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GB/XK/sn/D(2015)0023 C 2013-0585
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Subject: Notification for prior-checking on processing connected with ‘Crèches for the children of EIB staff’, Case 2013-0585

Dear Sir,

The EDPS has analysed the notification received from the EIB under Article 27(3) of Regulation 45/2001 (‘the Regulation’) concerning the case *‘Crèches for the children of EIB staff’*.

As requested by the EDPS, the Data Protection Officer and the controller subsequently supplied additional information.

As this was an **ex post notification**, the two-month deadline within which the EDPS is required to give his opinion does not apply.

According to the notification, the EIB has signed contracts with six external crèches which retain complete management independence in providing services for the children of EIB staff. That service provision includes the administrative management of enrolments and the medical supervision of the child at the crèche and also invoicing of the parents. The EIB is involved solely in monitoring the quality of the services provided, checking the calculation of parental contributions and in the event of a dispute between the crèche and the parents. The EIB

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collects only the name and surname of the first and, where appropriate, the second parent, the name and surname of the child and also the total sum invoiced.

The contracts between the EIB and each of the six external crèches contain a reference to Directive 95/46/EC, state the law to which they are subject (Luxembourg law) and also contain confidentiality and data protection clauses.

The various enrolment forms can be accessed on the '*my portal*' page of the EIB intranet and also directly from the crèches.

According to the notification, where parents make informal complaints and/or where formal reports are prepared concerning accidents involving bodily injury in which safety/security aspects are involved, the crèches may transfer certain health data to the EIB in anonymous form: all those data are destroyed once the complaint is closed.

On the basis of the documentation received, the EDPS finds that the processing at issue is very similar to other processing connected with the management of enrolments and the monitoring of children at crèches that has already undergone prior-checking¹. For that reason, this Opinion does not contain a full analysis of all the aspects of the processing from the data protection perspective, but focuses on the points where improvement is needed. In his analysis, the EDPS highlights the practices which do not appear to conform with the Regulation and makes the relevant **recommendations** to the EIB regarding those matters.

1) Grounds for the prior-checking

According to the notification, the processing may present risks within the meaning of Article 27(2)(a) of the Regulation, since the processing makes it possible to collect data on the children's daily health and/or hereditary diseases. In addition, it states that, as part of the processing, it is proposed to collect information on personal aspects of the parents, such as their abilities or their conduct as regards their duties as parents. The notification also refers to Article 27(2)(c) and considers that the processing allows linkages not provided for with hospitals or the health authorities. It also states that one of the purposes of the processing is to exclude certain children from access to the crèche under the rules on priority and therefore makes reference to Article 27(2)(d).

In this case, the EIB has sub-contracted enrolment, invoicing and the medical supervision of the child at the crèche to six external crèches, from which parents may make their choice. The purpose of the part of the personal data processing for which the EIB is responsible is in reality restricted to monitoring the quality of the services provided, checking the calculation of the parental contributions and any potential disputes. It therefore does not collect any data on the child's health for the purposes of the child's medical supervision at the crèche. However, the EIB is the controller, since it is the EIB that determines the purpose of the processing via a contract and the external crèches provide their services in accordance with that contract on behalf of the EIB. In addition, the EIB may potentially process health data in connection with a dispute between the parents and the crèche. According to the notification, the crèche would transmit those data in anonymous form. Since the purpose of the subsequent processing is to handle a dispute, the EDPS considers that it is possible that the data subjects could be indirectly identifiable (Article 2(a) of the Regulation). On the basis of those facts,

¹ See Case 2007-0148 (Commission) and Case 2007-0441 (Council).

the EDPS concludes that Article 27(2)(a) provides a relevant legal basis for subjecting the processing to prior-checking.

According to the information available to us, the processing is not intended to evaluate the parents' ability, efficiency and conduct regarding their parental duties or to evaluate the ability, efficiency and conduct of the children, and so Article 27(2)(b) cannot serve as grounds for prior-checking in this case.

Regarding Article 27(2)(d), the EDPS wishes to point out that the processing is not intended to exclude children from the right of admission to a crèche, but rather to assess certain criteria for the purpose of admitting them. Article 27(2)(d) is therefore not applicable to this case.

Nor does Article 27(2)(c) provide an appropriate legal basis, since the processing does not allow linkages not provided for between data processed for different purposes.

Consequently, the EDPS asks the EIB in its notification to refer solely to Article 27(2)(a) of the Regulation as the basis for submitting the processing to prior-checking by the EDPS.

2) Information to be given to the data subject

Articles 11 and 12 of the Regulation set out the information to be given to the data subject in order to guarantee transparency in the processing of personal data. Those articles give a list of information that must be provided and certain other information that is optional. The latter would be supplied insofar as it is necessary, having regard to the specific circumstances of the processing in the case at issue, in order to guarantee fair processing in respect of the data subject.

In this particular case, the EIB has not produced an information notice which is available and accessible to parents. The data processed by the EIB (see above) are not collected directly from the parents, but rather are transferred to it by its sub-contractors, the external crèches, and therefore Article 12 is applicable.

Consequently, the EDPS recommends that the EIB draw up an information notice for parents, to be made easily accessible on its intranet. It should contain clear and relevant information concerning the items listed in Article 12 of the Regulation.

Since the processing has already been put in place, the EDPS recommends that that information notice be displayed on the EIB intranet and that it also be attached to enrolment forms, so that the EIB can guarantee fair processing in respect of the data subjects, in accordance with Article 12 of the Regulation.

3) Security

The EIB may, where appropriate, process health data in anonymous form. Since it is possible that the data subjects may be identifiable (see point 1 above) and in view of the sensitive nature of those data, the EDPS recommends that the EIB draw up confidentiality declarations to be signed by the file managers, stating that they are subject to a professional secrecy obligation equivalent to that applying to health professionals. This is an organisational measure within the meaning of Article 22 of the Regulation intended to protect the confidentiality of medical data by preventing unauthorised access to those data insofar as the

file managers do not need to have knowledge of them in order to do their job (need-to-know principle).

In the light of the foregoing and on the basis of the principle of accountability, the EDPS expects that the EIB will implement the recommendation made above and has therefore decided to close this case. We will of course be pleased to provide you with any further information you may require.

Yours faithfully,

Giovanni BUTTARELLI

(signed)

Cc: Mr Alberto SOUTO de MIRANDA, Data Protection Officer