

Concluding remarks by the workshop on “Data protection and legal aspects”

1. Draft statement

In order to set up a European Migration Health Database, a clear legal basis is required, regardless whether the database would be truly European level or based on data-sharing between national databases. Legislation to establish such a database is necessary to meet the criteria for processing special categories of personal data (such as health data) as regulated in Art. 9 of the GDPR; this is necessary also in order to comply with the requirements emanating from the EU Charter of Fundamental Rights (Arts. 7-8) and the European Convention on Human Rights (ECHR, Art. 8).

The legal framework shall provide for suitable and specific measures to safeguard the rights and freedoms of the data subjects. These safeguards shall cover both the collection and transfer of as well as the access to personal health data in the European Union. The safeguards and measures applied by the regulations on the Schengen Information System, which also covers sensitive data, may provide good practice for regulating a European level Migration Health Database. Furthermore, the law of the European Union and the ECHR both require that the principles of non-discrimination and equal treatment be taken into account and adhered to in this context as well. It also needs to be clearly defined by law who the data subjects of any such database would be.

2. Further comments:

In case we are dealing with an EU-level database, the question arises whether the necessary EU legislative competence exists. In the view of the Workshop, such a legal act could theoretically be based either on a combination of Arts. 77-78 TFEU (migration and asylum), Art. 74 TFEU (administrative cooperation) and Art. 168 TFEU (public health); or in the alternative on Art. 352 TFEU (the flexibility clause).

If cooperation with international organisations such as UNCHR is envisaged, it should be borne in mind that these institutions also have their own data protection regimes, but these may differ from the requirements laid down by the GDPR.

As for the data subjects, the conceptual questions as to who the data subjects are, i.e. who are regarded as migrants shall be clearly laid down by law. Data collection can cover both ‘migrants and refugees’ – by utilizing such a formulation, disputes as to whether the term ‘migrants’ should for the purposes of such a database encompass ‘refugees’ can be avoided.