



AURE

Alliance of UK Health Regulators on Europe

AURE briefing

23 December 2009

Response to the European Commission consultation on the legal framework for the fundamental right to protection of personal data

The Alliance of UK Health Regulators on Europe (AURE) brings together the 10 health and social care regulators in the United Kingdom to work collaboratively on European issues affecting patient and client safety. Our purpose is to protect and promote patient safety through effective regulation and ensuring proper standards in the practice of health and social care.

In response to the European Commission consultation on the legal framework for the fundamental right to protection of personal data, AURE has produced the following statement. This is in complement to individual responses from AURE members.

Our response focuses on the key questions of relevance to AURE and is informed by the fact that the UK has, for many years, been a net importer of healthcare professionals, both from Europe and internationally. We have considerable practical experience of the regulatory implications of high levels of professional mobility. The UK undoubtedly benefits from this high level of mobility, receiving many dedicated professionals who contribute positively to health and social care in this country. Mobility however raises a number of challenges that the Commission's consultation presents an opportunity to address.

Please give us your views on the new challenges for personal data protection, in particular in the light of new technologies and globalisation

Most European healthcare professionals are highly competent individuals who make an important contribution to the health and well-being of European citizens and to safe, good quality, healthcare across Europe. Healthcare in Europe also benefits from health professionals being able to work and share their expertise in other European countries. However, there will always be a small minority who seek to exploit rights of free movement in order to evade regulatory control.

Regulators need access to information that assures them that health professionals registered in their jurisdiction, or seeking registration from another EEA Member state, are fit and safe to practise. Similarly patients across the European Union have a right to be confident that they will be treated by safe health professionals that are properly regulated and fit and safe to practise.

It is vital for patient safety that regulators exchange information, particularly when a

Protecting standards for patients and service users across Europe

AURE briefing

professional's suitability to practise is in question. Without this, professionals who have been judged unsafe to practise by one regulator may be registered to practise in another member state and put patients at risk.

The Directive on Recognition of Professional Qualifications 2005/36/EC already sets out that regulators must cooperate closely on information exchange¹ while respecting the personal data protection provisions of Directive 95/46/EC.

In your view, does the current legal framework meets these challenges?

The European Commission and Member State regulators must work together to facilitate the free movement of the competent majority, while protecting EU citizens against the small number of professionals who may put them at risk.

Since 2005 AURE has supported [Healthcare Professionals Crossing Borders](#) (HPCB), an informal network of healthcare professional regulators in the EEA, that has been working to develop voluntary information sharing solutions. The initiative has also informally established a model for proactive and reactive information sharing between regulators². Regulators across Europe have to date welcomed the HPCB initiative and engaged in developing and implementing its Agreements. The initiative has been successful in raising awareness among all healthcare regulators of the importance of effective information exchange between regulatory authorities in the context of Directive 2005/36/EC.

However our experience continues to show that the provisions of the Directive are open to varied interpretation based on national approaches to information management and privacy laws. Some regulators, for example, have expressed a desire to exchange information, but are impeded in the extent of that exchange because of national interpretations of data protection legislation.

Several cases of impaired healthcare professionals practising in a European jurisdiction after they have been stripped of their right to practise in another country have come to light and some have been brought to the attention of the European Commission in a number of questions tabled by MEPs in the European Parliament³.

¹ Article 56.2 of Directive 2005/36/EC on recognition of professional qualifications states: "The competent authorities of the host and home member states shall exchange information regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for the pursuit of activities..."

² Through the HPCB [Memorandum of Understanding on case-by-case and proactive information exchange](#).

³ Questions: [P-3434/09](#) tabled on 5 May 2009; [P-0690-09](#) tabled on 29 January 2009; [H-0350/08](#) tabled on 28 April 2008.



AURE briefing

These cases demonstrate that patient safety considerations may sometimes be overlooked as a result of interpretation of personal data protection legislation. They also highlight that it is imperative for competent authorities to be able to disclose, hold, request and act on full and up-to-date information about practitioners, such as simultaneous registrations, dual qualifications and registration and disciplinary history, and make this information available to other regulators. This is in line with Directive 95/46/EC which provides for the processing of data “necessary for the performance of a task carried out in the public interest” (Article 7) and disclosure where there is a public protection requirement (Article 13).

What future action would be needed to address the identified challenges?

The lack of consistent, proactive information exchange between regulators gives rise to a patient safety risk. The barriers to this are the diverse approaches to information exchange influenced by data protection legislation. Voluntary approaches provide some improvement but are inadequate in the context of data protection legislation and demonstrate the need for the European Commission to provide clarity as to when regulators should put patient safety ahead of data protection considerations and share information in a collaborative, efficient and transparent way. Guidance for healthcare regulators should be drafted to bring absolute clarity as to what personal information can be exchanged and with whom. It is also imperative that regulators have a responsibility to act on such information to make patient protection and public safety their paramount concern.

AURE calls on the European Commission:

- To clarify Directive 2005/36/EC on the free movement of personal data and to draft guidance for healthcare professional regulators about their rights and obligations with regards the exchange of personal data under Directive 95/46/EC.
- To establish a legal duty on regulatory authorities in Europe to reactively and proactively exchange disciplinary information about the health professionals they register⁴. A legal duty would ensure that patient safety is central to the free movement of health professionals in Europe.

⁴ To date the European Parliament has supported AURE’s call for an EU legal duty on regulatory authorities to exchange information. This has been adopted within the texts of the Braghetto opinion in the Employment and Social Affairs Committee (adopted on 2 March 2008), the Vergnaud opinion in the Internal Market and Consumer Protection Committee (adopted on 9 March 2009), and the Bowis first reading report on the draft Directive on patients’ rights in cross-border healthcare (adopted on 23 April 2009).



AURE

Alliance of UK Health Regulators on Europe

AURE briefing

- To explore whether the ad hoc Internal Market Information System (IMI), could be further developed to include more healthcare professions under its remit, and to allow for the systematic sharing of information between healthcare professional regulators in Europe on both a reactive and proactive basis. As an existing direct communication system, IMI could provide a secure and password protected direct communications tool between competent authorities which will satisfy those with data protection and privacy concerns. The alert system under the Services Directive⁵ provides a useful model for such a tool.

For more information about AURE's position please contact:

Anna Rowland, AURE Convenor

350 Euston Road

London

NW1 3JN

Tel: + 44 20 7189 5346

Fax: + 44 20 7189 5009

Email: arowland@gmc-uk.org

or visit: www.aure.org.uk

⁵ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market