



European Migration Health Database in the light of the GDPR

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General Data Protection Regulation

REGULATION (EU) 2016/679
of the European Parliament and of the Council of 27 April 2016
on the protection of natural persons with regard to the processing of
personal data and on the free movement of such data, and repealing
Directive 95/46/EC (General Data Protection Regulation)

Territorial scope

GDPR Art. 3 (1)

- This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

This means...

- ...any database containing health data is under the scope of the GDPR regardless of the data subjects' nation or country of origin.

Special categories of personal data

GPDR Art. 9 (1)

- **Processing of personal data revealing racial or ethnic origin**, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, **data concerning health** or data concerning a natural person's sex life or sexual orientation **shall be prohibited**.

Closed list of exceptions [Art. 9 (2)]

- the data subject has given **explicit consent** to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
- processing is necessary for reasons of **substantial public interest**, on the basis of **Union or Member State law** which shall be proportionate to the aim pursued, respect the essence of the right to data protection and **provide for suitable and specific measures to safeguard the fundamental rights and the interests** of the data subject;

Conditions for processing special categories of personal data

Closed list of exceptions [Art. 9 (2)]

- processing is necessary for the purposes of **preventive or occupational medicine**, for the assessment of the working capacity of the employee, **medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems** and services on the basis of **Union or Member State law** or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;
- processing is necessary for reasons of public interest in the area of **public health**, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of **Union or Member State law** which provides for **suitable and specific measures to safeguard the rights and freedoms of the data subject**, in particular professional secrecy;
- processing is necessary for archiving purposes in the public interest, **scientific or historical research** purposes or statistical purposes in accordance with Article 89(1) based on **Union or Member State law** which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for **suitable and specific measures to safeguard the fundamental rights and the interests of the data subject**.

Concluding remarks

Legitimate purposes

- Public health (protecting against serious cross-border threats to health)
- The provision of health care or treatment, the management of health care systems and services
- Scientific research or statistical purposes

Any measures

- Should meet at least one of the criteria of GDPR Art. 9 (2)

Legal bases

- Consent (freely given, specific, informed and unambiguous indication of the data subject's wishes for the processing of his/her personal data)
 - The voluntariness of the consent would be questionable
- Performing public task – legal regulation is needed

Concluding remarks

A Migration Health Database

- May only be based on Union or Member State law
- Which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject

Potential safeguards for public health purposes

- Data processing only by public bodies for **public health purposes**
- Potentially: EU level operation of the database, with single points in Member States
- Clear limitations on the categories of data collected
- Clear limitations on access (which body, for what purposes, etc.)
- Implementing data security measures, such as authorization control and logging
- Detailed procedure how to implement these safeguards
- Clear responsibilities for the actors
- Specified supervision regime by (data protection) authorities
- All other data protection rules (providing information, data subjects' rights, etc.)

What about other purposes?

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Thank you for your
attention!

