



AURE

Alliance of UK Health Regulators on Europe

## AURE briefing

15 January 2011

### **Response to the public consultation on the Commission's comprehensive approach on personal data protection in the European Union**

1. 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.

2. In response to the public consultation on the Commission's comprehensive approach on personal data protection, AURE has produced the following statement. This is in complement to individual responses from AURE members and should be considered alongside our submission in December 2009.

3. 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.

#### *Enhancing the Single Market*

4. We welcome the Commission's intention to improve the harmonisation, implementation and enforcement of European data protection rules and support the strategy's aim to strengthen legal certainty.

5. Most European healthcare professionals are highly competent individuals who make an important contribution to the health and well-being of European citizens. However, safe and high quality healthcare depends on appropriate regulation, which in turn relies on regulators and patients having assurances that the health professionals registered in their jurisdiction, or seeking registration from another EEA member state, together with those providing services on a temporary or occasional basis, are fit and safe to practise.

5. In the context of Directive 2005/36/EC on the mutual recognition of professional qualifications, it is vital for patient safety that regulators exchange information,

**Protecting standards for patients and service users across Europe**



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particularly when a professional's suitability to practise is in question. If information is not shared efficiently and effectively a professional could be erased or suspended in one jurisdiction while continuing to practise in another – such a situation is a serious risk to patient safety.

6. Despite the development of voluntary information sharing agreements<sup>1</sup>, our experience continues to show that national approaches to information management, data protection and privacy laws, impede their full adoption and implementation. However, some European regulators have expressed a desire to exchange information, but are impeded in the extent of that exchange because of national interpretations of data protection legislation.

7. Several recent cases<sup>2</sup> 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 public, media, the European Commission and MEPs in the European Parliament<sup>3</sup>.

8. These 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).

9. AURE calls on the European Commission:

- a. To ensure coherence between the priorities for a revised data protection Directive and the review of Directive 2005/36/EC, in the interest of patient and public safety.

<sup>1</sup> Through the HPCB [Memorandum of Understanding on case-by-case and proactive information exchange](#).

<sup>2</sup> Please refer to the cases of Dr Marcos Ariel Hourmann (<http://www.bbc.co.uk/news/uk-wales-11750857>) and Dentist Ben Verlinden (<http://www.ad.nl/ad/nl/1015/Gezondheid-wetenschap/article/detail/524852/2010/10/27/Horrtandarts-boort-vrolijk-verder-in-Spanje.dhtml>)

<sup>3</sup> 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; [P-1112/10](#) tabled on 8 March 2010.



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- b. To ensure that data protection rules allow for the strengthening of information sharing as part of the review of Directive 2005/36/EC and support any future initiatives to encourage proactive information sharing, developed either in the context of the Internal Market Information System (IMI) or another instrument.
- c. To draft guidance to assist healthcare professional regulators in exchanging personal data in compliance with their rights and obligations under Articles 7 and 13 of Directive 95/46/EC.

### *Strengthening individuals' rights*

10. AURE members have statutory responsibilities to maintain registers of health and social care professionals who are safe and fit to practise in the UK. In light of public interest and patient safety, we may also hold information concerning past and present registration, including professionals no longer on the register for administrative or disciplinary reasons.

11. AURE believes that the strategy's aim to strengthen individual rights must be balanced with the need for public protection. The "right to be forgotten" must be proportionate and clearly defined to ensure data controllers are able to maintain any records required to protect the public and, in the case of health and social care regulation, safeguard patients.

12. AURE calls on the European Commission:

- a. To ensure the appropriate balance between individual rights and the protection of the public and we call on the European Commission to assess any new measures in the context of patient safety.
- b. To ensure that the "right to be forgotten" is proportionate and clearly defined. It should only apply to data no longer required to protect the public interest.

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