



Opinion on a notification for prior checking received from the Data Protection Officer of the European Commission on the "*Management of crèches and childcare facilities*".

Brussels, 27 July 2007 (Case 2007/148)

1. Proceedings

Notification within the meaning of Article 27(3) of Regulation No 45/2001 concerning the "Management of crèches and childcare facilities" case was given by the Data Protection Officer (hereinafter referred to as the "DPO") of the Commission by letter received on 5 March 2007.

In connection with this notification, questions were put to the Commission's DPO by e-mail on 27 April 2007. On 8 May 2007 a meeting was held on the EDPS's premises with data controllers, who clarified certain aspects of the processing procedure. Additional information was supplied to us on 5 June 2007. Questions were put to the DPO on 8 June 2007 and replies were received on 2 July 2007. On 4 July 2007 the case was suspended again until 9 July 2007. On 13 July 2007 the procedure was suspended for seven days pending comments from the DPO. Comments were supplied on 26 July 2007.

2. Facts

The purpose of the interinstitutional day nurseries and kindergartens (hereinafter referred to as "crèches"), the outdoor childcare centre and the after-school childcare facilities is to ensure that staff arriving in Brussels from the different Member States of the Union, often far from their place of origin, have easy access to day-care facilities for young children. The processing operation relating to the management of crèches and childcare facilities in Brussels is performed by two sections of the Commission's Unit OIB.6 which run the secretariat for the Commission crèches and childcare facilities using the Loustic information system.

Purpose:

The purpose is twofold. First of all, the processing is intended to enable children to be enrolled at the crèche or childcare facilities by providing all the information necessary to determine the hours the child will attend, the parental contribution and the appropriate childcare for the child. Secondly, it is also designed to ensure monitoring of the child's attendance at the facilities, consideration of any medical factors and access control for persons authorised to drop off or collect children.

Legal basis:

The legal basis for the processing operation is Commission Decision 2003/523/EC of 6 November 2002 establishing the Office for Infrastructure and Logistics in Brussels, the Rules of the Early Childhood Centre – Crèche/Kindergarten Section (hereinafter referred to as "*the crèche rules*"), the Rules governing the Early Childhood Centre's outdoor childcare facilities

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(hereinafter "*the outdoor childcare centre rules*") and the Rules of the Early Childhood Centre – After-School Care Service (hereinafter "*the after-school care rules*"). The three sets of rules governing crèches as well as outdoor and after-school childcare facilities have also been signed by the Council¹, the European Economic and Social Committee (EESC), the COR (Committee of the Regions) and the Parliament². A multiple framework services contract has also been concluded between the Commission and a company which runs two private crèches. Article I.10 of the contract, with the heading "*data protection*", provides that *personal data referred to in or related to the contract, including those relating to performance thereof, shall be processed in accordance with Regulation (EC) No 45/2001... they may only be processed for the purposes of the performance, administration and monitoring of the contract, without prejudice to their possible transmission to bodies charged with auditing or inspection functions under Community law. The contractor (the company) has a right of access to and right to rectification in respect of personal data relating to him/her ... The contractor has the right to have recourse at any time to the European Data Protection Supervisor.* Article II.8.1, concerning confidentiality, also provides that the contractor *shall undertake to treat as strictly confidential all information and documents relating to the performance of the contract and not to make use of them or disclose them to third parties. The contractor shall continue to be bound by this undertaking after the tasks have been completed.* Article II.6 of the contract also provides that checks, audits and verifications for performance of the contract will be carried out by the Court of Auditors and OLAF.

Data subjects:

The data subjects of the processing operation can be grouped into three categories:

- children of European institution staff attending the crèches and childcare facilities,
- their parents, in particular the paying parent, but also the second parent,
- persons authorised to collect or drop off the children.

Enrolment procedure for the crèches and childcare facilities:

Parents must submit enrolment applications directly to the relevant department in their institution or body. In particular, Commission and Parliament staff send their enrolment applications to the appropriate section of the Commission's Unit OIB.6, Council staff send them to the Council's Welfare Department and EESC and COR staff send them to the Social Welfare Office. All enrolment applications submitted to the Council, EESC and COR are then forwarded to the Commission secretariat for crèches and childcare facilities.

According to Article 1 of the rules governing crèches and outdoor and after-school childcare facilities, the crèches (of which there are currently four, five as from September 2007) as well as the outdoor and after-school childcare facilities (currently eight) are reserved for the children of officials and other servants of the Communities within the meaning of Article 2(2) to (4) of Annex VII to the Staff Regulations³ and external members of staff who have a direct contractual link with the Communities in the form of a full-time employment contract of not less than six months' duration. The crèches admit children from the age of eight weeks until 15 September of the calendar year in which they reach the age of four. The after-school care

¹ The Council opened its own crèche in November 2006 but still cooperates with the Commission's crèche and after-school and outdoor childcare service.

² The Parliament works with the Commission only in the case of after-school and outdoor childcare facilities, as it has its own crèches. The processing operation relating to the crèches has already been the subject of prior checking – see EDPS opinion of 8 December 2006.

³ "*Dependent child*" means the legitimate, natural or adopted child of an official, or of his spouse, who is actually being maintained by the official.

centres admit children between the ages of four and twelve, and the outdoor childcare centre admits children up to 14 years old.

Files held for each child:

The crèches as well as the after-school and outdoor childcare facilities keep two files for each child:

- an enrolment file containing the documents required for admission, namely the enrolment form, the birth certificate and the medical form in the case of the childcare facilities. This file is kept by the secretariat of the crèches or childcare facilities;
- a financial file where pay slips and update forms are kept. This file is kept in the offices and archives of the OIB.6's finance department.

Specific procedures and processing operations relating to the crèches, the outdoor childcare facilities and after-school childcare facilities:

A/ CRECHES:

Children are admitted to the crèches in the following order of priority:

Officials and other servants:

Priority 1: Children one of whose parents is an official (or other servant) of the Communities and has sole responsibility for them.

Priority 2: Children both of whose parents are officials (or other servants) of the Communities and share responsibility for them.

Priority 3: Children one of whose parents is an official (or other servant) of the Communities while the other (who is not an official) is:

- (a) in employment,
- (b) following a full-time course of study, or
- (c) actively seeking a job

and both parents share responsibility for them. The fact of being registered with the *Office Régional Belge de l'Emploi* serves as proof that an active attempt is being made to find a job.

Priority 4: Children one of whose parents is an official (or other servant) of the Communities while the other (who is not an official) is not in employment and both parents share responsibility for them.

External staff, subject to availability:

Priority 5: Children of a nursery nurse or childcare worker having a direct contractual link with the Commission (member of staff of the crèches or after-school centres) where

- (a) that parent has sole responsibility for them, or
- (b) the other parent is also in employment and both parents share responsibility for them.

Priority 6: Children one of whose parents is a seconded national expert and has sole responsibility for them.

Priority 7: Children one of whose parents is a seconded national expert while the other is also in employment and both parents share responsibility for them.

Priority 8: Children of a nursery nurse or childcare worker having a direct contractual link with the Commission (member of staff of the crèches or after-school centres) while the other is not in employment and both parents share responsibility for them.

Priority 9: Children one of whose parents is a seconded national expert while the other is not in employment and both parents share responsibility for them.

The admissions procedure for the crèches differs from that for the childcare facilities.

Applications for admission to the crèches must be accompanied by the following documents:

- ❖ the enrolment form, including acceptance of the relevant rules, containing useful family information concerning the child, namely the surname and forename of the child, the (expected) date of birth, its mother tongue, the surname and forename of the mother and father, their marital status, nationalities, employer, office address, phone number, private address, staff number, grade, financial contribution, overall income and the names of two reliable persons, together with their address and phone numbers (office and home);
- ❖ child's birth certificate, and
- ❖ parents' payslips and/or tax assessment in the case of a self-employed parent.

With regard to the medical form, by virtue of Article VIII of the crèche rules, children are admitted only after the paediatrician attached to the crèche has carried out a medical examination by appointment on behalf of the medical service of the Commission crèches. The medical form is completed by the paediatricians and nurses in the medical service of the Commission crèches. The form is administered by the Commission's medical service and the Commission's OIB.6 department has no knowledge of its content. At the medical examination, parents are required to submit a medical certificate listing all the vaccinations already given and an outline of the child's diet. When their child is admitted, parents are issued with a health record which they may present to the crèche and to their family doctor on the occasion of every consultation so that the child's development may be monitored. Medical supervision of the children is carried out by the paediatrician attached to the crèche who is present in the mornings, and nurses are on call all day. The paediatrician carries out preventive medical checkups on the children once a month up to the age of one year, once every three months up to the age of three years and once every six months thereafter. Parents are informed in advance of the dates of such checkups.

With regard to the payslips required, in the case of a single parent the net remuneration and, where appropriate, maintenance are taken into account, while for two parents the combined amount of the two incomes is taken into account.

All data on the enrolment form, as well as the net salaries calculated based on the payslips to determine the amount of the parental contribution, are contained in the Loustic database. The data are updated on a daily basis by the crèche secretariat and the finance department respectively. The birth certificate is filed in the enrolment file and is not fed into Loustic. Financial files dating back more than ten years will be destroyed after the child has left the crèche by the end of 2007.

(B) OUTDOOR CHILDCARE FACILITIES:

The criteria for admission to the outdoor childcare facilities are as follows:

Priority 1: A child whose parent with sole responsibility for him/her is an official (or other servant) of the European institutions.

Priority 2: A child of an official (or other servant) of the European institutions in cases where the other parent also works.

Priority 3: A child of an official (or other servant) of the European institutions in cases where the other parent does not work.

Priority 4: A child one of whose parents has a contract with a European institution or a child of a member of one of the institutions or of a member's assistant.

Priority 5: Other children, for example children of European Parliament assistants at the request of the Parliament's Welfare Office, children of the staff of companies contracted to work for the institutions and children of representation staff.

According to Article II of the outdoor childcare centre rules, parents wishing to enrol their child for the outdoor care centre for the first time can download the enrolment form from the childcare website or obtain it from the relevant department of their institution. Enrolment forms are available about three months before the outdoor centre opens for a session. The enrolment form contains the same family information as the form for the crèche (see requisite data above), with the exception of the financial data which are not required. The only financial information requested is the identification number based on which the finance department can deduct the attendance cost from the salary.

The duly completed form must be sent to the e-mail address in the relevant institution, with an e-mail copy to the administering department indicated on the enrolment form. The enrolment form must be accompanied by the medical form. There is no medical check-up at the Commission medical service as is the case for the crèches. The medical form must be duly completed by the parent. The data requested for the medical form are as follows: surname and forename of the child, date and place of birth, surname and forename of the paying parent as well as those of the second parent, together with their office addresses, private address, commune, home phone no. and mobile nos., name of the family doctor or paediatrician as well as their address and phone number, name of a person to be contacted in the event of an emergency, vaccinations carried out, the date of the last tuberculin test, childhood diseases, previous illnesses, surgical operations, current illnesses, current treatment, allergies to medication, food and other things, and any special diet. The parent is also asked to authorise the outdoor childcare centre management to take the necessary steps in the event of an emergency or minor accident.

Parents wishing to enrol their child but who do not have internet or intranet access can obtain a paper copy of the form from the relevant department. The duly completed form must be returned to the relevant department of their institution, which will forward the necessary copies to the administering department. The administering department will also e-mail a partially completed re-enrolment form to parents whose children have previously attended the outdoor care centre so that they can enrol their children again. They need only enter the remaining details on the form and return it as described in the outdoor childcare centre rules.

Article II.B of the outdoor childcare centre rules states that "*where not enough places are available, unsuccessful applications will be placed on a waiting list, drawn up in accordance with the priority criteria*". Where there is a waiting list, decisions on enrolments are taken by the administering department. If there are places left, applications received late are dealt with subsequently on the basis of the priority criteria defined and as established in the rules. Enrolments on the waiting list are kept until the end of the reference period, i.e. the one or more weeks of the outdoor childcare centre. They are then destroyed if they could not be accepted. We are told, however, that, according to current practice, all enrolments are accepted and enrolment confirmation is obtained automatically.

Applications for cancellation must be made directly to the childcare facilities secretariat with a copy to the relevant social welfare department. This should preferably be done by e-mail, using the appropriate form (provided at the time of enrolment and available from the childcare website), within 15 working days of the date specified on the cancellation form for the relevant period. The cancellation form is kept with the enrolment form for the same period.

All enrolment form data corresponding to data fields in the Loustic programme are fed in. Medical data are not fed in at this stage and remain attached to the paper enrolment file, apart from the data concerning allergies and special diets. These data are entered into Loustic under the "comments" field on the "characteristics" screen to which only OIB.6 staff have access.

(C) AFTER-SCHOOL CHILDCARE FACILITIES:

The following admission criteria are used for after-school childcare facilities:

First of all, priority is given to re-enrolments. New enrolments are then prioritised as follows:

Officials and other servants:

Priority 1: children one of whose parents is an official (or other servant) of the Communities and has sole responsibility for them,

Priority 2: siblings of children who already attend the after-school care centre,

Priority 3: other children one of whose parents is an official (or other servant) of the Communities and not belonging to either of the first two categories (single-parent family or sibling already attending after-school care centre).

External staff, subject to availability:

Priority 1: children whose parent with sole responsibility for them has a contractual link with the Communities,

Priority 2: siblings of children who already attend the after-school care centre,

Priority 3: other children of contract staff not belonging to either of the first two categories (single-parent family or sibling already attending after-school care centre).

The admission application must be accompanied by the following documents:

- ❖ the enrolment form (the same as for the crèches and outdoor childcare centres)
- ❖ the medical form (the same as for the outdoor childcare centre)
- ❖ child's birth certificate, and
- ❖ parents' payslips and/or tax assessment in the case of a self-employed parent.

The admission file documents are kept in the paper file. Payslips of parents not working for an institution are forwarded to the finance department which keeps them and feeds the incomes into Loustic.

Every year the finance department sends parents a request to update the household income. The request does not concern parents working in the institutions, whose data are available to the finance department via administrative channels.

Under Article II of the after-school care rules, unsuccessful applications will be added to a waiting list drawn up in accordance with the same priority criteria. For applications lodged, in exceptional circumstances, in the course of the year, places will be allocated on a case-by-case basis as they become available and in accordance with the priority criteria. Enrolments on the waiting list are kept until the end of the reference period, which is in principle the academic year. They are then destroyed if they could not be accepted. We are told, however, that in practice all enrolments are automatically accepted.

Only data on the enrolment form and data concerning allergies and special diets are fed into Loustic. The medical form is kept in the paper enrolment file.

Reliable persons and medical staff in the crèches and the after-school and outdoor childcare facilities:

For the crèches and for the childcare centres (after-school and outdoor), the enrolment form, which must be signed by the parents, should bear the names of at least two reliable persons who are authorised to collect the child on the parents' behalf or to be contacted in the event of an accident or other circumstances preventing the parents from collecting the child by the specified closing time of the crèche. Any person other than those mentioned on the enrolment form who comes to collect the child shall be required to present the management with written authorisation to this effect, duly dated and signed by the person(s) having legal responsibility for the child, and to prove their identity.

In the case of the crèches, the paediatricians and nurses in the Commission's medical service have access to the same data as security guards, i.e. the details of parents and persons authorised to collect the child. In the event of an accident or other emergency, the staff of the Commission medical service inform the parents and/or reliable persons. The paediatricians and nurses in the Commission medical service as well as the childcare staff (which are part of OIB.6) are recruited by the Commission. They either have contractual status or status under Belgian private law.

No medical staff are assigned to the after-school and outdoor childcare facilities, except in the case of the outdoor centre where a temporary nurse is present at the holiday camp. The nurse does not have access to Loustic. The administering department may, on request, allow him or her to consult the medical form (on paper) attached to the enrolment file.

Handling of the processing operation:

Processing is both automated and manual. The automatic part is via the Loustic application, into which administrative data concerning the child, its parents and authorised persons as well as information relating to vaccines and allergies are fed. It is important to note that a Kiddyweb application under development will be introduced from January 2008 for new enrolments to the outdoor childcare centre (and in May 2008 for the after-school childcare centre). The medical form collected for the after-school and outdoor childcare facilities will be fed into the Kiddyweb application when it is introduced. The Kiddyweb application can be introduced for the crèches once the OIB.6 has adopted the recommendations of this opinion.

The Loustic application is used by the secretariat of the crèches and of the after-school and outdoor childcare facilities and by the finance managers of the Commission's OIB.6 department to manage information concerning children attending the crèches and the after-school and outdoor childcare facilities.

The Kiddyweb application will be made available to parents via the Commission intranet for the submission and administration of applications to enrol their children in the crèches and after-school and outdoor childcare facilities. It will only be accessible by the parents concerned if they work at the Commission. In the case of parents who do not have access to the application, the secretariat of the crèches and of the childcare facilities of the Commission's OIB.6 department is responsible for feeding in the necessary information and administering enrolment applications provided that the parents or competent departments submit the completed forms on paper or by e-mail.

The manual aspect of the processing operation is the printing of authorisation lists for staff, i.e. childcare workers and guards (security service) who do not have access to a PC and nursery nurses, and the printing of the individual form for each child. The Loustic data printed by the OIB.6 are the individual forms for each child containing the details of the persons authorised to

collect them. The forms are given to the nursery nurses and childcare workers only. The guards have direct access to these data via the controls on entry and exit by adults at the crèche receptions.

The data is collected as follows:

The Loustic application is interfaced (in read-only) with the COMREF database, a combined database of human resources data from the European Commission's human-resource management systems. COMREF is used to verify/obtain the personal data of the parent working for the Commission, i.e. surname, forename, gender, staff number, institution, administrative status, date of birth, nationality and office address.

The following administrative and medical data are collected via Loustic to make up the child's file:

- For children attending the crèches and the after-school and outdoor childcare facilities:
 - input by the secretariats of the surname, forename, date of birth, starting date at the crèche, finishing date, languages spoken, establishment attended (crèche or childcare facilities), attendance arrangements (full-time or part-time), attendance and daily absences;
 - input by the secretariat of the childcare facilities only of information concerning vaccination dates, any food allergies or illnesses;
 - production and printing by the secretariats of lists of children by crèche/childcare facility and by room.
- For the parents of children attending the crèches and the after-school and outdoor childcare facilities:
 - input by the secretariats of data concerning the parents, i.e. the surname, forename, staff number, institution, administrative status, date of birth, date of end of contract if appropriate, nationality, gender, office address, private address if the person is not working for a European institution, marital status;
 - verification by the secretariats of information fed in concerning the parent working for the European Commission against the information available in the COMREF database;
 - input by the finance managers of the professional incomes of the parents (either supplied by the parents or obtained from the Commission department responsible for the payment of salaries); on the basis of this information, calculation of the amount of the basic monthly contribution to be paid by parents, calculation and recording of the amount to be paid based on actual attendance by the child;
 - production and printing by finance managers of lists setting out the amounts to be paid based on actual attendance by the child;
 - production and printing by finance managers of individual salary deduction forms providing calculation details for the parent's financial contribution.
- For persons authorised to collect children attending the crèches and the after-school and outdoor childcare facilities:
 - input by the secretariats of the surname, forename, phone number, as well as the type and length of the period during which the persons are authorised to collect or drop off a child;
 - consultation by security guards of the list of persons authorised to collect a child.

The Kiddyweb application will also be interfaced with the COMREF database. In addition to the personal data used by Loustic, Kiddyweb will obtain from COMREF personal data concerning the private address and private phone number of the parent working for the Commission. Kiddyweb will allow paying parents to consult and feed in information concerning themselves, their children, the second parent and the persons authorised to collect the child. The data could be fed in by a member of the secretariat if the parent does not have access to the Kiddyweb application and has submitted their enrolment application on paper or by e-mail.

The following data are fed into Kiddyweb:

- For the parents of children attending the crèches and the after-school and outdoor childcare facilities:
 - input of the surname, forename, staff number, institution, administrative status, date of birth, nationality, gender, office address, private address, marital status and e-mail address;
 - input by the paying parent of an enrolment application for their child at the crèche, after-school childcare facilities or outdoor childcare centre. The data could also be fed in by a member of the secretariat if the parent does not have access to the Kiddyweb application and has submitted their enrolment application on paper;
 - consultation by the paying parent of the status of their enrolment applications; the Kiddyweb application also sends an e-mail to each parent when the status of one of their applications changes.
- For children attending the crèches and the after-school and outdoor childcare facilities:
 - input of the surname, forename, date of birth, gender and languages spoken;
 - data concerning vaccination dates, food allergies and any illnesses are fed in only for the childcare facilities.
- For persons authorised to collect children attending the crèches and the after-school and outdoor childcare facilities:
 - input of the surname, forename, private address, phone number, type and duration of authorisation;
 - consultation by security guards of the list of persons authorised to collect a child.
- Administration by the relevant secretariat of enrolment applications to the crèche, after-school or outdoor childcare facilities by attributing a priority to each enrolment application; the different priorities are defined in the respective rules on crèches, after-school childcare facilities and the outdoor childcare centre.

It is important to note that the administrative data (personal and salary-related) available in the Commission's human-resource management programmes are automatically extracted from the COMREF database. The OIB.6 finance department has access to the PAIE application to consult the payslips of parents working for the Commission, with their agreement, and manually feed the relevant amounts into Loustic. These amounts are used to calculate the parent's financial contribution for their child's attendance at the Commission crèches and/or childcare facilities.

Recipients:

The data recipients are as follows:

- The administering department of the childcare infrastructures, i.e. the secretariat of the crèches and that of the childcare facilities: all data is forwarded to them apart from the screens for calculating parental contributions.
- The finance department of OIB.6: all data is forwarded as they are all needed to establish the amount of the parental contributions.
- Security guards: the list of collection authorisations for each child is forwarded to them or made available to them only via limited access to the Loustic programme.
- The Commission's medical service only receives the list of collection authorisations for each child in the case of the crèches so that it can inform the reliable persons in the event of an emergency.
- In respect of the after-school and outdoor childcare facilities, the health-related data in Loustic, and in future in Kiddyweb, are and will be available on request to the Commission's medical service. The only circumstance in which the information may be disclosed is for emergency intervention in the event of an accident. In that case, the practitioner may, in the case of the after-school and outdoor childcare facilities, be informed of the content of the medical form.
- The welfare departments of the other institutions for the allocation of annual enrolments (after-school childcare facilities). Data used to allocate places are forwarded to them, in particular, the names of the children enrolled, their dates of birth, the place requested, their priority and the date of submission of the enrolment file.
With regard to the after-school and outdoor childcare facilities, the allocation of places is discussed at an annual meeting with representatives of the welfare departments of the institutions involved in the financing of the activity (Commission, Council, COR, ESC). The meeting is organised at the end of the enrolment period from mid-May to mid-July. Its purpose is to allocate available places to applicants based on the priorities set out in the after-school childcare service rules. At the meeting, representatives of the welfare departments are given a file containing the list of children enrolled, their priority, the site of the after-school service applied for and the institution in which the paying parent works. These persons are required to process the files in accordance with the confidentiality rules governing all administrative correspondence entrusted to them as part of their duties.
- The Flemish Community's accreditation body Kind & Gezin⁴. This body can access the enrolment lists on request in order to check that administration by the Commission's OIB.6 department is compliant with the administrative requirements of the accreditation conditions set out in the *Flemish Government Ministerial Decree of 19/03/03 establishing the general conditions for supervision by Kind & Gezin of childcare in the home, mini-crèches and independent childcare facilities*. The Commission is not required to obtain a compliance certificate from this Flemish regional agency. It is in fact a means of demonstrating to parents that the crèches and childcare facilities offer guarantees of health and safety, quality of care and supervision

⁴ This body, a regional agency under the Flemish Government, is responsible for inspecting childcare facilities for young children (crèches and other childcare facilities).

to at least the standard required for childcare facilities in the host country⁵. Access to the data is not systematic. The rules governing the checks carried out by this Flemish body require operators of accredited childcare facilities to keep an up-to-date file of information identifying the child (name, address, date of birth), phone numbers for reaching parents when the child is in their care, the name and phone number of the doctor to be called in the event of illness or an accident and details relating to the child which are necessary for good childcare. Such information must be available to the Ministry official during an inspection. The rules allow only the official inspector himself to note the child's personal identity data, in particular the name, address and date of birth. The sole purpose of the data collected by the official is to support the reports drawn up following the inspections, for example in the case of fraud when a fictitious attendance is recorded during the inspection. It is stressed that up to now there has been no record of data being copied in this context. Inspectors always limit themselves to checking proper handling of the registers and the number of children present in order to ensure that supervision standards are met.

- The Commission currently sub-contracts part of its childcare in a contract with a company running two private crèches. For each new enrolment, the OIB.6 crèche secretariat e-mails the private crèches the child's surname, forename, date of birth and starting date. No form is produced. The private crèche is responsible for collecting the other data it needs relating to the family and/or child, except in the case of payment. Instead of parents paying the private crèche directly, payment is made via salary deductions. The company bills the OIB.6 for the services rendered and the OIB.6 pays. Health and safety in the two private crèches are monitored by two accreditation bodies, the ONE and the Kind & Gezin.
- Security guards, who are managed by a private firm, have limited access to parents' details and a list of persons authorised to collect the children via Loustic, and will soon have it via Kiddyweb. This function was not the subject of a specific clause in the contract between the Commission and the security firm, but has been incorporated into the Loustic application.

Rights of access, rectification, blocking, erasure:

With regard to rights of access and rectification, parents are able to consult their Loustic file on request at the secretariat of the crèches and childcare facilities and to request its rectification. The rights of access, verification and rectification may also be exercised at any moment via the Kiddyweb application by those parents who have fed in the data required by the programme. For parents with no access to the application, the data may be consulted and rectified on request at the secretariat of the crèches and childcare facilities. Third parties authorised to collect or drop off children have similar rights. It is for the nominating parents to inform them of those rights.

Blocking and erasure requests are considered within a fortnight of acceptance by the controller, except in cases requiring a particular IT intervention needing a longer deadline, in which case equivalent solutions are proposed. Such requests would be examined and the data subject informed of the feasibility and the deadline for implementation.

⁵ Where a childcare facility meets the childcare standards described in the ministerial decree, it receives a form referred to as the "*attest van toezicht*", which constitutes a certificate of compliance with the requirements set out in the ministerial decree. The certificate also makes it possible to issue the tax attestations valid in Belgium for parents liable for Belgian taxes.

Right to information:

With regard to the right to information under Loustic, a note is sent to all parents, attached to the enrolment form, and published on IntraComm. For Kiddyweb, a message will appear on first log-in to the application and will be attached to the enrolment form published on IntraComm. For those who do not have access to the application, the note on the Loustic application, accompanied by the enrolment form, is sent to their e-mail or private address.

The two notes indicate the identity of the controller, the origin of the data, the purpose of the processing, the data recipients, the mandatory nature of the data, the existence of a right of access and rectification, the legal basis for the processing, the time-limit for storing the data and the right to have recourse to the EDPS at any time.

Data storage:

Data concerning the enrolment file (paper and electronic) are kept for five years after the child has left and the child's individual file has been closed. The reasons for keeping the data relate to:

- the need for accuracy with regard to the data and circumstances of accidents and seeking witnesses to accidents,
- invoicing arrears in the event of a dispute regarding the parental contribution,
- information to be supplied in the context of legal proceedings, i.e. attendance record,
- invoicing disputes regarding services provided by the sub-contractors (invoicing based on attendance). In particular, the practice is to produce order forms based on the exact number of children to be cared for while providing a reimbursement for absent children in the form of a credit note for part of the daily rate charged. Experience shows that this reimbursement clause can generate disputes with regard to the exact number of children present and the enrolment and presence records from Loustic/Kiddyweb are in this case needed to prove attendance.

Data concerning the financial file are kept for ten years. The reasons given relate to rules and procedures, accreditation bodies and parental salary deductions. These areas stem from their filing plan and the wish was to exercise caution by setting a longer data-storage period owing to the scope of the areas and the link between them. Parental contributions are linked to the rules in place when they are established (attendance arrangements and rates) and the right to the fiscal deductions attached to these contributions is dependent on accreditation.

Storage and security measures:

The data generated by the Loustic and, in future, the Kiddyweb applications are stored in an Oracle database at the Commission's computer centre in Luxembourg. Access to both applications is secured using password-protected logins.

For the Loustic application, access to the database is secure and is created for each member of the secretariats, the finance managers and security guards (single and identical access for all guards). In addition, application tools are used to limit access by the various user profiles to the information which they require. For example, security guards may only consult information concerning authorisations to collect children.

Access to the Kiddyweb application is made secure using a central authentication system introduced by the European Commission Authentication Service (ECAS). In addition, application tools are used to limit access by the various user profiles to the information which they require. For example, parents will only have access to information concerning enrolment applications for their children.

3. Legal aspects

3.1 Prior checking

Regulation No 45/2001 applies to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law (Article 3(1)). In the case in point, the data processing is carried out by the Commission and falls within the scope of Community law since it is part of activities under the first pillar.

The processing is both manual and automated, since the data being processed – the medical and administrative forms – are contained in a file. Furthermore, the processing operation forms part of a filing system or is intended to form part of a filing system. Article 3(2) is thus applicable in this case.

Accordingly, the processing falls within the scope of Regulation 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. Article 27(2) contains a list of processing operations likely to present such risks, for example "*processing of data relating to health...*" (Article 27(2)(a)) or "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" (Article 27(2)(b)). The controller states that the processing operation is likely to present a risk as it is intended to exclude individuals from a right, benefit or contract. As already mentioned, the purpose of the processing operation is to select for admission a certain number of children who meet the criteria set out in the rules and to take account of medical information so that the child can be monitored in the childcare facility. Instead of the sole purpose of the processing operation being to exclude (Article 27(2)(d)) parents and their children from being admitted to a crèche or childcare facility, it is intended to use criteria to assess their personal and family situations so as to include them in the benefit of admission (Article 27(2)(b)). Moreover, data relating to health and administrative data is collected in the context of assessing and selecting children admitted to the crèches and childcare facilities based on the criteria set out in section 2 of this opinion. This processing operation therefore falls within the scope of the prior checking procedure based on Article 27(2)(a) and (b) of the Regulation.

In principle, checks by the EDPS should be performed before the processing operation is implemented. In this case, the Loustic application is already in place, while introduction of the Kiddyweb application is scheduled as from January 2008. As the EDPS was appointed after the system for the Loustic application was set up, the check necessarily has to be performed *ex post*. Checking for the Kiddyweb application, however, is genuine prior checking. However, this does not alter the fact that the recommendations issued by the EDPS should be implemented.

Notification from the Commission DPO was received by post on 5 March 2007. Under Article 27(4) of the Regulation, the EDPS should have delivered his opinion within two months. On 13 July 2007 the procedure was suspended for seven days pending comments from the DPO. Taking into account the 81-day suspension, the EDPS will deliver his opinion by 1 August 2007 at the latest (5 March plus 39 + 24 + 5 + 13 days of suspension) under Article 27(4) of the Regulation.

3.2. Lawfulness of the processing

The lawfulness of the processing operation must be examined in the light of Article 5(a) of Regulation No 45/2001, which stipulates that the 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 other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution*".

The processing operation under examination involves the collection of administrative and medical data for the admission and daily management of the welfare of children in the crèches and childcare facilities run by the Commission and in the two private crèches. The operation is administered by the relevant Commission department. The procedure relates to a task of the Commission carried out in the public interest in the field of employment law. Since the purpose of the processing operation is the admission of children of staff of other institutions, i.e. the Council, Parliament, EESC and the COR, the Commission's task within the meaning of Article 5(a) of the Regulation is performed in cooperation with those institutions. The processing operation is therefore lawful.

Also, the forms collected for the processing operation must be duly completed, dated and signed by the parents. The processing operation is therefore also lawful under Articles 5(d) and 5(e) of the Regulation since the data subject – the parent – has unambiguously given his or her consent and since processing is necessary in order to protect the vital interests of the data subject – the children.

The legal basis for the processing operation is Article 3 of Commission Decision 2003/523/EC of 6 November 2002 establishing the Office for Infrastructure and Logistics in Brussels, which states that the Office is responsible for providing services to the institutions covering certain social welfare facilities such as crèches and after-school child-minding services.

The crèche rules are also included, as are the outdoor childcare centre rules and the after-school care rules, which state that places in the crèches and childcare facilities are reserved for children of officials and other servants of the European Communities.

With regard to the Flemish body allowed access to the enrolment lists on request so that it can check whether the administration carried out by the Commission's OIB.6 department complies with the health and safety and childcare quality requirements set out in the Flemish Government ministerial decree, there is no doubt that Belgian national law applies to the crèches and childcare facilities run by the Commission. Admittedly, "*the Community shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities ...*". The Community institutions therefore enjoy special status in the Member States. However, the Protocol on privileges and immunities provides no general exemption from any legal obligations arising from national law. The Court of Justice has emphasised that the privileges and immunities accorded to the Communities by the Protocol "*have a purely functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the Communities*". Since the application of the Flemish decree does not jeopardise the proper functioning of the Commission's administrative activity and since the supervision carried out by the body is needed to safeguard the vital interests of the children, it is reasonable that national law should be applied and observed by the Commission. It follows that the Flemish

decree constitutes the legal basis for the occasional transfer of certain data (see the analysis of the transfer under section 3.7).

The legal basis is therefore valid and supports the lawfulness of the processing operation.

3.3. Processing of special categories of data

Under Article 10(1) of Regulation No 45/2001, the processing of personal data concerning health is prohibited unless grounds can be found in Article 10(2) and (3) of the Regulation. The present case very clearly relates to the processing of personal data on health.

Processing of medical data is justified in this case, because it is needed to ensure that the Commission complies with its specific obligations and rights in the field of employment law as provided for in Article 10(2)(b).

Since some of the data subjects – the children – are minors, Article 10(2)(c) applies in this case. That point covers cases where "*processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his or her consent*". In this case, the children are legally incapable of consenting to processing of their data. Accordingly, the parents' consent must be taken into consideration for processing which is necessary to protect the vital interests of the children.

While no medical data are collected for the crèches, they are collected by OIB.6 staff for the childcare facilities, mentioning, inter alia, vaccinations already administered, previous and current illnesses; certain data relating to allergies and special diets are fed into Loustic. That is why 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 secrecy or by another person also subject to an equivalent obligation of secrecy*". The EDPS therefore recommends, for the childcare facilities, that the OIB.6 staff responsible for the medical form and feeding certain data into Loustic as well as the staff responsible for feeding health-related data into Kiddyweb in cases where parents do not have access be reminded that they are subject to the equivalent obligation of secrecy in order to ensure that Article 10(3) of the Regulation is duly complied with.

3.4. The controller and the processor

Pursuant to Article 2(d) of the Regulation, the controller is "*the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data*". The controller is responsible for ensuring that the obligations laid down in the Regulation are met (information to be given to the data subject, ensuring the rights of the data subject, choice of processor, notification of the data protection officer, etc.). The processor is the "*natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller*" (Article 2(e)).

In this case, the Commission has a contract with a company running two private crèches. The security guards are managed by a security firm with which the Commission has concluded a contract.

In the case of the company running the two private crèches, the Commission is regarded as the controller as it is the one which determines the purpose and means of collecting the data of the data subjects, i.e. it is the Commission which assesses and selects the children for admission based on the criteria set out in the crèche rules. Four items of administrative data concerning the admitted child (the child's surname, forename, date of birth and starting date) are then forwarded by the Commission's OIB.6 to the contracted company and OIB.6 administers the payment via the parental deduction once the company sends an invoice for its services under the contract⁶. The company is a processor as, based on the service contract concluded⁷, it processes administrative and medical data in order to perform its tasks on behalf of the Commission, i.e. it supplies the entire infrastructure of the private crèches (supervisory staff, nursery nurses, medical supplies, premises, cleaning services, electricity, etc.), insofar as the data collection and subsequent processing are necessary in order to comply with the Commission's specific obligations and rights in the field of employment law as set out in Article 10(2)(b). The roles of the Commission and the contracted company therefore comply with the provisions of Article 2(d) and (e) of the Regulation respectively.

The security firm is regarded as a processor as it processes administrative data on behalf of the Commission. In compliance with the purpose of the processing operation, security guards, who are recruited by the security firm, have access to the parents' details and to a list of the reliable persons in order to ensure monitoring of the child's presence in the childcare facility and control of access by persons authorised to drop off and collect the children. The roles of the controller and the processor therefore comply with Articles 2(d) and 2(e) of the Regulation respectively.

3.5 Data quality

Article 4(1)(c) of the Regulation provides that personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and further processed.

Even though children's files will always contain certain standard data, such as name and date of birth, the precise content of a file relating to health will quite obviously vary according to the case. However, there must be some guarantee that the principle of data quality is complied with.

The data described in section 2 appear to be relevant and not excessive in relation to the purposes for which they are collected, including those relating to the priorities set out in the respective rules. The collection of data concerning the child's health is clearly important for the childcare facilities so that the child can be properly monitored by the nurses and paediatricians in compliance with the purpose of the processing operation. In practice, there is no waiting list for the childcare facilities and all enrolments are accepted automatically. Accordingly, the EDPS does not regard collection of the medical form at the same time as the enrolment form to be excessive. However, if there is a waiting list in future, as provided for in the respective rules, it would be excessive to collect the medical form at the same time as the enrolment form as there would be no guarantee that all enrolments would be accepted and medical information would not be part of the admission criteria, as is the case for the crèches. It is therefore recommended that if there is a waiting list in the future, the medical form should only be collected once the child is admitted to the outdoor or after-school childcare facility.

⁶ Article I.3.1 of the contract stipulates that the Commission undertakes to pay the contractor for the services supplied under this contract.

⁷ Article II.2.4 of the contract stipulates that the contractor assists the Commission in performance of the contract.

The EDPS also wishes to emphasise the fact that data concerning the parent's marital status, without qualifications, required in the enrolment form does not seem relevant to the purpose of the processing operation. It is important to note that family situation/marital status is part of a broader concept. The parents' marital status indicates whether they are married, divorced, separated, widowed or single. As mentioned earlier, according to the priority criteria, the important elements to be considered for the admission of children to the crèches and childcare facilities are first of all the single-parent/two-parent situation, followed by the employment situation of the parent(s). It follows that whether two officials are married or not, they will have the same priority as their marital status is not relevant to the list of criteria. That is why the EDPS does not consider collection of data relating to marital status to be relevant to the priorities which determine the purpose of the processing operation. Admittedly, in certain cases, for example when the parent is divorced, documents concerning marital status inevitably need to be collected in order to determine the parental contribution. In most cases, however, there is no need to supply this type of document. The EDPS therefore recommends that instead of data concerning marital status, parents should be asked if the situation is a single-parent/two-parent situation (a single parent/both parents with responsibility for the child) or, at least, that parents be informed that the collection of data concerning their marital status is not relevant/necessary to the purpose of the processing operation.

Moreover, the data must be "*processed fairly and lawfully*" (Article 4(1)(a)). The lawfulness of the processing operation has already been discussed in section 3.2 of this opinion. As for fairness, this relates to the information which must be transmitted to the data subject (see section 3.11 below).

Article 4(1)(d) of the Regulation stipulates that "*data must be (...) accurate and, where necessary, kept up to date*". Furthermore, under that Article, "*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*". It is not easy to guarantee or assess the accuracy of the health-related data, i.e. data concerning allergies and special diets, fed into Loustic and which will be fed into Kiddyweb for the childcare facilities. Nonetheless, the EDPS would emphasise that every reasonable step must be taken to ensure that data are up-to-date and relevant. The EDPS welcomes the fact that both for the crèches and the childcare facilities all data on a child's enrolment form, as well as the health-related data in the case of the childcare facilities, are contained in Loustic and updated daily by the OIB.6. The EDPS recommends both for the crèches and for the childcare facilities that the OIB.6 staff should update the data in Kiddyweb for those parents who do not have access.

In the case of the childcare facilities, the medical form is kept in the paper enrolment file. It is very important to ensure that a child's medical data are filed separately from administrative data. The EDPS therefore recommends that the medical form and all other medical data collected be filed separately from forms containing administrative data, and that all health-related data be updated by the OIB.6 staff, who must be bound by an obligation of professional secrecy equivalent to that of a health professional.

Data subjects' right to access and rectify their data is a second means of ensuring that their data are accurate and up-to-date (see section 3.10 on the right of access).

3.6 Data storage

The general principle set out in Regulation No 45/2001 is 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*" (Article 4(1)(e) of the Regulation).

As mentioned earlier, data concerning the enrolment file are kept for five years after the child has left. The reasons given relate to information on accidents, disputes regarding the parental contribution, legal proceedings and disputes regarding invoices for services provided.

Data concerning the financial file are kept for ten years after the child has left. The reasons given relate to rules and procedures, accreditation bodies and parental salary deductions.

The EDPS welcomes the decision by the OIB.6 to destroy all financial files dating back ten years since the departure of the child by the end of 2007.

The need to use data from a child's file cannot of course be predicted, given that recourse to legal proceedings and accreditation procedures may be lengthy. However, the EDPS regards the two time-limits as excessive in view of the purpose of the operation and recommends that a shorter time-limit be adopted depending on the need for the data and files⁸. A new time-limit that is proportionate to fulfilling the purpose of the processing operation must be adopted, and administrative and medical data must be destroyed once a file has been closed and is no longer needed for the intended purpose.

It is also important to note that long-term storage of such data must be accompanied by adequate safeguards. As for all sensitive data, appropriate arrangements need to be made for their transmission and storage.

3.7 Change of purpose/Compatible use

Certain data are automatically drawn from the COMREF database and consulted in the PAIE database. The processing operation being reviewed involves no general change of the specified purpose, nor is it incompatible with that purpose. The two databases are in fact available in the Commission's human resources management programmes. They serve as tools for checking parents' personal and salary data. Accordingly, Article 6(1) of the Regulation does not apply in this instance and the conditions of Article 4(1)(b) of the Regulation are fulfilled.

3.8 Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation No 45/2001. The processing covered by Article 7(1) concerns the transfer of personal data between or within Community institutions or bodies.

In the case in point, the data is transferred within the same institution, as the administering department of the childcare infrastructures, i.e. the secretariat of the crèches and the secretariat of the childcare facilities, the OIB.6 finance department and the Commission medical service, are all Commission departments.

⁸ It should be noted that the EDPS opinion of 8 December 2006 on "*Medical files – Parliament crèche and private crèches*", case 2006-0267/2006-0268, considered a one-year data-storage period to be justified for both administrative and medical data, see page 9 of the opinion.

Data may also be transferred to other institutions, i.e. to the welfare departments of the other institutions for the allocation of annual enrolments, and to the Court of Auditors and OLAF for the purpose of fulfilling the contract, i.e. verification and checking of payments between the Commission and the company running the two private crèches and the security firm. The transfer therefore complies with Article 7(1) 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*".

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*". The EDPS recommends that recipients within the Commission and in other institutions be reminded to process the data exclusively for the purposes for which they were transmitted.

Since the Flemish Community accreditation body Kind & Gezin, the company running the two private crèches for the Commission and the security firm are external entities governed by Belgian law, they constitute recipients under national law, i.e. Belgian law adopted pursuant to Directive 95/46/EC. The data transfers in the processing operation will therefore be scrutinised under Article 8 of Regulation No 45/2001. This particular transfer is covered by Article 8(a) which states that transfer is possible "*if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority*". If data is transferred in the course of an inspection by an official of the Flemish Ministry, the transfer is justified insofar as it is necessary to enable the Flemish body to perform its task as a public authority. The need to transfer certain administrative data to the company running the two private crèches as well as the security firm is also justified, as these transfers are necessary to enable the two companies to perform their task in the public interest. It is recommended, however, that the two external recipients be reminded that they may only use the data in the strict and limited context of implementing the provisions of the Flemish decree and the contract respectively.

Where certain medical data are transferred to a temporary nurse responsible for children in the outdoor childcare centre who is employed under a Belgian contract or to staff of the Commission's medical service, whose status is partially under Belgian private law, Article 8(b) of Regulation No 45/2001 applies, as these individuals are recipients covered by national law adopted pursuant to Directive 95/46/EC. Since temporary nurses and staff of the Commission's medical service are bound by professional secrecy on the grounds of their duties, the transfer of certain medical data will not jeopardise the data subjects' legitimate interests.

3.9. Processing including the staff or identifying number

Article 10(6) of the Regulation provides that "*the European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body*".

The staff number is collected and processed when the child's file is established and it is therefore necessary to apply Article 10(6). 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. Such use may, however, have significant consequences. This was 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 EDPS. Here, it is not a case of establishing the conditions under which the Commission may process an identifying number, but rather of drawing attention to this point in the Regulation. In this instance, the

Commission's use of the staff number is reasonable because it is a means of facilitating the processing task.

3.10 Right of access and rectification

Article 13 of Regulation No 45/2001 establishes a right of access – and the arrangements for exercising it – upon request by 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 its source.

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.

As mentioned earlier, parents may, on their own or their children's behalf, ask to consult their Loustic file at the secretariat of the crèches and childcare facilities, and ask for the data to be rectified if necessary. In the case of Kiddyweb, parents may have direct access for feeding data into the application. Third persons, i.e. reliable persons authorised to collect or drop off children, have similar rights. It is for the nominating parents to inform them of those rights.

The EDPS therefore welcomes the fact that the obligations in Articles 13 and 14 of the Regulation No 45/2001 are duly complied with.

3.11 Information to be given to the data subject

Articles 11 and 12 of Regulation No 45/2001 relate to the information to be given to data subjects in order to ensure transparency in the processing of personal data. These articles list a series of mandatory and optional items. The optional items are applicable insofar as, having regard to the specific circumstances of the processing operation, they are required to guarantee fair processing in respect of the data subject. 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 supplied to the data subject apply here insofar as parents have direct access to the Kiddyweb application and supply the requisite information themselves either by computer or on paper as part of the procedure for having their children admitted to the crèches and childcare facilities.

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 applies in this case because the data relating to the reliable persons who may be contacted in the event of an emergency are supplied to the crèches and childcare facilities by the children's parents. The provision also applies to the Loustic application, as data concerning parents are extracted by COMREF and PAIE and fed in by the secretariats, the finance managers and security guards of the crèches and childcare facilities.

As mentioned earlier, for Loustic a note addressed to all parents is attached to the enrolment form and published on IntraComm. For Kiddyweb, a message appears on first log-in to the application, attached to the enrolment form, and is published on IntraComm. Individuals who do not have access to the application are sent a note by post, together with the enrolment form.

The two notes indicate the identity of the controller, the origin of the data, the purpose of the processing, the data recipients, the mandatory nature of the data, the existence of a right of access and rectification, the legal basis for the processing, the time-limit for storing the data and the right to have recourse to the EDPS at any time.

The EDPS therefore welcomes the fact that the content of the two notes sent to parents corresponds to both the mandatory and optional information referred to in Articles 11 and 12 of Regulation No 45/2001.

3.12 Processing by a processor

Where a processing operation is carried out on its behalf, Article 23 of Regulation No 45/2001 stipulates that the controller must choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by the Regulation. Performance of a processing operation by a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that the processor must act only on instructions from the controller and that the obligations with regard to confidentiality and security of personal data processing are also incumbent on the processor.

As mentioned earlier, the service contract concluded between the Commission and the contracted company which runs the two private crèches on the Commission's behalf contains a provision on data protection (Article I.10) and one on confidentiality (Article II.8). In the case of the security guards, a contract has been concluded between the Commission and the security firm.

The EDPS would welcome extension of Article I.10 of the contract to refer to data transferred and processed as a consequence of performance of the contract in the context of the processing operation under examination. The EDPS emphasises, however, that the sentences of Article I.10 of the contract stating that the contractor (the company) has a right of access to and right to rectification in respect of personal data relating to him/her and that the contractor has the right to have recourse at any time to the European Data Protection Supervisor, are incorrect in terms of the processing operation in question, as Regulation No 45/2001 does not apply to legal entities. It is therefore recommended that these two sentences be removed and that the rights of data subjects in this processing operation be protected by means of a clause inserted into the contract.

Article II.8.1 is also inadequate, as no security measure is mentioned. The EDPS therefore considers that the provision on data protection (Article I.10 of the contract) needs to be reworded by including a reference to the data transferred and processed as part of the processing operation in question. Article II.8 of the contract also needs to be supplemented by a reference to the level of security adopted within the meaning of Article 23(2)(b) of the Regulation. Given that the processor is governed by Belgian law, it needs to be subject to the security obligations set out in national law, pursuant to the second indent of Article 17(3) of Directive 95/46/EC.

With regard to the security firm, the EDPS recommends that the provisions relating to the respective roles of the data controller and processor are explicit and that those relating to the confidentiality and security obligations of the processing operation under examination be inserted into the contract between the Commission and the security firm in order to ensure compliance with Article 23 of the Regulation.

3.13 Security measures

In accordance with Article 22 of Regulation 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*".

The EDPS considers that the full set of security measures taken to ensure maximum processing security are such that they can be regarded as adequate within the meaning of Article 22 of the Regulation.

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 Commission:

- in the case of the childcare facilities, should remind OIB.6 staff responsible for the medical form and feeding certain data into Loustic that they are subject to an obligation equivalent to the obligation of professional secrecy, in order to ensure that Article 10(3) of the Regulation is duly complied with. The staff responsible for feeding health-related data into Kiddyweb on behalf of parents who do not have access should also be reminded that they have an obligation of professional secrecy equivalent to that of a health professional;
- should ensure that if in the future there is a waiting list for the childcare facilities, the medical form should only be collected once the child is admitted to the outdoor or after-school childcare facility;
- instead of requesting data concerning marital status, ask if the situation is a single-parent/two-parent situation (a single parent/both parents with responsibility for the child) or, at least, inform parents that the collection of data concerning their marital status is not relevant/necessary to the purpose of the processing operation;
- should, both for the crèches and the childcare facilities, ensure that the data in Kiddyweb is updated on behalf of parents who do not have access to the application;
- should ensure that the medical form and all other medical data collected be filed separately from administrative data, and that all health-related data be updated by the OIB.6 staff, who must be bound by an obligation of professional secrecy equivalent to that of a health professional;
- should adopt a new data-storage time-limit which is proportionate to fulfilling the purpose of the processing operation and should ensure that administrative and medical data are destroyed once a file is no longer needed for the intended purpose;
- should, as for any sensitive data, ensure that long-term storage of data is accompanied by adequate safeguards;
- should remind recipients within the Commission and in other institutions to process the data exclusively for the purposes for which they were transmitted. It is also important

that external recipients be reminded to use the data in the strict and limited context of implementing the provisions of the Flemish decree and the contract;

- should ensure that the two sentences on the contractor's rights are removed from Article I.8 of the contract and that the Commission guarantees that the data subjects' rights are protected in this processing operation via a clause to be inserted into the contract. Article II.9 of the contract also needs to be supplemented by a reference to the level of security set out in national law;
- should ensure that provisions relating to the respective roles of the data controller and processor are explicit in the contract concluded with the security firm and that those relating to the confidentiality and security obligations of the processing operation under examination are inserted into the contract.

Done at Brussels, 27 July 2007

(Signed)

Joaquín BAYO DELGADO
Assistant European Data Protection Supervisor