

## **Opinion on a notification for prior checking received from the Data Protection Officer of the CEDEFOP on the "Day care centre" case**

Brussels, 20 June 2008 (Case 2008-193)

### **1. Proceedings**

A Notification within the meaning of Article 27(3) of Regulation No 45/2001 concerning the "Day Care Centre" was sent by the Data Protection Officer ("DPO") of the European Centre for the Development of Vocational Training (CEDEFOP) to the European Data Protection Supervisor (EDPS) by e-mail on 21 March 2008 but only received on 28 March 2008 at the EDPS.

Questions were put to the CEDEFOP's DPO by e-mail on 16 April 2008 and replies were received on 17 April 2008. Exchanges of information took place on 21 April 2008. Some more clarifications were asked on 29 May 2008 and replies were provided on 11 June 2008. On 12 June 2008 the draft was sent for comments to the DPO. The DPO's comments were received on 19 June 2008.

### **2. Facts**

CEDEFOP's day care centre (hereafter DCC) is a facility offered by CEDEFOP to its employees. It is meant to improve the working and general living conditions of staff. The purpose of the data processing is to admit the staff's children to the DCC and make the medical records (vaccination and allergies record) available to the DCC staff. The purpose is also to calculate each month the financial contribution to be paid by the parents of children enrolled at the DCC and to know whom to contact in case of an emergency. The DCC shall offer a safe environment and stimulating pedagogical programme to children who are attending the services of the 'nursery' and 'after-school care'.

The DCC is a CEDEFOP facility under the responsibility of the Administration which works in close cooperation with the Parents' committee<sup>1</sup>. The concerned parties work on the basis of regular meetings and minutes of the meetings. Working groups may be created and they are composed of parents in order to work on specific issues and to contribute to the good functioning of the DCC.

- The Administration is responsible for decisions regarding admissions as well as financial and contractual arrangements.

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<sup>1</sup> which comprises of two members elected by parents whose children attend the DCC and parents on the waiting list, a member appointed by the Director as well as one staff committee representative, appointed by the Staff committee

- The Parents' committee's main duties are the following: liaison between the Administration, parents and DCC staff, preparing recommendations regarding admissions and the waiting list, monitoring of sporadic attendances, holiday planning, daily contact with the DCC staff and making proposals to the Administration for better functioning of the DCC.

The minutes of these meetings are published on the Intranet. The purpose of their publication is to make the work of the DCC visible and make this social service transparent for all the staff.

## **2.1. Specific procedures and processing operations relating to the DDC**

### **2.1.1. Admission**

The DCC is reserved for the children of officials and other servants of the Communities within the meaning of Article 2(2) to 4 of Annex VII of the Staff Regulations ('Dependent child' means the legitimate, natural or adopted child of an official, or of his/her spouse, who is actually being maintained by the official) and to external members of staff who have a direct contractual link with the Communities in the form of a full-time or part-time employment contract of not less than six months' duration.

The Rules and Regulations governing CEDEFOP's Day Care Centre (September 2007) (hereafter "DDC Rules") establish the following procedure:

#### Ceilings per age group

Every year by the end of June at the latest, a decision on the ceilings per age group for the coming year must be made. The decision is made by the Administration after consultation with the Parents' committee and the DCC staff.

#### Admission priorities<sup>2</sup>

Taking into consideration the present infrastructure and number of staff employed at the DCC, should the DCC reach its maximum capacity per age group, children will be admitted in the following order of priority:

1. Officials, Temporary Agents, Contract Agents and National Seconded Experts (no less than 6 months contract)
  - **Priority group 1:** A parent having sole responsibility for the child's upbringing and education.
  - **Priority group 2:** Parents who both work full-time.
  - **Priority group 3:** One parent working full-time and the other working part-time or not working.
2. Other staff (External and Interim Agents **having a direct or indirect contractual link with CEDEFOP**) (no less than 6 months contract)
  - **Priority group 4:** A parent having sole responsibility for the child's upbringing and education.
  - **Priority group 5:** Parents who both work full-time.
  - **Priority group 6:** One parent working full-time and the other working part-time or not working.

#### Provisions applicable to all the priorities listed above:

- Applications for full day attendance will be given priority over applications for half-day attendance.

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<sup>2</sup> The following priorities only apply for the admission of children.

- Priority for afternoon places for older children will be given to those who attended the nursery.
- For the purpose of these rules, a single parent is a parent who has sole responsibility for the upbringing and education of the child, whether married or not.
- Unmarried parents shall be treated in the same way as married parents where these two persons live under the same roof.
- Where one of the parents works and/or resides abroad, an application for enrolment will be given priority 1 status (single parent) in order to take account of this.
- Self-employed parents shall be treated in the same way as any employee. Full-time or part-time employee must be specified in the application.
- The Administration in consultation with the Parents' committee and DCC staff, may take motivated decisions on different admission priorities in special documented cases.

### Waiting lists

In order to apply for a place at the DCC, the applicant or the applicant's partner must be pregnant, have a set date for adoption or already have a child. Admission is subject to the availability of places, and new children may have to be placed on waiting lists, which shall be drawn up in accordance with the abovementioned priority criteria (one for babies/toddlers 5 months to 3 or 4 years and one for after-school care (5 to 12 years)).

When a place in the DCC becomes vacant, the parent who is the next on the relevant waiting list is offered the place. The parent should decide within two weeks whether or not he/she accepts the place. The waiting lists are maintained by the Parents' committee who informs the Administration immediately of any changes. The Parent's committee updates the anonymous waiting list and places it on the Intranet. The publication of this waiting list serves also as general information to all staff who may potentially be interested in applying for a position at the DCC. On request, parents of children on the waiting lists are informed of their position on the relevant list. The lists will be published on the intranet without names and each parent receives by e-mail a code that indicates the ranking of their child on the waiting list.

### **2.1.2. Enrolment**

According to point 4.1 of the DDC Rules, applications for admission must be submitted to the Administration representative in the Parents' committee who will keep the originals of the application and its annexes, and give copies to other members of the Parents' committee and to the DCC staff. Information given on the child's enrolment form is confidential. Parents may consult the data relating to their child at any time. The Administration representative in the Parents' committee must be informed immediately in writing of any change in the parents' family or financial circumstances, in their job situation or personal information. Applications for admission must be accompanied by the following documents:

- enrolment form,
- medical form,
- statement stating names of persons authorised to collect child (reliable persons' statement),
- child's birth certificate,
- recent salary slips of parents and/or tax assessment in the case of a self-employed parent (in order to permit the calculation of the parental contribution),
- enrolment form for the insurance,
- in cases where one of the parents resides abroad and on this basis the application has to be given priority 1 status (single parent), the parent shall issue a written declaration to this effect on his/her honour.

Decisions on enrolment will be taken by the Administration based on recommendation of the Parents' committee. Following a questionnaire given to parents before the summer holidays, the Parents' committee draws up a list of enrolled children at the beginning of each school year, indicating if each child attends full time or part time. This list is published and can be used to estimate any new admissions. The enrolment list shall be updated regularly. Parents are committed to an annual attendance.

These documents are kept in the individual file of the child.

### **2.1.3. Parental contribution**

#### Calculation of contribution

The following income shall be taken into account for the purpose of calculating the parental contribution:

- net salary (including the weighting and all allowances or expenses with the exception of non-flat-rate overtime);
- secretarial allowance or any other flat-rate allowance;
- allowance in respect of dependent children for whom the parents have responsibility;
- allowance from another source;
- allowance paid elsewhere;
- maintenance: where the maintenance is not paid, the person concerned shall be requested to make a written declaration to this effect on his/her honour.

#### Scale of parental contributions

Scale of parental contributions is available. If the requisite supporting documents are not produced, the parents' financial contribution shall be calculated on the basis of the maximum rate on the scale.

All supporting documents must be given to the Administration representative in the Parents' committee

#### Payment

The contribution shall be deducted from the monthly salary in the case of officials and other servants, unless other arrangements are agreed between parents and the Administration. In the case of other staff, the contribution shall be paid in cash. Where both parents are officials or other servants and/or have a contractual link with one of the Institutions or bodies, the deduction shall be made from the salary of the parent designated on the enrolment form.

The parental contribution shall be payable as from the scheduled date of admission, at the end of the month. The parents' financial contribution shall be fixed on 1 February of each year, at which time parents shall be requested to complete an update form and to submit their salary statement(s)/wage slip(s) for the month of January.

### **2.1.4. Absence of child**

If a child is absent the DCC and the Parents' committee must be informed immediately, if possible in writing (form foreseen). If, for reasons other than a "*force majeure*" or sickness, attendance of a child falls below 70 % of attendance requested over a two-month period, the place may be lost and can be offered to the next child on the relevant waiting list. Children who are attending the DCC for the first time are allowed three months of part-time attendance. After this, the 70 % attendance rule applies.

A child may be temporarily withdrawn for a maximum period of three months within one year. During this period the parent's financial contribution shall be maintained. In cases of illness of the child, the place will be kept open for the child. If the period exceeds three months, the financial contribution need not be maintained. Parents are required to submit an application for long term absence to the Administration representative in the Parents' committee, one month before the absence begins. If this period of absence exceeds three months, the child's place shall be declared vacant (except in case of illness).

### **2.1.5. Reception and departure of children**

- The entrance to the DCC is kept closed and can only be accessed using CEDEFOP access cards. When children arrive they should be handed over personally to a DCC staff member. The person who comes to collect the child must make sure that the relevant DCC staff member is aware that the child is leaving.

Access cards are issued to all staff members and if it is requested they are also issued to parents who need to access the DCC. The access card has an id number that is linked to a person and the doors have codes that can be opened by cards. Only parents who have a child at the DCC can have access to the DCC premises with the access card. Those access cards are non contact badge (proximity switches Radio Frequency). There is a database that contains the following data a) the access card number of the card, b) the staff name (first name, last name), c) security permissions (namely set of doors can be opened with a specific card number). This database is managed by the person in charge of security at the Centre.

### **2.1.6. Medical requirements**

#### Admission

A child is admitted after the parents have filled in a medical form according to Article 4.1 of the DCC Rules. Parents are required to submit a medical certificate listing all the vaccinations already given and an outline of the child's diet. Parents must inform the DCC staff if their child is suffering from any children's disease or serious illness. Children with food or other allergy will only be admitted on presentation of a certificate from an allergy specialist with details of the type of allergy and any measures that must be taken to deal with it. A copy of the medical form should be kept at the DCC. The record files regarding the medical-vaccination information of the children are only kept by the DCC staff.

#### Medical supervision

Children may not be brought to the DCC if they are ill. Further, in the general interest, parents are requested to report any illness affecting any other member of the household. Children deemed to be ill or contagious by a doctor or the DCC staff may not remain at the DCC. If, in the course of the day, a child develops symptoms such as a raised temperature, vomiting, diarrhoea or a rash, parents shall be contacted and must collect their child without delay.

In an emergency, the DCC staff shall take the measures required by the child's state of health and inform parents as soon as possible. The medical form shall confirm if authorisation is given by the parents to the DCC staff to give to the child basic medicine such as paracetamol, etc. A special procedure shall be followed in case a child at the DCC develops a serious contagious disease.

Medical treatment, prescribed by the family doctor/paediatrician, may only be administered by the DCC staff upon receipt of a written request from parents.

The DCC does not have at the present time a contract with any paediatrician to carry out medical check-up of the DCC children. When this will be the case, an external contractor will provide services for the Centre. The contract will be concluded under the provisions of Greek law.

A Medical Officer of Cedefop is present at the Centre several times a week to cover her duties. During her time of presence she is available to assist anyone who is in the premises of the Centre and needs immediate medical attention (emergency service). This applies to staff members, visitors and children attending the DCC.

#### Vaccinations

Parents are informed that, in view of the large number of children attending the DCC and the risk to the group as a whole, preventive measures such as vaccinations are essential. Parents must have their child vaccinated by the family doctor/paediatrician. No child may attend the DCC unless he/she has received the compulsory vaccinations by the deadline laid down by the Greek Ministry of Health.

#### Accidents

In case an accident occurs at the DCC, the parents shall be informed immediately. However, before a child is admitted to the DCC, the parents shall sign a statement authorising the DCC staff to take appropriate steps in case of an emergency.

### **2.1.7. Other information issued from the notification**

The processing operation is used to collect the **personal data** as follows:

1. the inscription form containing name, surname, birth date, school, mother tongue of the child, date of his/her entry to the DCC, presence at DCC as well as names and surnames of both parents, their nationality, their employer, their office address, their telephone number (land and mobile) and their home address;
2. names, addresses and telephone numbers of persons who can take a child from the DCC;
3. a medical file of a child containing information on vaccinations and the state of health, including the allergic reactions;
4. attendance list which contains a name of a child and information on his/her presence at the DCC.

No data comes from another CEDEFOP database. No personal number is collected.

The notification states that the **information** provided to the data subjects are the following: parents can be provided with all information listed above which concern their child. Any parent who has a child in the DCC may request from the DCC staff to receive a copy of the vaccination information of their child so that the parent can update or change the data in the form. The DCC staff will give to the parent a copy of the health record concerning only his/her child.

**The rights of data subjects:** Updating of data is initiated by the staff members who have their children at the DCC.

The handling of **the processing operation** is manual.

The **recipients of data with the exception of access to medical data** are the:

1. Data Controller;
2. Personnel of the DCC;

3. Administrator in charge of the DCC finances

4. Parents Committee

\*Medical data are only accessible by the Personnel of the DCC and no one else.

Medical data could be transferred to the medical institutions in case of an accident taking place at the DCC.

As regards the **storage and conservation** of data, data are stored in the DCC and kept in a locked cupboard with limited access. The kindergarden files are not kept longer than 6 months after a child leaves the DCC because there is the possibility that a child is withdrawn but then reapplies for a place at the DCC. In this case (usually after summer periods) the data are still available from Spring to Fall. The records files regarding the medical and vaccination information of the children are only kept by the DCC staff.

Regarding the **Security measures**, DCC files are kept in locked cupboards.

### 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 CEDEFOP and falls within the scope of Community law since it is part of activities under the first pillar.

The processing is manual but the data being processed – the medical and administrative forms – are contained in a file. 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) 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 purpose of the processing operation is to select for admission a certain number of children who meet the criteria set out in the DDC rules so that the child can be monitored in the childcare facility. Thus, data related to personal and family situations are processed so as to include them in the benefit of admission (Article 27.2.b). Data relating to health are also collected in the context of assessing and selecting children admitted to the crèches and childcare facilities based on the admission priorities outlined in the facts (Article 27.2.a). This processing operation therefore falls within the scope of the prior checking procedure based not only on Article 27.2.a but also on Article 27.2.b of the Regulation.

As concerns the data related to the access cards, this issue will not be analysed in the context of this processing operation. This issue has been dealt with by the EDPS in a separate case and all relevant recommendations should be taken into consideration by the DDC<sup>3</sup>.

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<sup>3</sup> See case 2008-195

In principle, prior-checks by the EDPS should be performed before the processing operation is implemented. In this case, the application has already been in place since October 2006. The EDPS should have been notified before this processing operation had been implemented. However, this does not alter the fact that the recommendations issued by the EDPS should be adopted accordingly in future..

Notification from the CEDEFOP DPO was received by e-mail on 21 March 2008 but only received on 28 March 2008 at the EDPS. Under Article 27.4 of the Regulation, the EDPS should have delivered his opinion within two months. On 12 June 2008 the procedure was suspended for seven days pending comments from the DPO. Taking into account the 22 days suspension, the EDPS will deliver his opinion by 20 June 2008 at the latest (29 May plus 15 + 7 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 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 nursery and childcare facilities run by the CEDEFOP. The operation is administered by the relevant CEDEFOP department. The procedure relates to a task of the CEDEFOP 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, the CEDEFOP's task within the meaning of Article 5.a of the Regulation is performed. 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 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 the decision of the Management Board of the Centre dated 24 March 2000, amended by the decision of 25 October 2007 of the Governing Board, which states that CEDEFOP offers a facility to its employees, in order to allow parents to carry out, with complete peace of mind, the job for which they were recruited, by taking care of their children. Moreover, the DCC Rules provide the procedure of admission, the data required and the medical supervision of the child within the DCC.

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 10.3 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 CEDEFOP 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.

Medical data are collected by the DCC staff such as, inter alia, vaccinations already administered, previous and current illnesses and also information related to allergies and special diets. That is why Article 10.3 of Regulation (EC) 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 that the DCC staff responsible for the processing of the medical data 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. 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 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 nursery and the childcare facilities so that the child can be properly monitored by the nurses and the paediatrician in compliance with the purpose of the processing operation.

There is a waiting list for admissions with a related form accompanied with at least the medical form. The EDPS regards collection of the medical form at the same time as the enrolment form to be excessive since at the time of enrolment there is no guarantee a place will be granted at the DCC. Moreover, collecting medical data for the selection procedure is not only excessive but it also carries the risk of discrimination among the children who apply. It is therefore recommended that the medical form should only be collected once the child is admitted to the nursery or after-school childcare facility.

The minutes of the meetings between the Administration and the Parent's committee as well as the waiting lists are published on the Intranet. In the case of the minutes, the EDPS is satisfied that their content does not reveal data that could be detrimental to the data subject and they only concern the social activities and organisation of the Centre. In the case of the waiting lists,

the EDPS welcomes the fact that they are anonymous and they serve for the parents' information regarding the availability places within the DCC.

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 3.8 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. 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 data are updated upon initiative of the staff parents who have their children at the DCC. Nevertheless, the EDPS recommends that the DCC staff should regularly remind the parents of this necessity.

Moreover, 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.

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 3.7 on the right of access).

### **3.5. Data retention**

The general principle set out in Regulation 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 are stored in the DCC and kept in a locked cupboard with limited access. The kindergarden files are kept for a period of 6 months after a child leaves the DCC because there is the possibility that a parent withdraws the child's application form but then reapplies for a place at the DCC. In this case (usually after summer periods) the data are still available from Spring to Fall. The records files regarding the medical and vaccination information of the children are only kept by the DCC staff.

The EDPS welcomes the time limit of 6 months set up by CEDEFOP regarding the data kept in the child file. It must be noted however that in the light of other Opinions<sup>4</sup>, the conservation period can be longer due to financial and legal proceedings. In case administrative and medical data need to be retained for a longer period by the DDC for the above reasons, the EDPS could accept a longer retention period. However, this should be proportional to the provisions of the Financial Regulation.

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<sup>4</sup> 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.

### **3.6. Transfer of data**

The processing operation should also be scrutinised in the light of Article 7.1 of Regulation 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 are transferred within the same institution, as the recipients such as Data Controller and the administrator in charge of the DDC finances are CEDEFOP staff members. Data are also transferred to members of the Parents' Committee. The EDPS welcomes the fact that that medical data are only accessible by the Personnel of the DDC and no one else.

Data may also be transferred to other institutions, as medical data could be transferred to the medical institutions in case of an accident taking place at the DCC. However, data could also be transferred to OLAF or the Court of Auditors in case of an audit, or to the Ombudsman and the EDPS in case of complaints.

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 CEDEFOP and in other institutions be reminded to process the data exclusively for the purposes for which they were transmitted.

There will be a part time DCC member of staff (paediatrician) who will be subject to a contract under the Greek law. Where certain medical data will be transferred to this DCC member, Article 8.a of Regulation 45/2001 will apply, since he will be a service provider who will receive data from the controller for the performance of a task carried out in the public interest. When the contract will be concluded, it is recommended that the EDPS is informed of its content which should be in conformity with Article 23 of Regulation 45/2001.

Regarding the Parents' Committee, Article 8.a. of Regulation 45/2001 applies as well, as some parents might be subject to an external contract. All recipients are covered by national law adopted pursuant to Directive 95/46/EC.

### **3.7. Rights of access and rectification**

Article 13 of Regulation 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) 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.

The rights of access and rectification are granted since data are updated by the staff parents' own initiative.

It must be mentioned that the data subjects of this processing operation are not only the children but also the parents (both the paying parent and the second parent) as well as the persons authorized to collect or drop off the children at the DDC. The concept of data subject is clearly indicated in Article 2.a of Regulation 45/2001<sup>5</sup>.

The parents who are granted a right of access and rectification must also inform the persons authorized to collect or drop off the children of these rights. It is for the parents to inform them of their rights of access and rectification (see point 3.8).

### **3.8. 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 give all required information directly themselves.

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 nursery and childcare facilities by the children's parents. Moreover, in the context of medical supervision and check-ups, data are introduced by the paediatrician in charge.

The information provided is only related to the personal data collected and to the vaccination information of the child. There is no privacy statement containing the information regarding the identity of the Controller, the purpose, the legal basis, the technical aspects, the recipients, the rights of data subjects, the security aspects, the conservation period and the recourse at any time to the EDPS.

The EDPS therefore recommends that a privacy statement should be prepared by CEDEFOP referring clearly to all elements provided in Articles 11 and 12 of the Regulation (both mandatory and optional). The CEDEFOP should also ensure that this privacy statement is accessible by paper or on the CEDEFOP intranet before any data are processed. It must also be clearly mentioned in the privacy statement that the parents must inform the persons authorized to collect or drop off the children (reliable persons) of their rights of access and rectification.

### **3.9. Security measures**

In accordance with Article 22 of Regulation 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*".

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<sup>5</sup> The data subject is "*an identified or identifiable natural person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity*".

As the process is completely manual, the EDPS considers that the 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) 45/2001, subject to the comments made above. This implies, in particular, that:

- all DCC staff responsible for the processing of medical data 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.
- the medical form should only be collected once the child is admitted to the nursery or after-school childcare facility.
- the DCC staff should regularly remind the parents of the necessity to update the data relating to their children.
- the medical form and all other medical data collected be filed separately from forms containing administrative data.
- a possible longer retention period that CEDEFOP might need to adopt should be proportionate in the light of the provisions of the Financial Regulation.
- recipients within the CEDEFOP and in other institutions be reminded to process the data exclusively for the purposes for which they were transmitted.
- the DCC informs the EDPS of the contract with the part-time paediatrician. This contract must be in conformity with Article 23 of Regulation 45/2001
- a privacy statement should be prepared by CEDEFOP referring clearly to all elements provided in Articles 11 and 12 of the Regulation (both mandatory and optional). The CEDEFOP should also ensure that this privacy statement is accessible by paper or on the CEDEFOP intranet before any data are processed. It must also be clearly mentioned in the privacy statement that the parents must inform the persons authorized to collect or drop off the children (reliable persons) of their rights of access and rectification.

Done at Brussels, 20 June 2008

(signed)

Joaquín BAYO DELGADO  
Assistant European Data Protection Supervisor