



**European Commission
Directorate-General Justice
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Subject: Consultation on the Commission's comprehensive approach on personal data protection in the European Union

I – Introduction

The Council of European Dentists (CED) is the representative organisation of the dental profession in the European Union, representing over 327,000 practicing dentists from 32 national dental associations in 30 European Countries. Established in 1961 to advise the European Commission on matters relating to the dental profession, the CED promotes high standards of oral healthcare and effective patient-safety centred professional practice across Europe.

The CED welcomes this opportunity to comment on the Commission's comprehensive approach on personal data protection in the European Union in order to revise the Data Protection Directive of the European Parliament and of the Council of 24 October 1995 (Directive 95/45/EC). The CED would like to provide further comments on specific issues contained in Commission's Communication.

II – CED Response

a) 2.1.2 Increasing transparency

The CED supports the improvement of the relevant provisions on the information to be given to the data subject and on the data subject's right of access to such data, so as to render them easier to understand both for data controllers and data subjects (Articles 10 to 13 of Directive 95/45/EC). A clear and plain language should be used when introducing further obligations for data controllers. Moreover, the introduction of further obligations should always be accompanied by non-legislative measures, such as awareness campaigns in the print and electronic media, clearly spelling out data controllers' responsibilities as well as data subject's rights, as suggested by the Commission under point 2.1.4 of the Communication.



a) 2.1.3. Enhancing control over one's own data

The CED would like to express its concern on the so-called “right to be forgotten” in connection to the Commission’s intention to enhance the data subject control over his/her own data. In healthcare, the right of individuals to have their data deleted should be balanced against legitimate interests and obligations of healthcare providers to keep medical records including for purposes such as outside inspections, complaint procedures, identification of remains (from dental records) etc. In the context of e-medicine and e-records, the possibility for healthcare provider to retain information about the treatments provided should be maintained.

Specifically, the CED would strongly recommend that in the particular case of dental practitioners, dental x-rays should be kept by the treatment provider so as to allow them to prove the procedures that were carried out in the patient’s mouth, if challenged, with a high degree of certainty. This legitimate purpose, recognised under Article 7 (f), should not be overridden with the revision of Directive 95/45/EC.

b) 2.1.4 Raising awareness

The CED acknowledges the importance of awareness-raising activities on data protection and strongly supports co-financing of such activities via the Union budget. At the same time the CED would like to note that such activities are very time-consuming and costly and that any consideration of making them obligatory should be carefully considered so as not to create undue additional burdens on small and micro enterprises.

c) 2.1.6 Protecting sensitive data

The CED fully agrees with the classification of genetic data as a sensitive category of data and its explicit mention in the Data Protection Directive under Article 8.

The CED also supports the Commission’s intention to further clarify and harmonise the conditions allowing for the processing of categories of sensitive data. This should however not lead to decreasing the existing high standards of data protection which already exist at Member State level.

The CED would like to stress that the protection of all categories of health data should remain one of the priority areas of EU personal data protection policy as this area is set to present significant challenges in the near future, particularly considering the proliferation of e-medicine and e-Health applications. The entry into force of the Directive on the application of patients’ rights in cross-border directive might also result in greater need for transfer of health information between healthcare providers in different Member States. These developments all point to the need to strengthen the safeguards for health information to prevent abuse and disclosure to unauthorized third parties.

d) 2.1.7. Making remedies and sanctions more effective

The CED is of the opinion that extending the power to bring an action before national courts to data protection authorities and to civil society associations, as well as to other associations representing the data subject's interests would not render the sanctions more effective. In fact, this possibility would only increase the number of cases before the court, potentially blocking the judicial system.

The CED believes that only the data subject and/or the data protection authorities should have the legal capacity to bring an action before the national courts to avoid the proliferation of (unfounded) law suits.

e) 2.2.1 Increasing legal certainty and providing a level playing field for data controllers

The CED agrees with the Commission's intention for further harmonisation of data protection rules at EU level in order to diminish the divergence between national laws in the implementation of the Data Protection Directive and to ensure the free flow of personal data within the internal market.

f) 2.2.2 Reducing the administrative burden

The CED is of the opinion that the possible drawing up of a uniform EU-wide registration form would be a positive solution to simplify the current notification system to the supervisory authority (Article 18 of Directive 95/45/EC). The CED would support this measure if such form would reduce costs as well as administrative burden for data controllers.

g) 2.2.3 Clarifying the rules on the applicable law

The CED believes it to be very positive that the Commission intends to improve legal certainty on the existing provisions on applicable law in the case where the data controller is not established in the EU but provides its services to EU residents. The same degree of protection should be provided to EU data subjects regardless of the geographic location of the data controller.

h) 2.2.4. Enhancing data controllers' responsibility

The CED would like to stress that both mechanisms identified by the Commission to enhance data controllers' responsibility - the appointment of an independent Data Protection Officer and the obligation of carrying out data protection impact assessments when sensitive data are being processed - would not be feasible within small and micro-enterprises. These mechanisms would represent an administrative and financial burden not reasonable during a period of economic crisis such as the one Europe is currently experiencing. For that reason, the CED is of the opinion that the threshold to avoid undue administrative and financial burdens should be set to exclude dental practitioners in individual or small practices.

Furthermore, the CED would welcome clarification of the proposal to promote the use of Privacy Enhancing Technologies (PETs) and the concrete implementation of the concept

“privacy by design.” These should be executed on a voluntary basis and should not imply further costs, for instance by requiring the acquisition of new (and costly) software solutions.

i) 2.2.5 Encouraging self-regulatory initiatives

The CED shares the Commission’s point of view of encouraging self-regulatory initiatives by data controllers, namely the active promotion of codes of conduct. The CED believes that agreement on and adoption of codes of conduct should be developed by EU-level professional associations through self-regulation. They should contain principles in line with high standards of professional conduct and ethics which should be applicable to professionals throughout the EU, but should also take into account different cultures, traditions and needs of the public (in case of health professions, patients) in the various countries of the EU. Apart from complying with the EU-level codes of conduct, whether practicing at home or in cross-border practice, professionals working in another EU country should also familiarise themselves with the national code of that country and respect it.

The CED has adopted in 2002 and amended in 2007, against the background of Directive 2000/31/EC, its Code of Ethics for Dentists in the EU. One of the dentists’ key principles stated therein is to subscribe healthcare confidentiality, that is to say the fundamental right of patients to privacy and confidentiality of their health information; and the right to control access to and disclosure of their own health information. After the revision of the Data Protection Directive, the CED intends to review its own Code of Ethics in order to adapt it, if necessary, to the new Directive provisions. The CED Code is available in its entirety on the CED website (<http://www.eudental.eu/index.php?ID=2745&>).
