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Brussels, 1 July 2014
GB/XK/sn/D(2014)1414 C 2012-0419
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Subject: Notification for prior checking concerning the processing operation ‘*Management of the administrative and financial files of interinstitutional (after-school and outdoor) crèches and childcare facilities by the OIB*’, Case 2012-0419

Dear Ms López Ruiz,

The EDPS thanks you for the notification received under Article 27(3) of Regulation (EC) 45/2001 (‘the Regulation’) regarding the ‘*Management of the administrative and financial files of interinstitutional (after-school and outdoor) crèches and childcare facilities managed by the Office for Infrastructure and Logistics (OIB)*’ case¹.

As a reminder, on 27 July 2007, the EDPS issued an opinion on the notification by the Commission regarding the ‘*Management of interinstitutional crèches and childcare facilities carried out by the OIB*’ (Case 2007-0148). According to that notification, the Commission’s OIB manages interinstitutional crèches and childcare facilities, whereas each institution is responsible for organising the enrolment and invoicing.

In the light of that notification, the EDPS considers that the legal analysis concerning personal data processed by *the OIB* for the purpose of managing interinstitutional crèches and

¹ The OIB was created by a Commission decision of 6 November 2002. The mission of the OIB is to ensure the implementation of all actions connected with the accommodation of personnel, the management of social infrastructure and the logistics of the Commission.

childcare facilities, including medical care for children attending crèches and childcare facilities, is covered by its Opinion of 27 July 2007 (Case 2007-0148).

In addition, in accordance with the facts, the Crèche and Childcare Facilities Service of the Council's Welfare Unit, in the case of *interinstitutional crèches*, collects no personal data other than the enrolment form²; the Council therefore collects no medical data for the purpose of that procedure. It follows that the processing of data relating to interinstitutional crèches is not likely to present risks within the meaning of Article 27(2)(a) of the Regulation.

In contrast, in the case of *after-school and outdoor interinstitutional childcare facilities*, the Council collects enrolment forms and medical forms submitted by parents. That is why, in its present opinion, the EDPS will focus on the data processed by the Crèches and Childcare Facilities Service of the Welfare Unit of the Council GS ('the C&C Service') in the context of after-school and outdoor interinstitutional childcare facilities.

Facts

According to the notification, the purpose of the processing in this case is for the **administrative management** of documentation relating to the children of officials and employees of the Council who are to be enrolled or are enrolled in interinstitutional childcare facilities managed by the Commission's OIB. That documentation relates to the information necessary to determine the hours the child will attend, the parental contribution and the appropriate childcare for the child, taking into consideration any medical factors and access control for persons authorised to drop off or collect children.

According to Article II.B of the after-school childcare facilities rules, 'the application for admission must be accompanied by the enrolment form and the medical form.' Moreover, according to Article II.A.2 of the outdoor childcare facilities rules, 'the enrolment form must be accompanied by a duly completed medical form'.

Therefore, the OIB, in its communication to parents, asks them to send the enrolment form with the medical form by e-mail to the OIB and to forward a copy to the competent service of the institution where they work (in the present case, the Council). However, the Council has confirmed that the administrative management of the documentation relating to children (the tracking of enrolments and the control of invoicing, so far as it is concerned) would not require the processing of the medical form but only that of the enrolment form and the parents' payslip.

Among the data requested on the registration form, parents must also provide the full names of at least two trustworthy persons who can collect the child, including their home address, phone numbers (office and mobile) and national identity card number.

The managers of the C&C Service keep the *medical forms* only on paper. Following a question from the EDPS about the storage period of *medical forms*, the Council replied that since they form an integral part of the enrolment file, they are destroyed at the same time as the enrolment file, in other words five years after the Parliament grants discharge for the budgetary year in which the child leaves.

² Moreover, according to Article VIII of the interinstitutional crèche rules, children are admitted only after the paediatrician attached to the crèche has carried out a medical examination by appointment on behalf of the medical service of the Commission crèches (see Case 2007-0148).

An information note will be published on the Council's Domus intranet site. No reference is made therein to the collection of medical forms.

Whether or not there are grounds for prior checking:

The question that arises in this case relates to the specific risks that the processing is likely to present in the light of Article 27(2) of the Regulation and therefore whether the processing should be subject to prior checking by the EDPS or not.

According to the notification, the processing may present risks within the meaning of Article 27(2)(a) of the Regulation, since the manager needs data on the health of the child, first, to protect the group (vaccinations) and, secondly, in case of medical problems directly relating to the child. In addition, it is stated that the processing operation is for the purpose of excluding individuals from a right, benefit or contract (for example, the family situation for the allocation of places) and therefore Article 27(2)(d) is cited.

The purpose of the part of the processing of personal data under the responsibility of the Council is in fact limited to monitoring the enrolment of children in childcare facilities and invoice management. It is not responsible for the medical care of the child in the childcare facility and the protection of other children from contagious diseases; that part of the processing operation is actually the responsibility of the OIB (see above for more information). It follows that Article 27(2)(a) is not a relevant legal basis for making the processing operation subject to prior checking.

As regards Article 27(2)(d), the EDPS emphasises that the processing operation is not intended to exclude children from the right to be admitted to childcare facilities, but to assess the parents' family and financial situations with a view to their children's admission and then to manage the administrative supervision of children attending the childcare facilities. Article 27(2)(d) of the Regulation is therefore not applicable in this case.

Nor is the processing operation intended to evaluate the competence, performance or conduct of parents or children, so Article 27(2)(b) of the Regulation cannot justify prior checking.

Nor is Article 27(2)(c) of the Regulation a relevant legal basis, because it is not a processing operation allowing linkages not provided for between data processed for different purposes.

Therefore, the EDPS concludes that the processing operation in this case should not be subject to prior checking.

Notwithstanding this decision, the EDPS highlights practices that do not appear to comply with the Regulation and proposes relevant **recommendations** in that regard to the Council.

1) 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*'. It is therefore necessary to verify that the data are related to the purpose of the processing operation for which they are processed.

The EDPS questions the need to collect medical forms. The responsibility of the C&C Service of the Council is to manage enrolments and control the invoicing of parents; medical care for

children in childcare facilities is not one of the tasks of the Council. Therefore, the medical forms are not required for the Council's mission and, accordingly, for the purpose for which they are collected. The EDPS therefore recommends that the Council no longer collect medical forms, and this is in accordance with Article 4(1)(c) of the Regulation.

2) Data storage

The general principle set out in the Regulation 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).

Because the collection of medical forms is excessive, storage is also unnecessary. The EDPS recommends that the Council destroy all medical forms it has retained to date in order to comply with Article 4(1)(e) of the Regulation.

3) Information to be given 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 mandatory items and other optional ones. 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, apart from data provided by parents directly to managers of the C&C Service of the Council (Article 11), the data of trustworthy persons (name, surname, phone number and national identity card number) are also collected from the C&C Service through the children's parents and, accordingly, Article 12 is applicable.

An information note will be published on the Council's Domus website. The EDPS notes that it contains most of the items listed in Articles 11 and 12 of the Regulation, with the exception of the information concerning trustworthy persons. In that regard, the EDPS recommends that the Council state in the information note that parents undertake to inform the trustworthy persons in question.

Since the processing operation has already taken place, the EDPS recommends that this information note be published as soon as possible on Domus and that it is also attached to the enrolment forms so that the Council ensures that the data of the data subjects is processed fairly, in accordance with Articles 11 and 12 of the Regulation.

2) Security

Since the medical forms are not necessary in the light of the purpose for which they were collected, the EDPS recommends that the managers of the C&C Service do not print and therefore do not store those medical forms. This is an organisational measure, within the meaning of Article 22 of the Regulation, intended to respect the confidentiality of medical data by preventing unauthorised access to those data, insofar as the managers do not need to know them ('*need-to-know principle*') in order to carry out their functions.

In the light of the foregoing, the EDPS invites the Council to send the EDPS the updated notification and the information note, as well as other relevant documents showing that its recommendations have been implemented, within three months from receiving this notice.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Massimo PARNISARI, Head of Unit, Welfare Unit, DGA1 B ADMIN