.

Useful specific tests may be carried out, after authorisation from the JSIS.

As regards the HIV test, the individual is asked by his or her doctor to agree to it and gives his or her signed consent to that effect. Consent is therefore explicit.

Where the individual concerned has annual check-ups performed by a GP, the documents which the latter is required to provide to the Parliament's Medical Service are forwarded as follows: the information received is the same, and the Medical Service therefore has the same information as it would have gathered if it had carried out the tests itself. The results of the various tests are submitted by post or by the individual in person.

#### Other information

The information provided to the data subject relates to the identity of the controller, the purpose of the information and the rights of the data subject. This information is communicated in the form of a notice (in French and English) posted on the premises:

##### *INFORMATION – MEDICAL SERVICE*

*You are informed that the Medical Service of the European Parliament at Luxembourg carries out certain personal data processing operations with respect to officials and other staff.*

*These operations include keeping a medical file, which includes data gathered at recruitment and in the context of the annual medical examination. The data managed includes data on name, personnel number, family status, date of birth, emergency contact and health. The legal basis for this operation derives from Articles 28 and 59 of the Staff Regulations (or Articles 13 and 16 CEOS where appropriate). This information will be sent to the Medical Service of another institution in the case of transfer of the official or staff member.*

*You have a right of access to, and a right to rectify if incorrect, any of the above data. You also have the right to have recourse to the European Data Protection Supervisor, if you consider that your rights have been infringed.*

*Medical Officer*

The data subject makes an appointment with the Medical Service; the Medical Officer reviews his or her file and provides access thereto.

Any rectification is subject to verification.

Data subjects can access their medical files during a visit to the Parliament's Medical Service under the terms laid down in Conclusion 221/04 of the Board of Heads of Administration, which states that:

Officials and temporary staff shall have the widest possible access to their medical files, under the following conditions:

1. 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.
2. The official or other servant will be able to have access to psychiatric/psychological reports concerning him or her, through the intermediary of a doctor appointed by him or her.
3. The official or servant may not have access to personal notes by 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 safeguard the protection of the data subject or of the rights and freedoms of others.

Processing is not computerised at present but could be so at a later juncture. As matters stand, data are still stored in hard copy form alone.

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

Medical opinions are not placed in the data subject's personal file. This contains administrative-type documents. Hence in an invalidity case, for instance, the Invalidity Committee's findings (i.e. whether or not the person in question is fit to work) is placed in the file, but no medical information is included with it. Furthermore, no information of a medical nature is forwarded to the Appointing Authority, nor are the administrative departments responsible for ensuring follow-up in respect of certificates entitled to receive information contained in the medical file.

Although no final conclusion has thus far been adopted, the current intention is for medical files to be stored for 30 years following the official's retirement (see letter from Mr CHENE, dated 6 October 2006, regarding follow-up to the meeting of the Board of Heads of Administration of 6 October 2005). This marks a shift from the position when the notification under Article 25 was made in February 2004, which referred to storing data for 40 years after retirement.

The number of cases of data storage in respect of individuals who have undergone the pre-recruitment medical examination but have not subsequently been recruited is on the increase. To date, no file has been destroyed. Under current practice, an individual undergoes the pre-recruitment medical examination when called for interview, thereby obviating the need for two visits.

There is provision for storage for historical, statistical or scientific purposes. There is no established procedure surrounding storage, since no file has been destroyed as yet. Archiving is under way, with files archived in one of two groups as either "retired" or "invalidity" files.

All medical certificates, supporting medical reports and opinions of the Medical Officer are placed in the data subject's medical file. Some opinions (administrative decisions) are placed in the personal file.

The following security measures apply: 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.

### 3. Legal aspects

#### 3.1. Prior checking

The notification received on 23 May 2006 relates to 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)). The notification applies to the content of the medical file itself and to the various documents that may be found therein. This processing operation does not relate to the invalidity procedure itself or to reimbursements of medical expenses. Furthermore, separate notifications will have to be made for such operations.

Processing of files under scrutiny remains manual for the time being, but processed data are contained in a file. Moreover, such processing could be computerised. Article 3(2) is therefore applicable in this case.

It follows that the processing falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 45/2001 makes "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" subject to prior checking by the European Data Protection Supervisor.

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"<sup>3</sup> and medical data.

The notification also alludes to Article 27(2)(b) to the extent that the expression "private sphere" used to describe categories of data refers in particular to data concerning life outside the workplace, such as a private address or telephone number. The Parliament maintains that, primarily because of the broad nature of the various official duties, information of a medical nature has to cover the data subject's personality. The EDPS takes the view, however, that this particular assessment applies solely to the pre-recruitment medical examination.

In principle, checks by the European Data Protection Supervisor should be carried out 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 carried out 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 Luxembourg; the activities of its counterpart in Brussels are the subject of their own prior checking procedure (2004-205). 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.

The notification from the Parliament's Data Protection Officer was received on 23 May 2006. By e-mail of 7 June 2006 questions were put to the Parliament's Data Protection Officer. Additional questions were put on 22 June 2006. Answers were given on 16 January 2007. Additional

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

questions were put on 6 February 2007. Answers were given in a letter on 30 March and by e-mail on 2 April 2007. Additional questions were put on 12 April 2007 and final answers thereto were given on 20 April 2007. On 20 April the EDPS decided to extend the deadline by one month, owing to the complexity of the case. The draft opinion was sent to the DPO with an 11-day suspension period to allow him to comment thereon.

Pursuant to Article 27(4) of the Regulation, the European Data Protection Supervisor should have delivered his opinion within two months. Taking into account the 297-day suspension, under Article 27(4) of the Regulation the European Data Protection Supervisor has to deliver his opinion by 19 June 2007 at the latest (24 July plus 297 days of suspension and a one-month extension).

### **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 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 instruments on the one hand, and whether that operation is necessary in order to perform that task on the other. 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 managing and performing the tasks specified 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 same applies to the pre-recruitment medical examinations (Article 33 of the Staff Regulations and Article 1 of Annex VIII thereto), the annual medical check-ups (Article 59(6)) and the invalidity procedure (Article 78 of the Staff Regulations and Articles 13 to 16 of Annex VIII thereto).

The pre-recruitment medical examination is based on Article 33 of the Staff Regulations. The primary purpose of the examination is to ascertain whether the candidates are fit to perform their duties (Article 28(2)). The medical examination performed by the institution's medical officer is designed precisely to guarantee the candidate's fitness to 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 Committee. 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 the data collected during the pre-recruitment examination which might prove useful to candidates in serving to alert them to an issue regarding their health should also be used for preventive purposes. This does not mean, however, that additional data which is not needed to determine fitness for service or to limit guaranteed benefits should be collected during the examination for preventive purposes. This point will be taken up again later (under data quality).

Article 4(1)(b) of Regulation No 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 purposes other than to ascertain that the data subject is physically fit or to limit guaranteed benefits, 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 other data should be collected for purposes other than to determine physical 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 also 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 said annual medical 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 results in a decision that the individual concerned is unfit for service. What is more, the data required for annual medical check-ups are more restrictive, thereby pointing to a different purpose.

Therefore, although the purpose of an annual medical check-up is not to check the fitness of the data subject, the processing operation may nonetheless be considered necessary – and, therefore, 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 or her own 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 results or 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.

In this regard, and where the purpose is purely preventive, the EDPS can deem the annual medical check-up to be lawful, provided that officials and other staff are able to have the check-up performed by a doctor of their choice and, for check-ups at the Parliament's Medical



Service, that data subjects are able to request a thorough explanation of their medical results, rather than merely receiving a copy of the tests.

The legal basis for the processing operations stems from Articles 28, subparagraph (e) (appointment of an official if he or she is physically fit to work as required) and 59 (sick leave, medical certificates, unauthorised absences, Invalidity Committee, requirement to take leave, medical check-up) of the Staff Regulations of officials of the European Communities.

Likewise, although they are not mentioned, the articles concerning pre-recruitment medical examinations (Article 33 of the Staff Regulations and Article 1 of Annex VIII thereto) and the invalidity procedure (Article 78 of the Staff Regulations and Articles 13 to 16 of Annex VIII thereto) are relevant to the legal basis for this processing operation. The same applies to Articles 12(2)(d), 13 and 16 (concerning temporary staff), Articles 55(1)(d) and 59 (concerning auxiliary staff) and, lastly, Articles 82(3)(d), 83 and 91 (concerning contract staff) of the Conditions of Employment of other servants (CEOS). The 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 legitimate and supports the lawfulness of the processing operation.

Moreover, data relating to health are among the data which Article 10 of Regulation (EC) No 45/2001 classes as "special categories of data".

### **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 present case very clearly relates to the processing of personal data on health.

Article 10(2)(b) ("*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 (...)*") applies in the case in point. The Parliament, in its capacity as employer, is complying with Article 10(2)(b) by processing the data submitted.

As an exception to the principle of the prohibition of data processing, Article 10(2)(b) must be interpreted narrowly. Firstly, 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). Secondly, the requirement that processing be "necessary" for this purpose introduces additional constraints with regard to data quality (see section 3.4 below).

Lastly, in the case in point, certain health-related data are processed by the Parliament doctors. Owing to the nature of the data involved, which concern health, Article 10(3) (special categories of data) of Regulation (EC) No 45/2001 applies in this instance. 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 secrecy or by another person also subject to an equivalent obligation of secrecy*". On account of their position, the doctors are subject to the obligation of professional secrecy and are the sole recipients of this data. In this instance, Article 10(3) of the Regulation is duly complied with.

However, the EDPS would draw attention to the fact that all administrative departments responsible, within the framework of social medicine, for processing files containing certificates issued by medical staff are themselves bound by professional secrecy. The EDPS recommends that they be reminded of that obligation.

### **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 medical examination is to establish whether or not the candidate is fit to perform his or her duties. The main issue, therefore, is what health-related data are likely to have an impact on the performance of the duties of the employee. If the data subject is fit for service only subject to certain accommodations made at the workplace, then the medical examination may also help determine the accommodations required.

The second purpose of the pre-recruitment medical examination is to determine whether, insofar as risks arising from sickness or invalidity are concerned, death or invalidity benefits should be limited until after a period of five years from the date of entering the service of the Communities. Thus any information requested during the examination should serve the two aforementioned objectives only.

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, during the pre-recruitment medical examination, no data should be collected for prevention purposes.

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

##### Medical history questionnaire

First, a check must be made to ensure that the medical history questionnaire completed by candidates at the pre-recruitment medical examination does not collect irrelevant or excessive data. The EDPS questions the relevance and proportionality of certain information requested during the pre-recruitment medical examination.

Family history: the medical history of a spouse or adopted children, lacking any genetic link, has no place in the medical history questionnaire. Although the state of health of parents and children as blood relatives may indicate predisposition to certain genetic disorders or 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 service<sup>4</sup>. Moreover, the answers to such questions may give rise to sensitive data

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<sup>4</sup> 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

without the individual concerned having been able to grant consent. For these reasons, the EDPS recommends that these questions be removed completely. Were these questions as to the state of health of parents and children as blood relatives to be considered useful for preventive purposes, they could be asked during the annual medical check-up, provided that it is made clear that they are optional and used solely for preventive purposes<sup>5</sup>.

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 history questionnaire submitted to the EDPS. In particular, candidates are required to answer a question on their menstrual situation, the date of their last period, whether or not they 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 the 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 anti-recruitment argument. That evaluation should not simply consider whether contraception in general should be mentioned, as some forms of contraception (in particular, oral contraception) constitute pharmacological treatment. A genuine need for or benefit derived from collecting this type of information in the context of the pre-recruitment medical examination must be demonstrated<sup>6</sup>.

Lifestyle: questions on lifestyle, such as those related to the amount of alcohol or tobacco consumed or physical exercise undertaken, although they may prove useful for prevention, also appear excessive for ascertaining fitness for service. The EDPS recommends that this type of question on the medical history questionnaire be reconsidered. Were these questions to be considered useful for preventive purposes, they could be raised during the annual medical

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challenged. While terms such as "potential disorders" and "foreseeable future" are somewhat vague for the purposes of data protection, relevance of the data with respect to the normal performance of duties must be proven. The link between a potential disorder and fitness to carry out one's duties has to be demonstrated. 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, in particular, appears to be problematic.

<sup>5</sup> 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. This record might state, for instance, "reference to case of mental illness" or, in the family history, "instance of high blood pressure, heart disease, diabetes, tuberculosis, asthma, cancer, epilepsy, mental disorders, paralysis".

<sup>6</sup> For instance, collecting such information might be proportionate if contraception generally had a significant impact on the results of the various blood and urine tests. 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 regular medication the candidates take. It might be appropriate to reformulate the question thus: "Do you regularly take any medication (including contraceptive pills)?"

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.

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 reconsidered.

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 reconsidered in the light of the principles of adequacy, relevance, and proportionality for the purposes of judging fitness for service. Blood and urine tests and the conclusions stemming from pre-recruitment medical examinations and annual check-ups ought also to reflect those principles.

#### 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 aim of which is preventive. This should not, however, impinge upon employee medical 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 (consider, for example, data regarding contraception use), the questions should be fully reassessed.

Should the 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 as to whether or not to provide the information. Collection of such data is permissible only if the employee gives his or her informed consent with a clear understanding that (i) the provision of the information is entirely optional, and (ii) the data so obtained will be used only for purposes of prevention, that is, for alerting the candidate to a possible health problem or recommending a course of action, and will have no effect on determination of the employee's continued employment.

#### Medical check-up performed by a medical practitioner

As regards annual medical check-ups carried out by a medical practitioner chosen by the official (Article 59(6) of the Staff Regulations), the medical department's need to receive the medical report and copies of additional examinations carried out must be demonstrated. It is worth considering whether the main objective of the medical check-up cannot be attained by means of a statement from the medical practitioner certifying the official's state of health and establishing whether or not certain examinations have been carried out. It might also be worth considering asking data subjects for their free consent to the transfer of their medical data. Some might agree to give their consent, whereas others would prefer their own doctor to keep their data.

### **3.4.2. Accuracy and updating of data**

Under 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".

The data in this case include the results of medical examinations and doctors' notes. It is not easy to ensure or assess the accuracy of data of this kind. However, the EDPS would emphasise that the institution must take every reasonable step to ensure that data are up to date and relevant. For example, to ensure that medical records are complete, any other medical opinions submitted by the data subject must also be kept in the file. Particular attention should be given to supporting documents relating to decisions taken under the Invalidity Committee procedure, in particular as regards updating of data. The same applies to assistance for disabled people or family allowances which are prolonged in particular cases not specifically set out in detail in this case, but in respect of which opinions are, of course, placed in the medical file.

Some officials in the various administrative units (Welfare Office, AA) have access to certain data relating solely to entitlement to payment of specific allowances and can thus preserve the quality of the information. Furthermore, the persons responsible for file-based administrative follow-up of medical files have an essential role to play in updating administrative information relating to the data subject and in compiling and updating the medical file itself.

In this instance, Article 4(1)(d) of the Regulation is duly complied with. The data subject is made aware of his or her rights to access and rectify data in order to ensure that the file remains as comprehensive as possible. These rights are the second means of ensuring data quality. They are discussed in section 3.9 below.

### **3.4.3. Fairness and lawfulness**

Furthermore, the data must be *processed fairly and lawfully* (Article 4(1)(a) of Regulation (EC) No 45/2001). The matter of lawfulness has been reviewed above. Given the sensitivity of the subject, fairness warrants considerable attention. It is linked to the information to be given to the data subject (see section 3.10 below).

### **3.5. Data storage**

Article 4(1)(e) of Regulation (EC) No 45/2001 lays down 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*".

Bearing in mind data storage periods (see facts on page 5 above), we must therefore consider to what extent and for what purposes it is necessary to keep, throughout an official's career, the contents of a medical file which includes data such as the results of medical examinations and medical certificates.

In this context, the EDPS would draw the European Parliament's attention to the recommendations he issued on 26 February 2007<sup>7</sup> 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. 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

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<sup>7</sup> Case 2006-532, published on the EDPS website.

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.

Long-term data storage must be accompanied by appropriate safeguards. The data that is being kept is sensitive. The fact that it is archived for long-term storage does not make it any less sensitive. Accordingly, even where long-term storage is concerned, the EDPS recommends that appropriate transmission and storage measures must be applied when handling this data, as is the case for all sensitive information.

Lastly, there is provision for use for statistical, historical or scientific purposes. In this regard, and by way of recommendation, the Parliament must render the data to be used for such purposes anonymous or, failing that, encrypt them, as stipulated in Article 4(1)(e).

That said, with regard to storage for historical purposes, the EDPS is of the opinion that a distinction should be drawn between (i) files or documents whose historical value does not rely on the availability of data through which data subjects can be identified, and (ii) files and documents whose historical value relies precisely on such data being available.

If the historical value of a document relies on the availability of personal data, that value will be lost with the removal of said data when they are rendered anonymous. Therefore, where storage for historical purposes warrants the availability of data which identifies the data subjects, provided also that such storage is compatible with the initial purpose, the EDPS considers that the general rule on storage as set out in Article 4 applies to this new historical purpose. In this regard, as stipulated in Article 4(1)(b), the controller should ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual.

### **3.6. Change of purpose/compatible use**

Data are retrieved from or entered into the staff databases. 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**

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data within or to other Community institutions or bodies "*if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*".

It concerns transfers between institutions since the personal data are transferred not only to the Invalidity Committee, which is the ad hoc committee provided for by the Staff Regulations of officials of the European Communities, but also to the other Community institutions and bodies in the event of a change or transfer of post.

Care should therefore be taken to ensure that the conditions of Article 7(1) are fulfilled; that is the case, since the data collected are necessary for carrying out the processing and, furthermore, are "*necessary for the legitimate performance of tasks covered by the competence of the recipient*". In this case, the task is the responsibility of the various departments of the Parliament, the Invalidity Committee and the other institutions. As regards transfers, only relevant data must be transferred. Such transfers are therefore indeed lawful insofar as the purpose is covered by the competences of the recipients. Article 7(1) is therefore duly complied with.

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 the 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, the Parliament should specify that the persons responsible for the medical files may not use those data for any other purpose.

Furthermore, data may be transferred to external doctors appointed by the data subject. If those doctors are nationals of countries whose national law was adopted pursuant to Directive 95/46/EC, the data transfer will come under 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 is 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 EDPS 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**

The European 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 the Parliament may process the personnel number, but rather of drawing attention to this point in the Regulation. In this instance, the 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 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 have access to 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 gain access to their medical file is referred to in Conclusion 221/04 of the Board of Heads of Administration of 19 February 2004. By virtue of that 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 covers 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 personal notes by doctors 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 staff ("other servants"). The EDPS would welcome the introduction of a procedure for non-recruited persons 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 medical file be complete in the sense that 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 that it contains up-to-date information.

### **3.10. Information for data subjects**

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 others from other persons.

The provisions of 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 apply in this case insofar as officials themselves provide the information during medical visits or through the certificates to be submitted in the context of the different occupational medicine procedures.

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, Invalidity Committee).

**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, that the information process should be reinforced by including a reference on the European Parliament's Intranet site. In addition, the notice could be enclosed with the letter of invitation to the pre-recruitment examination or annual check-up.**

Articles 11 and 12 of the Regulation provide a detailed list of information that needs 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 the medical examination on recruitment, information is collected initially from the data subject during the medical examination prior to entry into service. The data subject should be provided with adequate information on that occasion, at any rate concerning the processing of

medical data relating to the medical examination and the purpose of the processing operation. The fact is that, although the Staff Regulations set out 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.

The EDPS recommends further that the 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.

Candidates should also be notified of the content of the certificate on their fitness for service and be given an assurance that under no circumstances will their medical data be forwarded to human resources staff.

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. This information ought also to be included in the letter of invitation to the examination. 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 as to whether the chosen medical practitioner will need to forward the results of the medical examinations to the European Parliament, and if so, for what purpose.

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 EDPS recommends mentioning them.

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".

The data subject should also be informed of the potential recipients of the data. He or she should be notified of the data storage period as well.

Candidates are also required to take blood tests. New staff members should be informed of the right of access to the test results and the right to rectify data concerning them.

As regards the processing of data subsequent to the medical examination before entry into service, the Parliament considers that, in principle, no additional information needs to be provided, since provision for the information is made in the Staff Regulations. The EDPS considers that this information should also appear in the questionnaire on medical fitness and should be the subject of a staff note.

The same considerations apply to the annual medical check-up. With respect to the additional examinations requested by the Medical Service, staff must be notified of their right to access and rectify the data concerning them. This same information must be communicated in the supporting documentation relating to the aforementioned Invalidity Committee procedure.

### **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 is 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.

The entire procedure is confidential. Ad hoc security measures are in place for consultation of files by data subjects.

The EDPS considers that the security measures adopted by the 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 the 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;
- remind all the administrative departments responsible, within the framework of social medicine, for processing files containing certificates issued by medical staff of their own obligation of professional secrecy;
- 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,
  - 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,

- questions on the use of means of contraception and menstrual situation,
  - lifestyle questions, especially with regard to alcohol and tobacco consumption and physical exercise. If these questions are 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.
  - reconsider the questions relating to absence on medical grounds, psychiatric consultation and refusal of employment on health grounds,
  - fully reassess 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 the health conditions of family members or lifestyle, or if the data provide only limited preventive benefits (consider, for example, data regarding the use of contraception);
- establish a data retention period for non-recruited candidates;
  - guarantee, where long-term storage is concerned, appropriate transmission and storage measures for handling this data, as is the case for all sensitive information;
  - render data anonymous or, failing that, encrypt them before they are used for historical, scientific or statistical purposes;
  - specify that the persons responsible for medical files may not use the related data for any other purpose;
  - ensure that, in the context of transfers to other institutions, only persons authorised to have access to data relating to health, and who are bound by professional secrecy, receive medical files;
  - introduce a procedure for non-recruited persons in respect of whom medical information has been recorded, so that they too have a right of access under Article 13 of Regulation (EC) No 45/2001.
  - **review the notice to data subjects, and in particular:**
    - **add a reference on 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,**
    - **provide the data subject with adequate information, at least concerning the processing of medical data relating to the medical examination and the purpose of the processing operation,**
    - **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,**
    - **notify candidates also of the content of the certificate on their fitness for service and give them an assurance that under no circumstances will their medical data be forwarded to human resources staff,**
    - **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 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,**
  - **add a reference to the decision of the Board of Heads of Administration concerning access rights,**
  - **point out that an appeal may be lodged with the EDPS "at any time",**
  - **specify the time-limits for storing data,**
  - **make new staff members aware of the right of access to the test results and the right to rectify data concerning them,**
  - **include also, in the questionnaire on medical fitness and in a decision communicated to staff, information on the processing of data after the medical examination carried out prior to entry into service,**
  - **inform staff of their right to access and rectify data concerning them in respect of the additional examinations requested by the Medical Service following the annual medical check-up;**
- mark envelopes containing medical information "CONFIDENTIAL" and "TO BE OPENED BY THE PERSON CONCERNED ONLY", in the interests of good practice and as an appropriate measure.

Done at Brussels, 14 June 2007

Peter HUSTINX  
European Data Protection Supervisor