



Opinion on the notification for prior checking received from the Data Protection Officer of the European Parliament on the ‘*Management of the European Parliament’s Crèches in Brussels*’.

Brussels, 25 July 2011 (Case 2010-0385)

1. Procedure

By letter received on 22 November 2010, notification within the meaning of Article 27(3) of Regulation No 45/2001 (‘the Regulation’) was given by the Data Protection Officer (‘DPO’) of the European Parliament (‘the Parliament’), concerning the ‘*Management of the European Parliament’s Crèches in Brussels*’.

In connection with that notification, questions were put to the Parliament’s DPO by e-mail on 14 January 2011 and replies were received on 17 and 22 February 2011. On 22 February 2011, a summary of the facts together with additional questions and requests for documents were sent to the DPO. The DPO provided further clarification on 4 April 2011. Additional questions were put to the controller on 7 April 2011 and replies were provided on 27 May 2011 and 12 July 2011.

The draft opinion was sent to the Parliament’s DPO on 14 July 2011 for comments. Comments were supplied on 20 July 2011.

2. Facts

The Parliament’s Social Action Unit currently manages three crèches in Brussels:¹ its own crèche and two private crèches. In that connection, the Unit’s role and that of its Crèche Service in Brussels involve the verification of priorities for admission, the enrolment of children, contact with parents and calculation of the contributions to be paid by parents.

Purpose

The purpose of the processing operation is the procedure for the enrolment and admission of children to the Parliament’s crèches based on the administrative and financial data provided by the people with legal responsibility for the children. The other purpose of the processing operation is the management of data relating to the health of the children cared for.

Legal basis

The following provisions constitute the legal basis for the processing operation:

- Article 1e of the Staff Regulations,
- the Office’s decisions of 26 May 1992 and 9 July 1992 on the setting up of crèches,

¹ The management of the Parliament’s crèches in Luxembourg has already undergone prior checking and the EDPS issued his opinion on 8 December 2006 (Cases 2006-267 and 2006-268).

- the Rules governing the Parliament’s crèche in Brussels dated 1 March 2010 (‘the crèche rules’),
- the Medical Rules with effect from 1 February 2009 (‘the medical rules’),
- the Rules on private crèches of 28 January 2009.

In addition, the Parliament has concluded contracts with two external private companies: a company to which the Parliament has delegated the day-to-day running of its own crèche (‘contract A’) and another company which provides places in the two private crèches (‘framework contract B’).

Contract A is governed by European Union law, supplemented² by Belgian law. The company which runs the Parliament’s crèche has the task of making available to the institution the staff and all the resources required for the smooth operation of the crèche. Article II.10 of the contract refers to the confidential nature of the information which the company undertakes to keep. Article II.14 concerns data protection and provides that ‘... *the contractor has a right of access ... relating to it ... the contractor has the right to have recourse at any time to the EDPS*’.

Framework contract B is governed by Belgian law. The external company undertakes to make available to the Parliament a certain number of places in the two private crèches which it owns and to deal with the day-to-day running using its own staff and all the resources required for the smooth operation of the two crèches.

The controller has provided to the EDPS an Annex 4 which refers to two provisions concerning data protection and confidentiality. The controller has stated that these provisions will be inserted into contract B. The provision relating to data protection states that ‘... *the contractor has a right of access ... as do the parents ... the contractor and the parents have the right to have recourse to the EDPS*’.

Following an invitation to tender, the Parliament concluded a contract with a paediatrician who is responsible for collecting directly data relating to the health of the children in the three crèches concerned. A copy of the contract between the Parliament and the paediatrician was provided to the EDPS. The contract is governed by European Union and Belgian law and contains two provisions of interest: Article II.10 on confidentiality and Article II.14 on data protection. The provision on data protection states that ‘... *the contractor has a right of access ... as do the parents ... the contractor and the parents have the right to have recourse to the EDPS*’. Data relating to health are kept by the paediatrician in the crèche attended by the child concerned.

The external companies recruit and provide nurses for each crèche.

Data subjects

The data subjects of the processing operation are:

- children attending the crèches,
- parents who use the crèches (members of the Parliament, officials, temporary staff, contract staff, parliamentary assistants and freelance staff),
- nannies and other people authorised to collect children. The controller has stated that, currently, the list of these data subjects is processed not by the Crèche Service in

² The activities of the EU are primarily subject to EU law. However, EU law is not a complete legal system. Where a legal vacuum exists in European law, national law applies.

Brussels but by each crèche concerned. In the coming months, these data will be included in the file managed by the Service.

Data collected in the processing operation

The Parliament's Social Action Unit collects the following personal data when an application is made for a place at a crèche:

- application for admission (name of father, mother or person with legal custody of the child; child's surname and first name; child's date of birth; date and duration of admission to the crèche; date and signature),
- the child's birth certificate,
- certificate of net monthly family income,
- certificate proving marital status,
- authorisation signed by the parent enabling the medical service and the director of the crèche to take action in the case of an emergency or accident involving the child,
- data sheet for the mother and father (surname, first name, home and office address, telephone number, e-mail address, occupation, grade, staff number, employer's name, address and telephone number, whether employed on a full-time, three-quarter time, half-time or other basis, reason for any part-time work, net monthly income, details of any maintenance allowance, marital status, number of children in their care, child's surname and first name, child's date of birth and pre-school establishment). These data are considered to be essential for determining the priority of a parent for the allocation of a crèche place in the light of Article 2 of the crèche rules.

The rules also refer to the existence of waiting lists drawn up by the crèche management service of the Parliament's Social Action Unit.

According to the medical rules, children are admitted only after a medical examination has been carried out by the crèche paediatrician. At the medical examination, the parents are required to submit a medical certificate listing the vaccinations already given and an outline of the child's diet.

In addition, the paediatrician fills in a medical form after she has had a discussion with the parents. According to the information received, the interview with the parents is carried out in the strictest privacy. The confidential medical file is a reference document which is used in checking the information supplied by parents about their child. It is for the doctor alone to decide on the questions and the direction of the interview with the parents. All of the data remain strictly confidential.

The medical file is divided into different sections and contains the following personal data:

- father's and mother's surnames, first names, place and date of birth, home telephone number, office telephone number, mobile telephone number and e-mail address,
- recommended vaccinations at the ages of 2, 3, 4, 12 and 13 to 14 months,
- childhood illnesses (measles, chickenpox, rubella, mumps, etc),
- family doctor's name, telephone number, fax number and e-mail address,
- mother's and father's ages, nationalities, mother tongue, state of health, whether smoker or non-smoker,
- brothers' and sisters' names, ages, gender, state of health, whether full or half siblings,
- details of examinations of the systems and organs of family members (parents, uncles, aunts etc),
- social history (parents' employment, civil status, health insurance),

- method of pregnancy, whether the child is adopted, complications and infections during pregnancy,
- Method of childbirth, whether father present, complications, birth weight, size, size of head, birth conditions, hospital treatment,
- feeding (breast or other methods and duration), problems, introduction of the child to solid food, any intolerance or refusal,
- the child's habits in the morning, at midday, in the afternoon, in the evening and at night,
- any allergies to certain products,
- the child's growth and development (birth weight and size),
- the languages which the child has heard spoken,
- toilet training,
- sleeping habits,
- dates of last tuberculosis, hearing, sight, urine and other medical tests,
- illnesses, infections and medicines,
- clinical and psychomotor examinations for children of 3, 4, 5, 6, 9, 13, 15 and 18 months and from 2 to 4 years.

All those health data are processed only by the crèche nurses and paediatrician. They monitor the children's health and warn parents about any illnesses which they have noticed. No medical data are collected **before** a child has obtained a crèche place. The medical examination is carried out only after a place has been allocated to a child.

Handling of the processing operation

Processing is manual. In particular, applications for admission together with supporting documents and data sheets are filed in a cupboard in chronological order of arrival.

Recipients

-Internal

- the crèche management service, which is responsible for the allocation of places and the administrative file concerning the admission of a child,
- the services of the Accounting Officer and the Payroll Unit, which receive every month the contributions due for each parent.

The controller has provided the EDPS with two notes, one of which is addressed to the people responsible for managing children's medical data while the other is addressed to the officials/other staff who process the administrative files concerning the admission of children.

The first note refers to Article 10(3) of the Regulation and states that *'the service reminds people who are responsible for managing children's medical data that it is imperative that they comply with the obligation of professional secrecy and that they undertake to treat in the strictest confidence all information and documents concerning medical data and not to use or divulge those data to third parties ... even after children have left the crèche'*.

The second note refers to Article 4(1)(d) of the Regulation and reminds officials and other staff processing the administrative files concerning the admission of children that personal data must be kept reasonably up to date (at least once a year; for example, when there is a request to update salary records).

-External

Where places are allocated, the Social Action Unit transfers to the two external companies the names of the parents or spouses, the names of the children and the names of contact people so that they are able to get in touch with parents in the event of a problem with their children.

Rights of access, rectification, blocking and erasure

Parents are informed by means of a written note that they have a right to access and rectify data relating to them directly or relating to their child(ren).

That note also states that the right of access may be restricted under Article 20(1)(c) of the Regulation, namely in the case of divorced spouses and in the specific cases of the rights of a nanny or other trusted person chosen by the parents.

Right to information

In addition to the rights of access and rectification, the written note also includes the following particulars:

- the identity of the data controller,
- the purposes of the processing operation,
- the recipients of the data,
- the time-limits for storing administrative data in the case of children admitted and
- the right to have recourse at any time to the EDPS.

It also states that it is for parents to inform trusted persons about their rights under the Regulation.

Data retention

Data are erased one year after a child has left the crèche.

Payment demand notes and bills only are kept for five years after the end of the financial year concerned.

Waiting lists and data collected at the admission stage of the procedure are kept while parents' applications for a crèche place are ongoing.

The controller has indicated that the paediatrician keeps medical data for 30 years following the last contact with a patient, in accordance with Article 46 of the national code of medical professional ethics of 20 April 2002. The Parliament does not impose any time-limit on the retention of medical files.

Storage and security measures

The data collected (all administrative and financial data, with the exception of medical data) are stored in a locked cupboard in the office of the administrative manager who is responsible for the allocation of places.

Medical data are kept in each child's medical file at the crèche and only the paediatrician and nurses have access to it.

3. Legal aspects

3.1 Prior checking

Applicability of the Regulation: The data processing operation under examination is the processing of personal data (*‘any information relating to an identified or identifiable natural person’*, according to Article 2(a) of the Regulation). The data processing operation is carried out by a European Union (‘EU’) institution – the Parliament – in the exercise of activities which fall within the scope of EU law.³ Processing is manual and forms part of a filing system (applications for admission, supporting documents and medical certificates are processed in paper form and filed in chronological order). Accordingly, the Regulation is applicable.

Reasons for prior checking: Article 27(1) of the Regulation makes subject to prior checking by the EDPS all *‘[p]rocessing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes’*. Article 27(2) includes a list of processing operations likely to present such risks, such as *‘processing of data relating to health ...’* (Article 27(2)(a)) and *‘processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct’* (Article 27(2)(b)).

As mentioned earlier, the purpose of the processing operation is to select for admission a certain number of children who satisfy the criteria laid down in the crèche rules, and, according to the medical rules, children are admitted only after the crèche paediatrician has carried out a medical examination. It follows that the processing operation concerns data relating to health, since the paediatrician – as the Parliament’s processor – collects medical certificates and information about vaccinations, allergies, medical examinations, etc. Therefore, the processing operation falls within the scope of the prior checking procedure, in accordance with Article 27(2)(a) of the Regulation.

In principle, checks by the EDPS should be performed before the processing operation is implemented. In this case, as the EDPS was appointed after the system was set up, the check necessarily has to be performed *ex post*. This does not alter the fact that the recommendations issued by the EDPS should be implemented.

The official notification was received on 22 November 2010. In accordance with Article 27(4) of the Regulation, the two-month time-limit for delivery of the opinion by the EDPS was suspended. As a result of the 175-day suspension, the EDPS had to deliver his opinion by 25 July 2011 at the latest (175 days of suspension plus 6 days for comments).

3.2 Lawfulness of the processing operation

According to Article 5 of the Regulation, data may be processed only if one of the five conditions laid down in that provision is satisfied.

Of those five conditions set out in Article 5, the processing operation in question satisfies the condition laid down in Article 5(a) of the Regulation, according to which data may be processed if *‘processing is necessary for the performance of a task carried out in the public*

³ The concepts *‘Community institutions and bodies’* and *‘Community law’* may no longer be used following the entry into force of the Lisbon Treaty on 1 December 2009. Article 3 of the Regulation must therefore be read in the light of the Lisbon Treaty.

interest on the basis of the Treaties establishing the European Communities ... or in the legitimate exercise of official authority vested in the Community institution’.

In the case in point, **the legal basis** for the processing operation is Article 1e of the Staff Regulations, which provides that *‘[o]fficials in active employment shall have access to measures of a social nature adopted by the institutions ...’* and the Office’s decisions of 26 May 1992 and 9 July 1992 on the setting-up of crèches. The provisions of the crèche rules, the medical rules and the private crèche rules are also the legal basis for the processing operation in question.

The need for the processing operation is also referred to in Recital 27 in the preamble to the Regulation, which states: *‘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.’* In the present case, the processing of personal data is necessary for the purposes of admitting children to the Parliament crèche and the two private crèches and managing data relating to the health of the children cared for.

In addition, the processing of some of the data relating to health also satisfies the conditions laid down in Article 5(d) of the Regulation. The application for admission, accompanied by supporting documents and signed by parents, and the medical certificates are collected with parents’ consent (see also point 3.3).

Therefore the requirement that the proposed processing operation must be lawful is satisfied.

3.3 Processing of special categories of data

Article 10(1) of the Regulation provides that the processing of personal data concerning health is prohibited unless it is justified on one of the grounds laid down in Articles 10(2) and 10(3) of the Regulation. In the case in point, the processing operation specifically relates to personal data concerning, first and foremost, the health of the children admitted to the Parliament’s crèches and also data concerning the health of their parents and members of their family.

According to the notification, the paediatrician collects data concerning the health of children, of their parents acting as legal representatives, and of family members at an interview which forms part of a child’s medical file. The EDPS recommends that the express consent of the data subjects is obtained, in accordance with Article 10(2) of the Regulation. The Parliament might, in particular, draw up a note which parents must sign before the interview with the paediatrician, to ensure that the data subjects are free to reply to the paediatrician’s questions only where they have given their express consent pursuant to Article 10(2)(a) of the Regulation.

Moreover, the processing operation falls within the scope of Article 10(3) of the Regulation since it 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 draws attention to the note addressed to the persons responsible for managing the children’s medical data, which refers explicitly to the application of Article 10(3) in their case. In addition, the EDPS notes that children’s medical data are processed only by the paediatrician and the nurses, who are health professionals and who are therefore subject to the obligation to respect medical

secrecy. Accordingly, the Parliament has satisfied the conditions laid down in Article 10(3) of the Regulation.

3.4 Data quality

In accordance with Article 4(1)(c) of the Regulation, personal data must be *'adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed'*.

The practice of collecting medical certificates and other data concerning health only after a child is admitted to a crèche is a good practice which respects the principle of data quality.

The collection of data concerning the health of a child (such as allergies, illnesses and vaccinations) and the health of members of the child's family (family history for parents and family members) at the time of enrolment at a crèche once a place becomes available is necessary in order to establish whether the situation of the child concerned is such that he or she requires specific care and/or the provision of treatment while in the crèche. The collection of those data also enables the crèche paediatrician and nurses to take the steps needed to protect a child's health in the event of an emergency. However, the EDPS reminds the Parliament that only data which are strictly necessary for the purposes of the processing operation must be collected and therefore invites the Parliament to re-assess the proportionality of the data collected.

As regards the subsequent collection of medical data and other information which form part of the medical file, as described in the summary of the facts, the EDPS considers that these data are excessive in the light of the purpose for which they are collected. The purpose of collecting data relating to health is to monitor a child's health while he or she attends the crèche and not the creation of a medical file on the child and the child's parents. The EDPS finds, in particular, that the data collected by the paediatrician concerning the examination of the systems and organs of family members (parents, uncles, aunts, etc.) seems excessive. It is recommended that only data relating to examinations which are strictly necessary for monitoring a child's health are collected. Furthermore, data concerning social history, methods of pregnancy, whether or not a child is adopted and methods of childbirth do not appear to be necessary for the purposes of the processing operation in question.

Accordingly, the EDPS reminds the Parliament that, in accordance with Article 4(1)(c) of the Regulation, there must be compliance with the principle of proportionality of data collected. That means that only data which are strictly necessary for the established purpose are collected. Therefore the Parliament should make the paediatrician aware, by means of the contract between the two parties, that her specific task is limited to monitoring children while they are in the crèche and that her role does not replace the wider role of a child's family doctor. The EDPS also invites the Parliament to re-assess, in collaboration with the paediatrician, the questions put to parents and the data collected in the light of the principle of proportionality, within the meaning of Article 4(1)(c) of the Regulation.

Furthermore, Article 4(1)(d) of the Regulation provides that data must be *'accurate and, where necessary, kept up to date'*. According to 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'*. In the present case, it is the data subject who supplies the data required (application for admission, data sheets, supporting documents, medical certificates). The EDPS also draws attention to the note addressed to the managers of the administrative files concerning the admission of children, which refers to the principle laid down and to the good practice of keeping the data

collected up to date. Accordingly, the procedure is such that it is reasonable to assume that the data are accurate and kept up to date. In addition, the rights of access and rectification are the second method of ensuring that the data relating to the data subjects are accurate and kept up to date (see point 3.7 on the right of access).

Data must also be '*processed fairly and lawfully*' (Article 4(1)(a)). The lawfulness of the processing was analysed in point 3.2 of this opinion. The reference to fairness is linked to the information which must be transmitted to data subjects (see point 3.8 on the right to information).

3.5 Data retention

The general principle set out in the Regulation provides 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).

The EDPS considers that, in the case of children admitted to a crèche, the periods of retention adopted in respect of administrative and financial data are reasonable in the light of the purpose of the processing operation.

The period of retention of waiting lists and administrative and financial data while parents' applications for a crèche place are ongoing also appears to be reasonable within the meaning of Article 4(1)(e) of the Regulation. However, parents must be informed of that period of retention as concerns waiting lists (see point 3.8 on the right to information).

The EDPS notes that the Parliament does not retain any medical data relating to children who attend the crèches, such data being collected and processed only by the paediatrician in the crèches concerned, who keeps it for 30 years. The EDPS considers that that period of retention is excessive and that there is no reason to believe that the retention of data after children have stopped attending the crèches is necessary having regard to the purpose for which data are collected and processed. As a result, the EDPS recommends that a much shorter period of data retention is adopted, by reference to the need for the data. Moreover, as the data controller, it is for the Parliament to establish a time-limit for data retention and to ensure that the processor/paediatrician does not keep data for an excessive period which exceeds the period of retention set. Article 46 of the national law, which refers to a period of 30 years, is not applicable to the case in point.

Accordingly, the EDPS recommends that the Parliament ensures that an appropriate time-limit for the retention of medical data is set, that this time-limit, which is proportional to the purpose of collecting the data, is indicated in the contract with the paediatrician, and that parents are informed in the information note. In addition, as the EDPS recommended in the case of the Commission's crèches,⁴ there might, for example, be provision for the secure transfer, in accordance with Article 22 of the Regulation, of a child's medical file, which has been held temporarily at the crèche, to the child's family doctor when that child stops attending the crèche.

⁴ Opinion published on 27 April 2009 (Case 2009-088). The Commission has implemented all the recommendations of the EDPS in the follow-up to that opinion, including the recommendation concerning the retention of children's medical data.

The EDPS also notes that no period of retention is given in the notification in respect of children who are not admitted to a crèche. It is therefore recommended that the Parliament sets a period of retention which is proportional to the purposes of the processing.

3.6 Transfer of data

Articles 7, 8 and 9 of the Regulation lay down a number of obligations which apply when personal data are transferred to third parties. The rules vary depending on whether the transfer is effected (i) between or within EU institutions or bodies (Article 7), (ii) to recipients subject to Directive 95/46 (Article 8), or (iii) to other types of recipient (Article 9).

Internal transfers

To ensure compliance with Article 7(1), the Parliament must ensure that all recipients have the appropriate competence and that the transfer is necessary. In the present case, data are transferred within the Parliament, in particular the crèche management service and the services of the Accounting Officer and the Payroll Unit. Each recipient has a specific sphere of competence and the data which are transferred to each of them appear to be necessary for the legitimate performance of tasks covered by the competence of each service responsible. However, the EDPS stresses that only data which are necessary for the performance of their tasks are to be transferred. Accordingly, in the opinion of the EDPS, the transfers in question appear to satisfy the requirements of Article 7(1) of the Regulation. The lawfulness of the transfers must be verified on a case-by-case basis.

External transfers

Where places are allocated, the Social Action Unit transfers to the two external companies the names of the parents or spouses, the names of the children and the names of the contact people. The two external companies are governed by Belgian law. It is therefore a transfer of data to external recipients subject to Directive 95/46/EC and it must be analysed in the light of Article 8 of the Regulation. The transfer to the two external companies may be justified under Article 8(a) of the Regulation if '*the recipient establishes that the data are necessary for the performance of a task carried out in the public interest...*' However, in the present case, the transfer of certain administrative data is carried out at the request of the Parliament in its capacity as the controller and transferor of the data and therefore the recipients (processors) are not required to prove that the transfer is necessary. Moreover, the transfer is necessary to ensure that the Parliament may accomplish its task carried out in the public interest in the field of employment law; that task also forms part of the processors' tasks.

Once the need for such a transfer has been established by the Parliament, the precise remit of its two processors must be set out in contracts A and B. Their respective obligations must also be fulfilled in the light of the principles of confidentiality and security laid down in Article 23 of the Regulation (see point 3.9 on processing by a processor).

3.7 Rights of access and rectification

Article 13 of the Regulation lays down the principle of the right of access to data – and the arrangements for exercising it – upon request by the data subject. Article 14 of the Regulation 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.

The information note addressed to parents states that parents have a right of access and a right of rectification in relation to their own data and their children's data and that trusted persons

have a right of access and a right of rectification in relation to their data. There is also a reference to restriction of the right of access under Article 20(1)(c).

The EDPS considers that the rights of access and rectification have been provided for and must be observed in practice, subject to any restrictions which must be applied restrictively. As concerns the exercise of the rights vis-à-vis processors, see point 3.9.

3.8 Information to be given to the data subject

Articles 11 and 12 of the Regulation concern the information to be given to data subjects in order to ensure transparency in the processing of their personal data. These articles list a series of compulsory 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 while other data are collected from other persons.

The information note includes most of the items listed in Articles 11 and 12 of the Regulation. Nevertheless, the EDPS recommends that the note should also include the following information:

- all the recipients should be clearly mentioned,
- the legal bases for the processing operation should be indicated and
- the periods of retention of waiting lists, financial data, data concerning children's health and data relating to non-admitted children should also be mentioned.

3.9 Processing by a processor

Where a processing operation is carried out on its behalf, Article 23 of the Regulation stipulates that the controller must choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by the Regulation. The carrying-out of a processing operation by way of 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 are also incumbent on the processor.

As mentioned earlier, the Parliament concluded contracts with two external companies, which, as discussed in point 3.6, are external recipients. The Parliament also concluded a contract with a paediatrician who collects and processes directly medical data relating to the children at the crèches concerned.

The Parliament is considered to be the controller, within the meaning of Article 2(d) of the Regulation, since it is the Parliament which determines the purposes and the methods of collecting the data of the data subjects in the light of the purpose of the processing operation. The two external companies and the paediatrician are considered to be processors, within the meaning of Article 2(e) of the Regulation, because they process administrative and medical data on behalf of the Parliament, in so far as the collection and subsequent processing of the data are necessary to comply with the Parliament's specific obligations and rights in the field of employment law as set out in Article 10(2)(b) of the Regulation.

The two external companies – processors and recipients

The EDPS notes that contract A includes provisions on confidentiality (Article II.10) and data protection (Article II.14). According to the controller, the plan is also to insert these

provisions into contract B. Moreover, the existence of the contracts between the Parliament and the two companies complies with Article 23(2) of the Regulation.

However, in relation to Article II.14 on data protection, it is important to stress that it is not sufficient merely to refer to the contractor's personal data and to its right to access its data and to have recourse to the EDPS. Every data subject must also be included as some of their data will be processed by the processors in performance of the contract. That assertion applies equally to the provision on data protection in contract B. Although 'parents' are mentioned in that provision, the other data subjects of the processing operation (nannies, trusted persons, etc.) are not covered. Therefore the EDPS recommends that, where the two provisions on data protection refer to the '*contractor*', the phrase '*and all data subjects whose data are processed by the contractor*' is added.

Moreover, the EDPS notes that the two contracts are governed by Belgian law. It follows that there is compliance with the security obligation laid down in Article 23(2)(b) because, in accordance with Article 16 and the second indent of Article 17(3) of Directive 95/46/EC, the two processors are already subject to the security obligations laid down in the national law of a Member State, in this case Belgian law⁵.

In the light of the foregoing, it is recommended that the Parliament send an updated version of the two contracts with the two provisions on confidentiality and data protection inserted in them, as explained above.

The paediatrician – processor

The contract with the paediatrician contains provisions on the principles of confidentiality and data protection and it is governed by Belgian law. Therefore, the contract complies with the obligations set out in Article 23(2)(b) of the Regulation. However, the EDPS draws attention to Article II.14 of the contract on data protection and recommends that the Parliament add the phrase '*and all data subjects whose data are processed by the contractor*' where there is a reference to the '*contractor*', for the reasons stated above.

Furthermore, since the paediatrician collects and keeps data relating to health, the sensitive nature of such data means that the Parliament must provide expressly in the contract with the paediatrician that the paediatrician is to act only on the Parliament's instructions and that use of all the data relating to health which she collects is to be restricted only to the strict performance of her contract with the Parliament. It is also recommended that the Parliament insist that the paediatrician apply the principle of proportionality when she collects data relating to health and that it set a period of retention of such data which is necessary and proportional in the light of the purpose of the processing.

Accordingly, the Parliament is invited to adopt these recommendations in the contract and to send an updated copy.

3.10 Security measures

Under Article 22 of Regulation No 45/2001 on security of processing, the controller must 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*'.

⁵ By way of reminder, Regulation No 45/2001 applies to processors in the performance of their contracts except in so far as the security of the processing operation is concerned.

Having regard to the full set of security measures taken to ensure maximum processing security in this case, which is in particular carried out by the administrative managers within the Parliament, the EDPS has no reason to believe that the Parliament has failed to observe the security measures required in Article 22 of the Regulation.

Conclusion:

The proposed processing operation does not appear to involve any infringement of the provisions of Regulation No 45/2001, provided that the comments made above are taken into account. This implies, in particular, that the Parliament should:

- put in place a procedure for obtaining the express consent of data subjects, as explained in point 3.3,
- remind the paediatrician that only data which are strictly necessary for the purposes of the processing operation must be collected; the Parliament is consequently invited to re-assess the proportionality of the data collected in relation to allergies, illnesses and vaccinations and in the context of the medical file, as discussed in point 3.4,
- adopt a period of data retention for children who are not admitted to a crèche which is necessary and proportional in the light of the purpose of the processing operation,
- define and indicate in the contract with the paediatrician a period of retention of data relating to children's health in the light of the comments made in point 3.5 and ensure that a child's medical file is transferred to the family doctor when that child stops attending crèche,
- include in the note addressed to parents all the information referred to in Articles 11 and 12 of the Regulation, as explained in point 3.8 and
- send updated versions of the contracts with the two external companies and with the paediatrician which include all the recommendations, as indicated in point 3.9.

Done at Brussels, 25 July 2011

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor