



Brussels, 17 January 2018

**EDPS Decision concerning the transfers of personal data carried out by the European Centre for Disease Control to the World Health Organisation pursuant to Article 9(7) of Regulation (EC) No 45/2001**

**THE EUROPEAN DATA PROTECTION SUPERVISOR,**

Having regard to Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>1</sup> ('the Regulation'), and in particular Article 9(7) thereof,

**Whereas:**

- (1) Under Decision No 1082/2013/EU<sup>2</sup>, Member States have to report cases of certain diseases to the European Centre for Disease Control (ECDC)<sup>3</sup>. Data subjects are not directly identifiable from the content of the notifications, which contain information about cases of certain diseases, but no obvious identifiers allowing re-identification by parties other than the originating authority of the reporting Member State. ECDC instructs Member States to remove all personal identifiers prior to submission to ECDC; any unique record identifiers must not be traceable to individuals by ECDC. Member States also report aggregate data to ECDC, which do not qualify as personal data, and which this decision does not address.
- (2) Under the International Health Regulations (IHR)<sup>4</sup>, States Parties have to report cases of certain diseases to the World Health Organization (WHO). All EU Member States are States Parties to the IHR. The content of such notifications to be submitted to the WHO is identical to the content of the notification to be submitted to ECDC. Notifiable diseases under the IHR are a subset of notifiable diseases under Decision No 1082/2013/EU.
- (3) ECDC notified its processing operations in this regard to the European Data Protection Supervisor (EDPS) for prior checking under Article 27 of the Regulation. The EDPS issued its Opinion on 3 September 2010, recommending among other points that ECDC ensure compliance with Article 9 of the Regulation when transferring personal data to recipients neither subject to the Regulation, nor to national legislation implementing Directive 95/46/EC<sup>5</sup>. All other recommendations made in the EDPS Opinion of 3 September 2010 have been implemented and are closed.

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<sup>1</sup> [OJ L 8, 12.1.2001, p. 1.](#)

<sup>2</sup> [OJ L 293, 5.11.2013, p.1.](#)

<sup>3</sup> [OJ L 142, 30.4.2004, p. 1.](#)

<sup>4</sup> World Health Organization, International Health Regulations (2005), third edition, [United Nations Treaty Series Volume 2509, I-44861.](#)

<sup>5</sup> [OJ L 281, 23.11.1995, p. 32,](#) as amended.

- (4) In the follow-up to the EDPS Opinion of 3 September 2010, ECDC informed the EDPS about a planned structural transfer of personal data to the WHO. The WHO, as an international organisation, is neither subject to the Regulation, nor to national legislation implementing Directive 95/46/EC. It also has not been the subject of an adequacy decision of the European Commission under Article 25 of Directive 95/46/EC.
- (5) Transfers of personal data from ECDC to international organisations not recognised as ensuring an adequate level of protection of personal data in the meaning of paragraphs 1 and 2 of Article 9 of the Regulation and which cannot be based on the derogations in paragraph 6, necessitate an authorisation from the EDPS under Article 9(7) of the Regulation.
- (6) The reporting of cases of certain diseases to the WHO under the IHR aims to promote global public health by preventing, protecting against, controlling and responding to the international spread of disease. Under its founding Regulation, ECDC shall among other tasks ‘provide timely information to [...] international organisations active within the field of public health’<sup>6</sup>. The announced transfers also aim at easing reporting burdens on Member States by forwarding to the WHO those notifications sent to ECDC that Member States are also obliged under the IHR to send to the WHO.
- (7) With a view to guaranteeing protection of personal data transferred to the WHO, ECDC has negotiated a set of data protection clauses for the transfer of personal data to the WHO in this context. These clauses notably contain a strong commitment from the WHO not to try to re-identify data subjects. They also contain rules on purpose limitation, information security and onward transfers. The IHR also contain rules on data subjects’ access rights vis-à-vis WHO.
- (8) As the transfer of personal data from ECDC to the WHO qualifies as structural, using the public interest derogation in Article 9(6)(d) of the Regulation would not be appropriate.
- (9) In line with the EDPS Position Paper on the transfer of personal data to third countries and international organisations by EU institutions and bodies<sup>7</sup>, transfers for which the safeguards are adduced in non-binding instruments, such as the one negotiated between ECDC and the WHO, require authorisation by the EDPS under Article 9(7) of the Regulation.
- (10) ECDC has provided the EDPS with a draft set of data protection clauses negotiated with the WHO.

HAS ADOPTED THIS DECISION:

#### Article 1

For the purposes of the present Decision:

- (a) **EDPS** shall mean the European Data Protection Supervisor;
- (b) **ECDC** shall mean the European Centre for Disease Control, established by Regulation (EC) No 851/2004<sup>8</sup>;
- (c) **WHO** shall mean the World Health Organization;
- (d) **IHR** shall mean the International Health Regulations;

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<sup>6</sup> Article 3(2)(c) of Regulation (EC) No 851/2004.

<sup>7</sup> EDPS Position Paper on the transfer of personal data to third countries and international organisations by EU institutions and bodies, 14.07.2014, available on the EDPS website at [https://edps.europa.eu/sites/edp/files/publication/14-07-14\\_transfer\\_third\\_countries\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/14-07-14_transfer_third_countries_en.pdf).

<sup>8</sup> OJ L 142, 30.4.2004, p. 1-11.

- (e) **Notifications** shall mean those reports sent to ECDC under Decision No 1083/2013/EU which Member States also have to notify to the WHO under the IHR;
- (f) **Data protection clauses** shall mean the clauses negotiated between ECDC and the WHO and provided to the EDPS;

#### Article 2

1. Subject to the conditions laid down in Articles 3 and 4 below, the EDPS takes note that ECDC has provided sufficient safeguards in respect of transfers of personal data contained in the notifications from ECDC to the WHO.
2. Transfers of personal data from ECDC to the WHO within the meaning of paragraph 1 are therefore authorised.

#### Article 3

ECDC shall enter into an arrangement with the WHO based on the Data protection clauses notified to the EDPS and annexed to this Decision.

#### Article 4

ECDC shall issue detailed instructions setting out the specific implementing rules concerning the transfers addressed in this Decision, with particular regard to the safeguards aimed at ensuring respect for the principles of necessity, proportionality and data quality in the processing of personal data.

#### Article 5

The EDPS may exercise the existing powers conferred under Article 47 of the Regulation, and in particular the power to impose a temporary or definitive ban of the transfers addressed by this Decision. Such powers may be exercised in particular where:

- (a) the EDPS or another competent data protection authority or court has determined that ECDC or the WHO is in breach of the applicable standards of protection; or
- (b) there is a substantial likelihood that the standards of protection are being infringed; or
- (c) there are reasonable grounds to believe that any of the conditions set out by the present Decision are not complied with.

#### Article 6

ECDC shall report on the implementation of this Decision on a regular basis, at least once a year.

#### Article 7

ECDC shall take all the measures to comply with this Decision and submit the first report to the EDPS in this regard within three months of the adoption of this Decision.

#### Article 8

This Decision is addressed to ECDC.

Done at Brussels, 17 January 2018

[signed]

Wojciech Rafał WIEWIÓROWSKI

Assistant European Data Protection Supervisor

Annex: Data protection clauses for arrangement between ECDC and WHO