

eHN COVID-19 – Subgroup Joint Controllers
2020-09-09

Participants:

Commission Units: SANTE (B3, A1, A4), CONNECT (H2, H3)

Member States: CY, DE, DK, EE, ES, FI, FR, HR, IT, LT, LV, MT, NL, PL, PT, SE

Other attendees: SAP/TSI

On 9 September 2020, the fourth meeting of the eHealth Network subgroup of Joint Controllers took place to discuss the coordination actions pursuant to Implementing Decision 2020/1023/EU. The subgroup discussed in particular the Data Protection Impact Assessment (DPIA) for the EFGS, the onboarding procedure for participating in the EFGS as well as a draft application form to be submitted before joining the EFGS.

Agenda

- Governance of the subgroup: Appointment of Vice-Chair, and volunteers for core
- EFGS DPC/DPIA
- Onboarding procedure and application form
- Google app-less functionality

Meeting discussions

Governance of the subgroup

- DE volunteered as Vice-Chair. The eHN Joint Controller subgroup confirmed the appointment of DE as Vice-Chair.
- A core group in charge of the preparation of the onboarding procedure and the review of applications to join the EFGS is being set up. 2 representatives from PL volunteered to be part of the core group, as well as a representative from DE. NL will reflect on volunteering for the core group.

DPC/DPIA for the EFGS

- Feedback received in writing from FR on DPC/DPIA. PL supported FR comments on the strong statements made on anonymisation and impossibility to re-identify and the need to soften those statements.
- DK raised some questions regarding the setup with the joint controllers and the possible risks with using different legal base for the processing in EFGS. COM clarified that the joint controllers are jointly responsible for the processing in EFGS but they are not a distinct legal entity. While it would ideally be preferable for joint controllers to rely on the same legal basis, this is not possible in this case, as there is no harmonised legal basis for this processing in the EU. Each MS must ensure a legal basis for processing at national level and for processing in EFGS/sharing with other MS through EFGS. DK underlined the need to reflect in the DPIA that in case of invalidity of a legal basis in one MS, it would not always be possible to stop the processing in other MS (in particular due to the fact of not using the same legal basis for processing).

- DK asked how a recipient MS, handling data which were transmitted to EFGS on the basis of consent, can deal with such data when a user withdraws consent. COM underlined that DPIA explains that, in view of the specificities of the processing and the level of pseudonymisation applied in EFGS, there are some technical limitations as regards withdrawal of consent. Once the data is processed in EFGS, it is technically not possible to retrieve the relevant keys related to the individual having withdrawn consent. The withdrawal applies from the moment of withdrawal (no further sharing of data from that point) but there is technical impossibility to apply it retroactively to the data already shared through EFGS. The data will be deleted after 14 days. NL underlined that the MS has full control of the keys it sends to EFGS and full control on what it accepts from the EFGS. SAP/TSI provided further explanations on what is provided in DPC/DPIA in respect of the validity of the legal basis, and the importance of providing transparent information to users about these limitations.
- DE underlined the need for users to be informed of the processing in EFGS. IT explained that the basis for processing is the law which they will update to include processing in EFGS and that they will update the information document for users. COM supported that point and explained that SAP/TSI are developing a template notice for providing information on the processing in EFGS that could be used by all joint controllers. To increase transparency, the COM webpage will provide a link to the national privacy statements. MS to provide link to their privacy statement.
- Next steps: the comments provided by MS are to be reflected by SAP/TSI in a revised version of the DPC/DPIA, which will be circulated to the subgroup. The Chair noted that the discussion on the DPC/DPIA can be closed at this point. As it is a living document, the discussions can be resumed at a later stage when the need arises.

Onboarding procedure and application form

Changes to the onboarding procedure were discussed in the subgroup in particular:

- Reference to ‘Coronawarning system’ was changed to ‘contact tracing and warning mobile application’ in line with language in the Implementing Decision.
- Need to provide link/resource locator to the participating country privacy notice was added.
- Information on any deviation from the eHN documents and EDPB guidelines shall be provided by the participating country by filling in a survey to be included in Annex. The Annex should also include questions on data retention periods and further processing.
- The procedure was amended to specify that the off-boarding procedure may be triggered at the request of the eHN technical Working group. When issues are resolved, the participating country can undergo a simplified on-boarding procedure. The Joint Controller subgroup will be informed of the results.
- The revised version of the onboarding procedure will be sent to the eHealth Network for discussion and adoption today.
- The Joint Controllers core group will work on the Annex.

The Chair presented the draft Application form:

- There was a discussion on the scenarios for disconnecting a participating country from the EFGS. The scenario under point c) was reformulated to refer to a participating country that no longer fulfills the technical and security obligations. The subgroup noted that the eHealth Network technical subgroup or the EFGS may become aware of such technical issues. Changes to the onboarding procedure were discussed in this respect (see above).
- Comments on the application form should be sent until Friday COB. The document will then be adopted through written procedure.

Update on Google app-less functionality

- NL indicated that the app-less functionality is meant mainly for the US market. In the EU, it is up to the health authorities to make use of this functionality or not.

Actions

- MS to appoint volunteers for the core group to check the onboarding documents.
- SAP/TSI will update the DPC/DPIA in light of the discussions by Friday 11/09. COM will then circulate revised version of the DPC/DPIA to the subgroup.
- The onboarding procedure will be discussed for adoption at the eHealth Network meeting of 9 September at 15:00.
- MS to send written comments on the application form until Friday 11/09 COB.

Next meeting

The next meeting of the subgroup will take place on 16 September.