

Opinion on a notification for prior checking received from the Data Protection Officer of the European Commission on the "Management of the Children's Centre (CPE) - day nursery ("*Garderie*") and study centre: Loustic information system and medical files" case (Luxembourg)

Brussels, 29 September 2009 (Case 2009-0089)

1. Procedure

On 2 February 2009, the Data Protection Officer (DPO) of the European Commission sent the European Data Protection Supervisor (EDPS) a notification, by email, under Article 27(3) of Regulation (EC) No 45/2001, concerning the Management of the Children's Centre (CPE) - day nursery ("*Garderie*") and study centre (Loustic information system and medical files).

This opinion concerns the notification relating to the management by the Commission's Office for Infrastructure and Logistics (OIL) of the CPE's day nursery ("*Garderie*") and study centre in Luxembourg. It concerns neither the management by the Commission of the crèches and after-school childcare facilities in Brussels, nor the management of medical data by those crèches and after-school childcare facilities, matters which have been notified separately to the EDPS (see case 2007-148 and case 2009-088 respectively).

Some questions were put to the DPO on 13 March 2009, and answers were received on 8 July 2009. On 27 July 2009 the case was extended by two months in accordance with Article 27(4) of Regulation (EC) No 45/2001. On 14 September 2009, the EDPS's draft opinion was sent to the DPO for his comments. The comments were received on 28 September 2009.

2. Facts

The Children's Centre (CPE) comprises a crèche, a day nursery ("*Garderie*") and a study centre; it aims to provide parents from the various EU Member States who are far from their country of origin with easier access to child care facilities for their young children upon their arrival in Luxembourg. The Rules on Admission to and Operation of the CPE Establishments define the admission criteria and operating arrangements of the abovementioned establishments. Admission to the CPE is restricted to the children of officials and other staff of the European institutions and bodies in Luxembourg which are members of the Luxembourg Committee on Social Activities.

The Commission's Office for Infrastructure and Logistics in Luxembourg (OIL) is in charge of the management of the CPE's day nursery and study centre, and has set up data processing operations to that end ¹.

¹ The crèche is managed by the European Parliament. On 8 December 2006 the EDPS issued an opinion on the data processing operations conducted by the European Parliament in that context (see joint cases 2006-267 and 2006-268).

The **data processing operations** in question concern administrative and medical files for the CPE's day nursery and study centre. As part of its role as manager of the CPE, the OIL is controller of those operations. The OIL has entrusted the Commission's medical service with management of the medical files, a task which is carried out in accordance with the agreement signed on 9 July 2009 between the OIL and the Commission's medical service on the application of regulations on the protection of personal data to the management of medical files concerning children attending the CPE. The CPE has nursing staff on site.

The **purposes** of data processing operations are enrolment of children in the day nursery or study centre, checking access of persons authorised to pick up the children, and taking into account any medical constraints requiring the adoption of special measures.

The **data subjects** of this processing are: (i) children attending the day nursery or study centre; (ii) parents using the CPE; and (iii) trusted persons authorised to pick up the children.

Data processing operations are automatic - only as far as the administrative data are concerned - and manual:

- The processing of administrative data is automated on the Loustic application. The service managing the day nursery and study centre uses the "Loustic" computer application to manage administrative information concerning children attending the Children's Centre (CPE), parents using the CPE and trusted persons authorised to pick up the children. Each child also has an individual file on paper.
- Medical data on each child are compiled in a personal medical file and processed on paper only. The file is held exclusively by the medical staff in the building to which the child is assigned. The OIL does not use the Kiddyweb application.

Parents must provide the following documents for the admission of their child to the day nursery or study centre: (i) personal details form (ii) medical form (iii) child's birth certificate (iv) parents' salary statements (v) certificate of composition of household and place of residence (for priority 1 people).

Administrative data, which are mainly collected using the personal details form, are input into the Loustic application by the service managing the day nursery and the study centre:

- *Concerning the children:* surname, first name, date of birth, starting date, leaving date, languages used, establishment attended, timetable; for the period during which the child attends the day nursery or study centre, input of daily presences and absences.
- *Concerning the parents:* surname, first name, staff number, institution, employment status, date of birth, nationality, date of end of contract (where appropriate), marital status, sex, postal address, office address, telephone numbers, professional income.
- *Concerning persons authorised to pick up a child:* surname, first name, telephone number, address, period to which authorisation applies.

As far as **medical data on the children** is concerned, the medical file contains: the medical form, the medical opinion issued by the medical service to the administration, the medical form for re-enrolment, the copy of the child's vaccination booklet, medical documents relating to management of the child's food allergies, the request for authorisation to administer medicines signed by the parents, the medical form for liaison between the medical service and the

childcare staff, medical certificates, e-mails exchanged with parents relating to the health of their child.

The medical form is filled in by the parents and handed over directly to the CPE's medical service at an appointment. The medical form contains the following information: school year, requested admission date, child's surname and first name, sex, date and place of birth, parents' address and private telephone number, name of mother and father's employers, their telephone numbers, health insurance number, person(s) to be contacted in case of emergency, parents' express authorisation for the medical service of the CPE's administration to take the necessary medical or surgical steps in case of an emergency or accident, GP's name, the child's medical situation (to be completed and signed by the GP) such as vaccination dates, allergies and any illnesses.

If the medical form is approved by the medical service, it stamps a "medical opinion" form, noting only that the opinion is positive (i.e. no medical information is included), which the parents must submit to the administrative service. The administrative service then approves the enrolment. If the document is not approved, the CPE's medical service submits the file to the Commission's doctor for examination. If the latter does not approve the document, enrolment may not take place.

The **recipients** of the administrative data are: (i) the service managing the day nursery and study centre (secretariat and accounts), (ii) the childcare staff, (iii) the PMO of each institution which receives a statement of the fees payable by the parents, (iv) security officers, who receive a list of persons authorised to pick up the children. Since September 2009, access for consultation of the Loustic application has been granted to the childcare staff on a need-to-know basis only. Security staff also are shortly to be granted such access so that they can check the name of the person(s) authorised to pick up a child.

Data contained in the child's medical file can only be accessed by medical staff (i.e. the medical service's doctors and the CPE's nursing staff); the OIL does not have authorisation to access data managed by the medical service. The dietician is informed of food allergies, as are the childcare staff, coordinators and staff distributing meals. The childcare staff are also informed of children's serious illnesses by a medical liaison form drawn up for that purpose by the OIL and the Commission's medical service. The form contains the medical data which the medical service deems it useful to transmit, with the parents' consent, to the childcare staff to assist them in their conduct towards the child, in particular in the event of an emergency.

Administrative and financial data managed using the Loustic application are **kept** in an Oracle database housed in the European Commission's (...) Data Centre (...). Medical files are kept in the buildings to which the children are assigned.

Files relating to the child's administrative data and medical file are kept for ten years then transferred to the historical archives. Paper and computer files relating to relations with parents, incidents/accidents, teaching/activities and relations with the European school are kept for five years. If the application for the child's enrolment is rejected, the enrolment file is kept for the current school year, then destroyed.

Some data are used for **statistical** purposes. The CPE's administrative service uses the data extracted from the Loustic system to compile regular statistics depending on needs and situations encountered (for instance, to check the evolution in the number of children per group, the number of children at the European School, age ranges, daily attendance on certain

days of the week, languages and nationalities). The medical staff also keep statistics on the number of interventions and the number of children with allergies.

According to the notification, the data subjects' **rights to access and rectification** are guaranteed. Parents are able to consult the administrative file on site and make corrections by a simple request to the secretariat. Third parties authorised to pick up children have the same rights; it is up to the parents to inform them of those rights. As far as access to the medical file is concerned, the parents may access medical data and diagnoses concerning their child by contacting the medical staff. In general, such data may not be modified, but parents' comments may be added.

Data subjects are informed by means of the on-line publication on the OIL's Intranet site of two confidentiality declarations, one concerning data processing in the Loustic application and the other concerning the processing of children's medical data.

As regards the **security measures** in place, measures have been taken (...)

3. Legal aspects

3.1. Prior checking

This prior check relates to the processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2(a) of Regulation No 45/2001, hereinafter called "the Regulation") in the context of the management by the Commission's Infrastructure and Logistics Office (OIL) of the CPE's day nursery and study centre in Luxembourg.

This data processing is carried out by an institution - the Commission through the Infrastructure and Logistics Office (OIL) - in the exercise of activities which fall within the scope of Community law (Article 3(1) of the Regulation). The processing is both manual and automated. Article 3(2) of the Regulation is therefore applicable in this case. These processing operations therefore fall within the scope of Regulation (EC) No 45/2001.

Article 27(1) of the Regulation requires prior checking by the EDPS of all "*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*". Article 27(2) contains a list of processing operations that are likely to present such risks. Article 27(2)(a) classifies "*the processing of data relating to health*" as processing operations that are likely to present such risks. One of the processing operations examined here specifically concerns children's medical data collected during the procedure for their enrolment in the nursery or study centres, and therefore falls within the scope of Article 27(2)(a) of the Regulation.

Under Article 27(2)(b) of the Regulation, "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct*" are also subject to prior checking. In the context of management of the day nursery and study centre, the OIL may be called on to evaluate personal aspects of the children concerned, in particular with regard to their conduct, in order to decide whether to suspend or exclude them, which falls within the scope of Article 27(2)(b) of the Regulation.

In principle, checks by the EDPS should be performed before the processing operation is implemented. Otherwise the checking necessarily becomes *ex post*. This does not make it any the less desirable that the recommendations issued by the EDPS be implemented.

The DPO's notification was received on 2 February 2009. According to Article 27(4), the present opinion must be delivered within a period of two months following receipt of the notification. In view of the 117 days of suspension for additional information + a two-month extension of the case + 14 days for comments, the EDPS will issue his opinion by 13 October 2009 at the latest.

3.2. Lawfulness of the processing

The lawfulness of the processing operations should be scrutinised in the light of Article 5(a) of the Regulation. Article 5(a) provides that a processing operation may not be carried out unless "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities ... or in the legitimate exercise of official authority vested in the Community institution*".

The data processing involves the collection of both administrative and medical data for the admission of children to the CPE's day nursery and study centre. These processing operations are implemented by the OIL in the course of a task carried out in the public interest in the field of employment law, in that it concerns making social welfare facilities available to members of the institutions' staff located in Luxembourg. Since the purpose of the processing operation relates to the admission of children of staff belonging to more than one European institution, the OIL's task within the meaning of Article 5(a) of the Regulation is also performed in the context of cooperation by the Commission with those institutions. The processing operations are therefore lawful.

The processing operations also fall within the scope of Article 5(d) of the Regulation, since the parents' unambiguous consent is required for the data processing. Moreover, in accordance with Article 5(e) of the Regulation, the processing of medical data and the names of persons authorised to pick up the children also seem necessary to protect the vital interests of the data subjects, namely the children.

The processing operations are carried out in the context of the tasks entrusted to the OIL in accordance with Commission Decision 2003/524/EC of 6 November 2002 establishing the Office for infrastructure and logistics in Luxembourg, which states that the OIL is responsible for providing services to the institutions covering certain social welfare facilities such as after-school child-minding services in Luxembourg. In the course of its tasks, the OIL is responsible for managing administrative data, and has entrusted the management of medical data to the Commission's medical service in Luxembourg under an agreement. The EDPS considers that the processing of administrative data is founded on an appropriate legal basis and falls within the scope of the management mandate received by the OIL. Moreover, the EDPS is pleased to note that the processing of medical data by the Commission's medical service in Luxembourg is founded on a specific basis, namely the agreement concluded between the OIL and the medical service. Given the above the EDPS concludes that the legal basis is valid and supports the lawfulness of the processing operations.

3.3. Processing of special categories of data

Under Article 10 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 that Regulation. In the present case, the personal data concerning the health of children of staff of the institutions is processed in the context of their enrolment in the CPE's day nursery or study centre.

The processing of data relating to health is justified here, as it is necessary for the purposes of complying with the specific rights and obligations of the Commission in the field of employment law, in particular as regards making social welfare facilities available to the staff of the institutions, in accordance with Article 10(2)(b) of the Regulation.

Given that the data subjects of the processing of health data are minors, Article 10(2)(c) of the Regulation also applies, the processing being *"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.

Lastly, in the present case, the processing of health data falls within the scope of Article 10(3) of the Regulation, insofar as the processing of the data is necessary *"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 data relating to health are collected by the Commission's medical service in Luxembourg in the context of preventive medicine and for the provision of care. Access to the medical file is restricted to members of the Commission's medical service and to the nursing staff of the CPE. The doctors are subject to the obligation of professional secrecy, and the nursing staff is subject to an equivalent obligation of secrecy. The EDPS considers that the processing of data by staff of the medical service and the CPE's nursing staff complies with Article 10(3) of the Regulation.

It is also necessary for the medical service to communicate information concerning food allergies to the dietician, childcare staff, coordinators and staff who distribute meals so as to protect the vital interests of the children. Information concerning serious illnesses are also communicated, with the parents' express consent, to the childcare staff so as to help them deal with situations, in particular in the event of emergency. Since the dietician, childcare staff, coordinators and the staff distributing the meals are also the recipients of medical data received by the medical service, the EDPS recommends that they should be subject to an equivalent obligation of professional secrecy in order for Article 10(3) of the Regulation to be complied with. This could, for instance, be achieved by means of a special reference in or an amendment to the contract of employment, or a special privacy statement signed by the staff.

3.4. Processing including the personal or identifying number

Article 10(6) of the Regulation states 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 of officials and other staff concerned is collected and processed as part of the process of compiling the enrolment file for their child; Article 10(6) of the Regulation therefore applies. In this instance, the Commission's use of the staff number is reasonable because it is a means of facilitating the processing task. There is therefore no need to establish other conditions under which the Commission may process the identifying number.

3.5. 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) of the Regulation).

The OIL is the controller of the processing operations within the meaning of Article 2(d) of Regulation (EC) No 45/2001. The OIL has entrusted management of medical data to the Commission's medical service in Luxembourg, which acts as processor. An agreement has been concluded between the OIL and the medical service to this end, setting out the processor's obligations regarding the processing of medical data on behalf of the OIL.

3.6. 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/or further processed. Given the information contained in the notification, the administrative data processed seem relevant and not excessive in relation to the purposes for which they are collected. However, as far as access by the CPE's childcare staff to certain administrative data processed on the Loustic application is concerned (languages, parents' contact details, person authorised to pick up children, etc.), the EDPS recommends that access for such staff be restricted solely for information which they need to know (for example, access to billing data does not seem relevant in this context).

The collection of data relating to the child's health (allergies, illnesses, vaccinations and medical certificate relating to contagious diseases) is necessary to establish whether or not the child is in a delicate physical state. That is important to enable the data recipients to monitor the child's health and take appropriate measures in the case of fragile health or a health problem, in accordance with the purposes of the processing. The aim is also to protect the health of the other children attending the day nursery or study centre, and to enable authorised staff of the day nursery and study centre to take appropriate measures (for instance, in the event of a contagious disease). The information collected in this context does not seem excessive in relation to the purpose of the processing. The EDPS therefore considers that Article 4(1)(c) of the Regulation is complied with.

Furthermore, data must be "*processed fairly and lawfully*" (Article 4(1)(a) of the Regulation). 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 3.10 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*". We are dealing here with administrative data and health data. The EDPS welcomes the fact that purely medical data are only updated by the staff of the medical service, while the accuracy of the administrative data is guaranteed by the staff managing the day nursery and study centre. The arrangements for exercising rights of access and rectification are examined in section 3.9 below.

3.7. Data storage

The general principle set out in Regulation (EC) 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).

The notification indicates that data relating to relations with parents, incidents/accidents, teaching/activities and relations with the European School are kept for five years. Files relating to the child's administrative data and medical file are kept for ten years then transferred to the historical archives. Medical files are kept for ten years then transferred to the historical archives.

With regard to the information communicated, the EDPS considers that the periods for keeping administrative files and medical files seem excessive in relation to the purpose of the processing operations, which mainly concern a child's attendance during a given school year. The EDPS recommends that shorter storage periods be adopted according to the need for the data and the files ². The storage of certain data regarding payment and/or incidents until the end of the statutory period of limitation in the case of disputes or lawsuits may be justified, while the storage of data concerning enrolment and the medical file does not seem useful beyond the end of the school year, unless the child re-enrols the next year. If the child's enrolment is refused, the EDPS considers that the enrolment file may be kept for the current school year in case the service managing the CPE should find that it can in fact offer the child a place during the course of the year. The EDPS would issue a reminder that both administrative and medical data must be erased as soon as a file is closed and is no longer necessary for the intended purpose. For instance, in respect of medical data, transferring the documents from the medical file to the child's GP when the child has left the day nursery or study centre could be contemplated.

Article 4(1)(e) of the Regulation also stipulates: "*the Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes*". The CPE produces various statistics, such as the number and type of incidents, based on the storage of data identifying the data subjects and the incidents. In order to ensure compliance with Article 4(1)(e) of the Regulation, the EDPS recommends that all data stored for statistical purposes should be anonymous.

3.8. Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of the Regulation, which relates to the transfer of personal data within or to other Community institutions or bodies.

² 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.

We are dealing here with transfers within the same institution, as the PMO and the medical service are Commission services, and the staff in charge of security comes under ADMIN D.S.1.

In accordance with Article 7(1) of the Regulation, whether the transfers are necessary for the performance of tasks covered by the competence of the recipients should be checked.

The transfer of administrative data to the PMO is necessary for good administrative management and for billing and, in the light of the information supplied, seems to satisfy the conditions of Article 7(1) of the Regulation. As for access by security staff to the Loustic application to check the names of persons authorised to pick up children, the EDPS recommends that it be restricted solely to information they need to know in that context (such as the name of the child and the name of the authorised persons).

The transfer by the medical service to the staff of the day nursery and study centre of some information from the medical files (in particular regarding allergies) seems justified in that it is intended to supply members of staff with the information strictly necessary to protect the children's health, and therefore satisfies the conditions of Article 7(1) of the Regulation.

Article 7(3) of the Regulation provides that "*the recipient shall process the personal data only for the purposes for which they were transmitted*". The EDPS recommends that the recipients be reminded to process the data exclusively for the purposes for which they were transmitted.

3.9. Right of access and rectification

Article 13 of the Regulation establishes a right of access to personal data – and the arrangements for exercising it – upon request by the data subject. Article 14 of the Regulation allows the data subject a right of rectification.

The controller of the processing has provided for parents to exercise the right of access to administrative data on the spot by means of a request to the secretariat; they may request rectification of the data on that occasion. Third parties authorised to pick up the children have the same rights of access and rectification of the data concerning them; it is up to the parents to inform them of these rights. The EDPS would issue a reminder that in accordance with Article 13(c) of the Regulation, the right of access must enable the data subject - in this case, the parents and third parties authorised to pick up the children - to obtain communication in an intelligible form of the data concerning them or concerning the child over which they exercise parental responsibility and who is the data subject of the processing operations. Exercise of the right of access should include the possibility of obtaining a copy of such information without constraint, without delay and free of charge. It must also be possible to exercise the right of rectification on simple request to the controller of the processing.

As far as access to the medical file is concerned, the parents may access medical data concerning their child by contacting the medical staff. A copy of the documents may be sent, with the parents' consent, to the child's GP. The EDPS is satisfied that measures are in place to guarantee the parents' right of access to the medical file and to obtain a copy of it through their GP. The EDPS nevertheless recommends that the information note indicate the details of the contact point in the medical service to which requests to exercise the right of access and rectification should be addressed. The EDPS recommends that the right of rectification be fully guaranteed and that parents be able to rectify data concerning the health of their child upon presentation of medical evidence. This could apply for instance with a view to rectifying

information concerning allergies or illnesses communicated to certain members of the day nursery and study centre's staff, which may contain errors or be out of date.

3.10. Information to the data subject

Articles 11 and 12 of the Regulation 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 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 the present case, some of the data are collected directly from the data subject and others from other persons.

Article 11 (*Information to be supplied where the data have been obtained from the data subject*) on the information to be given to the data subject applies in this case insofar as the parents, acting on their own behalf and as legal representatives of the children, provide the information themselves as part of the procedure for admission to the day nursery or study centre. 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 trusted persons who may be contacted in the event of an emergency are supplied by the children's parents.

Two separate declarations of confidentiality have been adopted by the OIL, one relating to data processing in the Loustic application and the other to processing of children's medical files. These declarations of confidentiality are available on the OIL Intranet site.

Both declarations contain all the information required by Articles 11 and 12 of the Regulation. Nevertheless, to reflect the information contained in the notification, the PMO should be added as a recipient of data processed in Loustic. The EDPS would point out that the CJEC, the Ombudsman and the EDPS can also be data recipients. The EDPS also recommends that the arrangements for exercising the right of access and rectification be amended in the two declarations in accordance with the recommendations made in section 3.9 above. The storage periods indicated in the declarations must also be amended to take into account measures implemented further to the recommendations made in section 3.7 of this opinion.

Lastly, in order to safeguard the rights of the parents, who are not necessarily both officials and one of whom may therefore not have access to the OIL's intranet site, the EDPS recommends that the information notices be communicated by any other means enabling both parents to be informed (for instance, a paper copy placed in the enrolment file, or the notices displayed or made available at OIL premises, etc.).

3.11. Processing by a processor

Where a processing operation is carried out on behalf of the controller, 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.

The agreement signed between the OIL and the Commission's medical service in Luxembourg contains a number of measures intended to implement Article 23 of the Regulation, thus satisfying the conditions of Article 23 of the Regulation.

3.12. Security measures

Under Article 22 of the Regulation, which concerns the 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*".

On the basis of the information available, the EDPS has no reason to believe that the Commission has not respected the security measures required by Article 22 of the Regulation.

Conclusion:

The proposed processing operations would not appear to involve any breach of the provisions of Regulation (EC) No 45/2001, provided that account is taken of the observations made above. This implies, in particular, that the OIL should:

- make sure that all recipients of medical data are subject to an obligation of secrecy equivalent to professional secrecy in accordance with Article 10(3) of the Regulation;
- in accordance with the principle of data quality, restrict access to the Loustic application by the day nursery and study centre's childcare staff solely to information which they need to know;
- adopt separate storage periods for administrative and medical data and files according to the specific need for the data and files, at the end of which the data must be erased;
- only keep data for statistical purposes based on anonymous or encrypted data;
- in the context of transferring data to other Commission services, allow security staff access to the Loustic application only for information which they need to know in order to check the names of persons authorised to pick up children;
- remind all data recipients to process data solely for the purposes for which they were transmitted;

- guarantee data subjects' rights to obtain a copy of the administrative data concerning them without constraint, without delay and free of charge, and the right to have them rectified on simple request;
- guarantee parents' right to have data relating to their child's health rectified upon presentation of medical evidence, and provide the details of the contact point to which requests to exercise the right of access and rectification of medical data should be addressed;
- modify the declarations of confidentiality relating to processing in the Loustic application and to the medical file in accordance with the recommendations made in sections 3.10, 3.9 and 3.7 of this opinion, and communicate them by all possible means with a view to informing both parents.

Done at Brussels, 29 September 2009

[Signed]

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor