

Opinion on the notification for prior checking received from the Data Protection Officer of the European Commission on the "Management of the activities of the Medical Service in Brussels and Luxembourg, in particular via the SERMED computer application"

Brussels, 10 September 2007 (Case 2004-232)

1. Procedure

By letter received on 21 February 2007, the Commission's Data Protection Officer (DPO) drew up a notification within the meaning of Article 27 of Regulation (EC) No 45/2001 on the "Management of the activities of the Medical Service in Brussels and Luxembourg, in particular via the SERMED computer application" (Case 2004-232). This processing operation features on the list of operations subject to prior checking submitted to the European Data Protection Supervisor (EDPS) in 2004. The notification was sent together with a number of documents, including:

- the relevant extracts from the Staff Regulations,
- the SERMED manual,
- Annex 1 to notification DPO-496, listing the data contained in SERMED and DREC;
- Annex 2 to notification DPO-496, DREC basic fields,
- a SERMED table – "reporting" module,
- a declaration of confidentiality concerning the computer tools used by the medical services.

In connection with this case, questions were put to the controller via the DPO on 16 March 2007. An answer was given on 26 June 2007.

In order to enable the DPO to provide the additional information and relevant comments, the opinion was forwarded on 26 July 2007. The controller forwarded his comments on 24 August 2007.

2. Facts

The medical services in Brussels and Luxembourg use the SERMED database to run their daily activities. This database supports the management of medical activities in the fields of preventive and occupational medicine as well as medical checks.

Responsibility for managing the data contained in SERMED lies with the heads of unit of the medical services in Brussels and Luxembourg.

SERMED is used to record specific information needed for the procedures carried out by the Medical Service, such as medical examinations, the administration of absences on medical grounds and check-ups, invalidity procedures and occupational accidents. This same information is sorted into lists for a specific period of time ("reporting" module).

SERMED also facilitates the monitoring of procedures by automatically generating the various notes and letters required for these procedures. As well as SERMED, the Brussels Medical Service uses an application for tracking requests for reimbursement for additional examinations (DREC) and other medical services.

2.1 SERMED

The SERMED database is used for:

- administering pre-recruitment medical examinations (VEs) and annual medical check-ups (VAs) within the framework of preventive and occupational medicine,
- recording periods of absence on medical grounds (absences with a medical certificate),
- recording cases of invalidity,
- recording occupational accidents,
- recording the results of medical checks.

Administration of pre-recruitment medical examinations (VEs) and annual medical check-ups (VAs)

SERMED is used to manage VEs and VAs. Administrative staff will record the factual data immediately prior to the recruitment of the person concerned as a new member of staff at the European Union, namely the dates of the examination, the medical centre where the examination took place and the status of the file following the examination (complete, incomplete), together with the individual's personal administrative information – name, staff number, date of birth, nationality, sex and place of employment. In cases where the individual is already a member of staff, the administrative data are imported via the SYSPER/SERMED interface. If the VA is performed outside the workplace, the name of the GP will also be recorded. Otherwise, the name of the doctor from the Medical Service will be selected from a preset list.

For its part, medical staff (nurses or doctors) record the data relating to the type of tests (ECG, blood, urine, hearing, eye, spirometric and other tests) conducted for VEs and VAs within the framework of preventive and occupational medicine. In addition, for VEs the Medical Service's administrative staff will record the result of the examination (fit/unfit, fit "with reservations"). Additional tests are listed in the "comments" box.

Moreover, SERMED is used to select individuals scheduled for a VA within a given period, so that the invitations to the VA can be dispatched to them.

Recording absence covered by a medical certificate

SERMED is used to record absences covered by a medical certificate. Whenever a medical certificate to cover an absence is sent to the Medical Service, the latter enters the dates of the period of absence, the name of the doctor issuing the certificate as it appears thereon, the "type of illness" (accident, illness, illness of a child, maternity, etc.), the field of specialisation of the doctor consulted (orthopaedic specialist, rheumatologist, psychiatrist, etc.) using the preset SERMED tables, and the individual's personal administrative information (name, staff

number, date of birth). If the certificate covers a medical appointment abroad, this is also mentioned in SERMED (as a *visite médicale à l'étranger*, or VME). A comment relating, for instance, to travelling time, may be entered for the attention of the leave administrator. Any refusal of the certificate by the Medical Service's doctor is entered into SERMED.

SERMED generates a certificate number, which is then written on the certificate by hand. The certificate is subsequently placed in the file managed by the examining doctor¹.

Recording cases of invalidity

A case of "invalidity" is recorded in SERMED by the Medical Service administrator in charge of cases of invalidity. This record contains the following data:

- name, staff number and date of birth of the person concerned,
- the date of commencement of the procedure (submission of the request for invalidity status),
- the date of the meeting of the Invalidity Committee,
- the names of the three doctors on the Invalidity Committee,
- the invalidity claim by the official,
- the outcome of the Invalidity Committee (fit = negative, unfit = OK),
- the date of the check-up and frequency of check-ups,
- a "comments" field (administrative data only),
- a field labelled "medical report request – doctor", used solely to insert the doctor's name into the standard letter to be sent to the person concerned, asking him or her to supply a recent medical report on his or her state of health,
- the "type of medical condition" (three-digit figure), recorded in the "cause of invalidity" field; this is used to generate "anonymous" end-of-year statistics containing two items of information:
 - the number of cases of invalidity per year, and
 - the type of medical condition (code for the "type of medical condition").

Recording occupational accidents

SERMED is used to record occupational accidents. In addition to personal administrative data (name, staff number, place of employment, etc.), the nursing staff enter factual data (such as the date of the accident), the medical data relating to occupational accidents (the nature of the accident, i.e. a fall, a burn, etc.), the physical elements involved (an escalator, for instance), the nature of the injury (such as a fracture or cut), and the location of the injury (for instance the cranial region or an upper limb). Each accident is identified by means of the codification system used in Belgian regulations on occupational accidents (four series of figures used as the standard means of identifying the nature of the accident, the physical elements involved, and the nature and location of the injury).

Management of check-ups

Check-ups using the aforementioned criteria are performed with the help of SERMED. In addition, SERMED is used to manage factual information on the various stages of the check-up process ("management of check-ups" module).

The letter of invitation to undergo a check-up is generated by the application.

¹ This is not the data subject's medical file, but rather the doctor's file in which periods of absence owing to illness are recorded. Once a staff member's employment has been terminated (on grounds of retirement, invalidity or death), the examining doctor's file is added to the medical file proper in the Medical Service archives.

In addition to the administrative data which are downloaded automatically from SYSPER to SERMED (staff number, name, date of birth and place of employment), when registering a check-up the examining doctor or his or her secretariat enters the following factual data:

- the dates of the check-ups,
- whether or not the individual attended the check-up and, if not, whether he or she cancelled the appointment,
- the name of the examining doctor,
- the person who arranged for the check-up,
- the decision of the examining doctor (fit/unfit, absence justified/unjustified, date on which work to be resumed (where absence unjustified), unfit to work before ... (where absence justified),
- two "comments" boxes to be ticked by the examining doctor as appropriate, namely "problem at workplace" or "invalidity procedure" (where that procedure needs to be launched), and
- one "comments" box in which the examining doctor places information enabling him to monitor the absence (i.e. his or her own notes, plus references "certificate approved", "decision of examining doctor confirmed by arbitration" or "medical certificate validated by arbitration"). A request has been made for access to these boxes to be restricted to the examining doctor alone.

Once the result of the check-up has been entered, SERMED can be used to generate automatically and print the note setting out the examining doctor's decision for the Human Resources Department (HRD).

Any arbitration request by the subject of the check-up is recorded in SERMED. Likewise, SERMED is updated so as to show the result of the arbitration.

When an entry is created, the administrative data of the individual who is the subject of the entry (staff number, surname, first name, place of employment, sex, nationality and date of birth) can be downloaded via a "SYSPER2/SERMED" interface (by inputting his or her staff number or surname). In all these entries, the personal administrative data in SERMED come from SYSPER2. SERMED cannot be used to create a new entry for a person not registered in SYSPER2, except in the case of pre-recruitment examinations, where SERMED generates a temporary identification number and subsequently, if that person is recruited, replaces it with his or her official staff number as a new member of staff (via the SYSPER2/SERMED interface).

Through this interface it is also possible to access data in SYSPER2 that staff members may, and indeed must, update immediately using the online "HRMforms" – i.e. their "private" administrative data, such as their home address and telephone number. SERMED draws on this information when generating letters of invitation (to check-ups for absences owing to illness or for cases of invalidity, for instance).

The "reporting" module

SERMED also has a "reporting" module which can produce lists containing relevant data relating to a given period of time for use by the various administrators.

The list of VAs is used to compare the list of individuals invited to undergo a VA against those people who actually attended their VA. The list gives, by institution, the staff number,

name, institution, office address, telephone number and date of visit of each individual. It also serves as a means of establishing invoicing for the various institutions and bodies for which examinations have been performed and billing services.

The list of ongoing invalidity procedures serves as a back-up for tracking procedures. In addition to the name of the institution/centre and of the individual employed there, the list contains the latter's date of birth, the date of commencement of the procedure and the individual's home address for any mail. Another list identifies persons with invalidity status so that they can be invited to attend check-ups. It contains the same data.

The list of persons to be invited for a check-up on resuming work serves as a means of monitoring those individuals who, on taking up their duties after a VE, will be required to pay a visit to the Medical Service to discuss a specific problem detected during the VE. The list contains administrative data, plus the type and date of the VE.

The list of medical certificates by DG or by sickness code for absences owing to illness can be sent to the HRD leave administrator once a week so as to keep the leave situation of the person concerned up to date. In addition to administrative data, this list includes the type of sick leave (accident, maternity leave, breast-feeding leave, serious illness of a child, serious illness of a spouse, treatment abroad and so forth), the start and end dates of the leave as set out in the certificate and, where applicable, refusal of the certificate. The daily tracking list for medical certificates is a support tool to monitor absences for special leave on medical grounds.

The daily tracking list for special cases and for half time owing to illness is a management tool to monitor absences owing to illness. In this case, in addition to administrative data, the list generated by SERMED displays, for each individual, the date on which the length of absence owing to illness has reached 20 days, the total number of days' absence owing to illness amassed over the past three years (with a view to initiating an invalidity procedure if need be), the total number of days' absence owing to illness amassed over the previous two months – a total which, by definition, is equal to or greater than 20 days – and the type of medical certificate (half-time sick leave, etc.).

The list of long-term absences owing to illness is a management tool to monitor absences owing to illness. Besides administrative data, the list generated by SERMED displays, for each individual, the date of the most recent medical certificate applicable and the end of the temporary incapacity period (with the end of this period postdating the end of the observation period recorded as a selection criterion), the total number of days of absence owing to illness amassed over the past three years (with a view to initiating an invalidity procedure if need be), and the total number of days of absence owing to illness amassed over the previous two months on the date on which the observation period ended.

Besides administrative data, the list of occupational accidents for a period displays, for each individual, the date and nature of the accident, the physical elements involved, and the nature and location of the injury.

2.2 DREC

The DREC application contains the data used to track requests for reimbursement of visits to a GP or additional medical examinations requested as part of an annual or pre-recruitment medical.

Responsibility for managing the data contained in this database lies with the head of unit of the Medical Service in Brussels. No such application is in place for the Commission's Medical Service in Luxembourg.

DREC is a table into which entries can only be made manually, and which contains:

- o the name of the official concerned,
- o the name of the specialist, laboratory or hospital in which the examinations were carried out,
- o where the services involve an invalidity committee, the names of the doctors on that Invalidity Committee (IC),
- o the type of examination,
- o the amount to be paid for the examination and/or the IC doctors' fees and the date of payment,
- o the file in which supporting documents have been placed. The files are stored in a locked cupboard in the Brussels Medical Service's accounting department.

2.3 Other information from the notification

Information to be given to the data subject

A declaration of confidentiality has been published on the Commission's Intranet site. The declaration contains information on the purposes of the SERMED database and DREC application; the identity of the controller; the data collected by SERMED and for DREC; the data recipients; data protection measures; the means by which the data subject may verify, amend or remove data; the period for which data is stored; contact details for requesting information, and the option of recourse at any time to the European Data Protection Supervisor.

Individuals who are at the recruitment stage and do not have access to the Commission's Intranet site will receive a copy of the declaration of confidentiality at the pre-recruitment medical exam.

Rights of data subjects

The personal administrative data that SERMED downloads directly from SYSPER2 may be amended under the terms provided for by the SYSPER2 administrator.

Information held on SERMED and directly input by the Medical Service can currently only be accessed via SERMED screenshots which refer to the person concerned. The SERMED development program will include a module making it easier to access such information.

Any justified and legitimate request concerning the factual content of the SERMED database (to correct errors or add information) may be sent to the head of the Medical Service in Brussels or Luxembourg in writing.

DREC data can be accessed via a screenshot of the spreadsheet relating to the person concerned. Any justified and legitimate request concerning the factual content of the DREC application (to correct errors or add information) may be sent to the head of the Medical Service in Brussels.

Data retention

The length of time that data are held in SERMED depends on how long medical files are kept, i.e. for 30 years after termination of service at the Commission.

In the case of persons exposed to carcinogens or mutagens, files are kept for 40 years after the last exposure incident (General Regulation for the Protection of Workers, Belgium, Article 16, occupational medical services).

According to information received from the controller, data stored in DREC are kept for 7 years.

Recipients

Only the Medical Service's medical officers and their secretariat can access the SERMED data of relevance to them; they can access the data in either browsing or editing mode, depending on their responsibilities.

As part of the VE, the administration (HRD) receives a document from the SERMED database stating whether or not the patient is fit to work, a copy of which is kept in the medical file. In respect of VAs, the invitation to the VA is generated using SERMED and sent to the person concerned.

To help monitor invalidity, invitations or requests for medical documents are generated using SERMED and sent to the persons concerned.

To help administer the monitoring of periods of absence covered by a medical certificate, weekly lists containing the details of the person concerned and the start date and length of absence are drawn up and sent to the leave administrator for information.

In the context of check-ups, two documents are generated by SERMED:

1. the invitation to the check-up, sent to the person concerned;
2. the opinion of the examining doctor on the grounds for absence owing to illness, which is provided to the person concerned, with a copy sent to the relevant HRD. A further copy is kept on the examining doctor's file, with a third copy placed in the medical file of the person concerned.

The information contained in DREC can only be accessed by staff of the Medical Service's accounting department.

In addition, some administrative or factual information held in SERMED (dates of check-ups or examinations) and DREC (date of payment, name of doctor) may be temporarily made available to:

- (a) the Legal Service, to allow it to prepare a defence in the event of an appeal before the Civil Service Tribunal; or
- (b) judges of the Civil Service Tribunal, at their request; or
- (c) the European Ombudsman, at his request.

[...]

3. Legal aspects

3.1 Prior checking

The SERMED database and the DREC application as described in the notification received by the DPO on 21 February 2007 relate to processing of personal data ("any information relating to an identified or identifiable natural person" – Article 2(a)). The data processing in question is carried out by an institution in the exercise of activities which fall within the scope of Community law (Article 3(1)).

Since the SERMED database is automated, Article 3(2) is applicable in this case.

The processing therefore falls within the scope of Regulation (EC) No 45/2001.

Article 27(1) of Regulation (EC) No 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.

Under Article 27(2)(a) of the Regulation, the "processing of data relating to health" is subject to prior checking as a processing operation likely to present such risks. Data relating to health includes not only medical data in the strict sense of the term, but also any data providing an indication of a person's state of health. The SERMED database undeniably contains "data relating to health".

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

SERMED is a management tool for various procedures relating to pre-recruitment medical exams, annual medical exams, check-ups on absences owing to illness and the invalidity procedure. These procedures are subject to separate prior checking by the EDPS².

Notification from the DPO to the Commission was received on 21 February 2007. Under Article 27(4) of the Regulation, the EDPS had to deliver his opinion within two months, i.e. by 22 April 2007 at the latest. Taking into account the 141-day suspension (102 days + August + suspension for comments), the EDPS had to deliver his opinion by 10 September 2007 at the latest.

3.2. Legal basis and lawfulness of the processing operation

The lawfulness of the processing operation should be scrutinised in the light of Article 5(a) of Regulation (EC) No 45/2001. Article 5(a) provides that the processing operation may be carried out only if "*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...*". In this regard, Recital 27 of the

² See opinions 2004-225, 2004-226 and 2007-125 respectively.

Regulation also states that "*Processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies*".

The medical services in Brussels and Luxembourg use the SERMED database to run their daily activities. This database supports the management of medical activities in the fields of preventive and occupational medicine as well as medical checks. Thus the SERMED database is a management tool for the institution for procedures established under the Staff Regulations as adopted pursuant to the Treaties.

More specifically, these procedures concern pre-recruitment medical examinations (Articles 33 and 59 of the Staff Regulations³); absences owing to illness, applications for special leave owing to illness and checks on absences owing to illness (Article 59 of the Staff Regulations⁴); invalidity (Articles 59(4) and 78 of the Staff Regulations and Articles 7,8 and 9 of Annex II thereto⁵); and occupational accidents (Article 73 of the Staff Regulations⁶).

The legal basis thus supports the lawfulness of the processing.

3.3. Processing of special categories of data

Under Article 10 of the Regulation, the processing of personal data concerning health is prohibited unless grounds can be found in Article 10(2) and (3) of Regulation (EC) No 45/2001. As stated above, the case in hand clearly relates to the processing of personal data on health.

Article 10(3) applies in this instance: "*paragraph 1 (prohibition on processing health data) shall not apply where processing of the data is required for the purposes of (...) 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*". As stated earlier, SERMED supports the management of medical activities in the fields of preventive and occupational medicine. Only medical officers and their secretariat may access SERMED. The doctors are bound by the obligation of professional secrecy. For their part, staff of the Medical Service secretariat are bound by a duty of confidentiality by virtue of Article 17 of the Staff Regulations. This duty differs from the obligation of professional secrecy to which health professionals are bound, notably to the extent that the persons concerned have not received specific training on the detailed aspects of this obligation in the same way as those persons bound by the Hippocratic oath. With this in mind, and given the particularly sensitive nature of the information contained in SERMED, the EDPS would like them to be specifically reminded of their duty of confidentiality.

3.4 Data quality

Data must be "*adequate, relevant and not excessive*" (Article 4(1)(c) of Regulation (EC) No 45/2001).

Overall, the EDPS is satisfied that only adequate and relevant data have been input into SERMED. He would, however, make the following points:

³ Articles 16, 59, 60 and 91 of the Conditions of employment of other servants (CEOS) apply to other staff members by analogy.

⁴ *idem*.

⁵ Articles 33 and 102 of the CEOS apply to other staff members by analogy.

⁶ Article 28 of the CEOS applies to other staff members by analogy.

As regards invalidity procedures, the notification from the DPO states that the "comments" field is for administrative data only. To ensure that this is the case, the EDPS would like this to be made clear to SERMED users.

The Medical Service defends the inclusion of a reference to the "specialisation of the doctor" who has issued the certificate as part of medical follow-up in a VA, for instance, or after a consultation at the request of the person concerned. According to the Medical Service, the medical officer who sees a person for a VA does not have access to that person's medical certificates, since they are kept in the examining doctor's files⁷. Thus SERMED provides him with access to the information on the certificate. The EDPS takes the view that a medical certificate is submitted as a supporting document for an absence, not to provide medical supervision of the data subject. It follows, then, that periods of absence are the only relevant information required for inclusion in SERMED. The reference to the doctor's specialisation on the certificate is, therefore, irrelevant, especially since the specialisation may reveal information as to the data subject's state of health that the latter may not necessarily wish to share with the medical officer. The EDPS thus recommends that this information should not appear in SERMED.

The data contained in the DREC application comply with Regulation (EC) No 45/2001.

Under Article 4(1)(d) of the Regulation, personal data must be "*accurate and, where necessary, kept up to date*", and "*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.*" The procedure in place gives sufficient cause to believe that the data are accurate and kept up to date. The data subject has the right to access and the right to rectify data so as to render them as accurate as possible. We will return to this matter (see section 3.9 below on the right of access and rectification).

Lastly, the data must be *processed fairly and lawfully* (Article 4(1)(a) of Regulation (EC) No 45/2001). The matter of lawfulness has been reviewed above. Given the sensitivity of the subject, fairness is an issue which warrants considerable attention. It is linked to the information to be given to the data subject (see section 3.8 below).

3.5 Data retention

The length of time that data are held in SERMED depends on how long medical files are kept, i.e. for 30 years after termination of service at the Commission. In the case of persons exposed to carcinogens or mutagens, files are kept for 40 years after the last exposure incident (General Regulation for the Protection of Workers, Belgium, Article 16, occupational medical services).

Although it is right for the data in SERMED to be held for the same length of time as medical files, the EDPS would refer to his comments on this matter in his opinion on medical files (2004-225). Data retention periods ought to be set in such a way as to reflect the nature of the medical documents and the requirement – legal or otherwise – to store data. He would point out the need to limit the length of time for which data relating to persons who have not been recruited are stored.

Data stored in DREC are kept for 7 years. The EDPS is satisfied that this retention period is justified, by virtue of Article 49 of the Regulation implementing the Financial Regulation.

⁷

See footnote 1.

Under Article 4(1)(e) of the Regulation, data may be stored for a longer period than is required for the purpose for which they have been collected, and especially for statistical use, provided that they are kept either in anonymous form or, if that is not possible, with the identity of the data subject encrypted. The data contained in SERMED are not used for statistical purposes.

3.6 Transfer of data

The processing operation should also be scrutinised in the light of Article 7(1) of Regulation (EC) No 45/2001. The processing covered by Article 7(1) is the transfer of personal data within or to other Community institutions or bodies *"if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient"*.

This case concerns a transfer within a single institution, with certain data or documents taken from SERMED and sent to the Administration (HRD or leave administrator) or to the accounting department.

In some exceptional cases, administrative data may be made available to the Legal Service in the event of an appeal before the Civil Service Tribunal, to judges of the Civil Service Tribunal or to the Ombudsman, at his request.

Care should therefore be taken to ensure that the conditions of Article 7(1) are fulfilled; this is indeed the case, since the data collected are needed to carry out the processing and, furthermore, are *"necessary for the legitimate performance of tasks covered by the competence of the recipient"*. In this case, the task is the responsibility of the various Commission departments. As regards the transfers, only relevant data must be transferred. Therefore this transfer is indeed lawful, insofar as the purpose is covered by the competences of the recipients. Article 7(1) is therefore duly complied with.

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"*. There should be an explicit assurance that no individual receiving and processing data can use them for other purposes.

The EDPS is of the opinion that transfers in exceptional cases to other parties such as the Legal Service in the event of an appeal before the Civil Service Tribunal, to judges of the Civil Service Tribunal or to the Ombudsman, at his request, are fully in compliance with Article 7.

The EDPS would point out that he himself may be considered a data recipient under Regulation (EC) No 45/2001. For instance, pursuant to Article 33 (*Complaints by Community staff*) or Article 47(2)(a), he is entitled to gain access from the controller or Community institution or body to any personal data and any information he needs for his inquiries.

3.7. Processing including the staff or identifying number

The staff numbers of data subjects are kept in SERMED. The main purpose of a staff number is to provide a link between SYSPER2 and SERMED and thus draw on administrative information. In this case the use of an identifier is, in itself, no more than a legitimate means of facilitating the task of the controller. That said, such use may have important repercussions, which is why the European legislator decided to regulate the use of such identifiers or personal numbers under Article 10(6) of the Regulation. Here, it is not a case of establishing the

conditions under which the Commission may process the staff number, but rather of drawing attention to this point in the Regulation. In this instance, the Commission's use of the staff number is reasonable because it provides a better means of identifying data subjects correctly.

3.8 Information to be given to the data subject

Articles 11 and 12 of Regulation (EC) No 45/2001 provide that the data subject must be informed where his or her personal data are processed and lists a series of specific items of information that must be provided.

Article 12 (*Information to be supplied where the data have not been obtained from the data subject*) applies in this case, since the information is collected from the different participants in the process (staff at the Commission's Medical Service) and SYSPER2.

The EDPS is satisfied with the publication, on the Commission's Intranet site, of a declaration of confidentiality and with the fact that individuals who are at the recruitment stage and do not have access to the Commission's Intranet site can receive a copy of the declaration at the VE. The declaration states the identity of the controller, the purposes of the database and DREC application, the categories of data processed, the recipients of the data, the existence of a right of access and the arrangements for exercising it, the length of time for which data are stored, and the right to have recourse to the EDPS.

The EDPS considers that the declaration complies with the requirements of Regulation (EC) No 45/2001 with regard to information for the data subject.

3.9 Right of access and rectification

Article 13 of Regulation (EC) No 45/2001 establishes a right of access – and the arrangements for exercising it – at the request of 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.

The personal administrative data that SERMED downloads directly from SYSPER2 may be amended under the terms provided for by the SYSPER2 administrator. The EDPS therefore insists that it be possible to amend data in SYSPER2.

Information held on SERMED and directly input by the Medical Service can currently only be accessed via SERMED screenshots which refer to the person concerned. The EDPS welcomes the fact that the SERMED development program is to include a module making it easier to access such information.

The EDPS is satisfied that the right of access in relation to the DREC application is being upheld, insofar as DREC data can be accessed via a screenshot of the spreadsheet relating to the person concerned.

Article 14 of Regulation (EC) No 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.

Any justified and legitimate request concerning the factual content of the SERMED database (to correct errors or add information) may be sent to the head of the Medical Service in Brussels or Luxembourg in writing. The same applies to the factual content of DREC. Bearing in mind the specific nature of medical data, and given that the accuracy or completeness of such data is difficult to guarantee, the EDPS is of the view that the Regulation has been complied with.

3.11 Security measures

In accordance with Article 22 of Regulation (EC) No 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"*.

The EDPS considers that Article 22 has been complied with as regards the SERMED database and the DREC application.

Conclusion:

The proposed processing operation does not appear to infringe the provisions of Regulation (EC) No 45/2001, provided that the comments made above are taken into account. This implies in particular, that the Commission:

- should specifically remind those persons with access to SERMED of their duty of confidentiality, given the particularly sensitive nature of the information contained in SERMED,
- make it clear to SERMED users that the "comments" field should contain administrative data only,
- remove the reference to the doctor's specialisation on the medical certificate in SERMED,
- keep the EDPS abreast of the establishment of a module to make it easier to access information relating to the person concerned.

Done at Brussels, 10 September 2007

(signed)

Peter HUSTINX
European Data Protection Supervisor