

# eHealth Network - COVID 19 - Legal aspects of contact tracing apps

2020-09-02

## Participants

Commission Units: SANTE (B3), CNECT (H2, H3)

Member States: CY, DE, FR, FI, EE, IE, MT, NL, PL, PT, SE, SK

## Summary

*Overall a very productive meeting of the eHealth Network on coordinated actions against COVID-19, following the work of the Joint Controllers, Piloting Community and Technical working groups. The eHealth Network adopted by consensus the updated technical specifications, following the approval of the feature change request. The Commission and SAP/TSI reported on the latest state of play in the EFGS and related matters, and the Member States reported on the state of play. The eHealth Network discussed the onboarding procedure and agreed to send comments by Friday 10 AM and submit the document for adoption in written procedure. The Commission reiterated its request to Member States to designate an organization to submit the application for the grants to adapt the national backends for the EFGS.*

## Agenda

1. Debrief from the Joint Controllers, Piloting Community and Technical working groups
2. Onboarding procedure to connect to the EFGS
3. State of play on apps
4. Feature change request and updated technical specifications
5. Status on the grants to connect to the EFGS
6. Request from FI – Recommendation to download of local app when travelling abroad
7. Invitation from DG REFORM – Seminar by DG REFORM on eHealth strategies

## Detailed discussion

### **1. Debrief from the Joint Controllers, Piloting Community and Technical working groups**

The Data Privacy Concept and the DPIA were presented to the **Joint Controllers** subgroup in the morning. The Member States participating in the Joint Controllers will provide comments to the European Commission and SAP/TSI. These comments will be taken onboard by the Commission and SAP/TSI and will be further discussed on the upcoming meetings of the Joint Controllers (09/09).

The Commission, requested by IE, clarified that Member States will need to update their national DPIAs to incorporate the elements related to the cross-border exchange of keys and connection to the EFGS. The Commission also clarified that the EDPB guidance defines the COVID+ keys as personal health data.

Additionally, the Joint Controllers discussed the onboarding procedure (see below) as well as the rules and governance of the group. Poland has offered to chair this group, which has been approved with the support of the other Members. The vice-chair(s) still need to be designated.

During the **Piloting Community**, the Member States reviewed the timeline for the EFGS. Given some issues in providing SAP/TSI access to the EFGS environments in the Commission's Data Centre, it was agreed between the Commission and SAP/TSI last Friday to postpone the go-live of the EFGS from 21/09 to 25/09 (effectively to 28/09). This would be the technical go-live with a limited number of frontrunner Member States. The majority of Member States would go live mid-October. The updated state of play in Member States is provided in the slides by SAP/TSI from the Piloting Community. For the dry runs, piloting countries need to be technically ready to go live with the EFGS.

The Piloting Community also discussed the harmonization of the application parameters. The presentation of the example by DE on how to deal with the country of interest feature in the front end was postponed to next week, due to lack of time during the meeting.

During the **technical working group**, SAP/TSI provided an overview of the implementation status for the EFGS and Member States shared an update of the uptake of their national applications. The group discussed the onboarding procedure further and discussed the topic of the latest updates by Apple and Google. Apple released the update allowing the contact tracing functionality to work without the need for an app. The current understanding is that public health authorities must be in control of the backend operations of the exchange of the keys. This was confirmed by Apple and Google to NL. NL reported that they completed a vulnerability report and reported it to Google and Apple. SAP/TSI indicated that they expect that Google and Apple continue to support the GAEN API and the national contact tracing apps without discrimination. This expectation should be communicated to Google and Apple as well.

## **2. Onboarding procedure to connect to the EFGS**

The Joint Controller Subgroup has requested additional time to work on it. The new deadline for comments is 04/09 at 10:00. The Commission and SAP/TSI will then review the documents and the comments and align internally. Member States agreed with the Commission's proposal that the applications to connect should be submitted through the eHealth Network representative.

The eHealth Network representatives discussed the revised document of the onboarding procedure. The onboarding procedure is divided into 4 steps:

1. Application by participating country
2. Approval of application by the eHN Joint Controller Subgroup
3. Operational Checkup and Technical Implementation
4. Formal conclusion of the On-/Off-boarding process to the EFGS

In Step 1, Member States need to show fulfilment/commitment with their legal obligations. The Commission requested the Joint Controllers to designate a core group of colleagues from the Joint Controllers to evaluate the applications (Step 2). There are a very short deadlines included in the procedure, as acknowledged by the Commission and the Member States, but this is necessary due to the short time for go-live with the first Member States (25 September). Step 3 includes the verification of the certificates and the technical implementation and testing.

The Commission will then align on the technical aspects with SAP/TSI and submit the document for adoption via written procedure.

## **3. State of play on apps**

The Member States reported the uptake of their applications during the technical working group. The latest numbers are available [here](#) (also attached); the status of Member States is available [here](#).

France indicated that they are still waiting for feedback from CNIL (French Data Protection Authority) before taking a decision as to whether to switch to the GAEN API for their national contact tracing application. The reply is expected by mid-September.

#### **4. Feature change request and updated technical specifications**

There was consensus on the feature change request for the certificate governance and the updated technical architecture. NL and FI provided suggestions for changes, which will be incorporated by SAP/TSI. On this basis, the eHealth Network adopted by consensus the update of the document. The Commission will proceed to update the detailed technical specifications document (with updates from SAP/TSI and including comments from NL and FI) on the official website of the eHealth Network.

#### **5. Status on the grants to connect to the EFGS**

Last week, the European Commission submitted an official request to the eHealth Network to designate the organization to whom to send the documents for the grants application. These grants are available for the Member States and EEA countries participating in the eHealth network to support the adaptation of their national backends to connect to the EFGS.

The Commission reiterated the request to Member States to send to the eHealth Network Secretariat the eligible organization in the Member State. It should be noted that the email address from the organization must be a corporate or functional mailbox (cannot be a personal email address).

#### **6. Request from FI – Recommendation to download of local app when travelling abroad**

FI raised the question of whether if a foreign person entering a country with no app should be recommended to install the local app by the host country authorities. FI clarified that their question refers to a voluntary use of the app, therefore it would only be a recommendation, not a conditionality in order to enter in FI. FI suggested that common guidelines are needed. This would be pertinent if the country of origin of the traveler has no app or its app is not interoperable.

The Commission clarified that if the apps in both countries are interoperable, the arriving traveler should not be requested to install another one. The receiving Member State should not ask for an app, as this goes against the voluntariness principle of these apps, and may conflict with the free movement of people.

Member States agreed that is in mainly a communication issue. MT raised that different languages may be a barrier for users to install local apps. IE explained that they will reduce the communication campaign at entry points recommending the installation of an app, once the EFGS is rolled out in the EU. FR explained that 90% of the success of an app is marketing. Therefore, it would be interesting to share communication plans/activities when marketing these apps.

Besides these questions, another question was raised: if a person is in another country, the app should suggest to follow the local health guidelines and/or to contact the local health authorities. The Early Warning Response System (EWRS) by ECDC allows exchanging contact tracing information, but it is currently not scalable and Member States have not shown much enthusiasm. CZ indicated that it will be very complicated to integrate foreign confirmation codes. NL explained that the solution might not be technical but organizational: the test result could be sent to a contact point who could incorporate the result into the contact tracing workflow. The Commission and Member States that we can come back to this discussion once the EFGS is up and running.

## 7. Communication on contact tracing apps and network of communicators

FR stressed the importance of mass media presence for the uptake of these apps (both nationally and at EU level) and called to exchange best practices on communication, the Commission explained that communication materials produced by it are available for Member States on the [Confluence website](#). The Commission will develop a webpage explaining the EFGS and data protection aspects (privacy statement, contact details of joint controllers etc.). The Member States indicated their willingness to create a forum for the communication teams of Member States and EU. The Commission requested Member States to designate contact points to create a communicators community. MT and FR showed interest in this.

*Action point:*

## 8. Request from REFORM: Seminar by DG REFORM on eHealth strategies

DG REFORM from the Commission explained that it offers technical support to Member States on reform plans, including on building digital health strategies. DG REFORM is organizing an online seminar on 15/09 (“Building survivable eHealth strategies”) where several Member States will participate, on digital health strategies and reforms (e.g. transformation of clinical workflows). PL and CY showed interest. The Commission requested Member States to send an email to our colleagues in DG REFORM if they would like to receive more information.

## Next actions

1. Member States will provide feedback on the Data Privacy Concept and the DPIA to the European Commission and SAP/TSI by Friday COB (04/09).
2. Member States will provide feedback on the Onboarding Procedure to join the EFGS to the European Commission and SAP/TSI by 10:00 Friday (04/09). The Commission will then align on the technical aspects with SAP/TSI and submit the document for adoption via written procedure.
3. The Commission will proceed to update the detailed technical specifications document (with updates from SAP/TSI and including comments from NL and FI) on the official website of the eHealth Network.
4. Member States will indicate to the Commission the organization to whom to send the documents for the grants application (to 5.1.5 [@ec.europa.eu](mailto:5.1.5@ec.europa.eu), cc: 5.1.5 [@ec.europa.eu](mailto:5.1.5@ec.europa.eu))
- Member States will indicate to the Commission the contact point on communication matters regarding the national contact tracing apps, ahead of the next meeting on 9/09.
5. Member States will send an email to our colleagues in DG REFORM (contact point: 5.1.2e [@ec.europa.eu](mailto:5.1.2e@ec.europa.eu)) if they would like to receive more information seminar by DG REFORM on eHealth strategies (15/09).

Email address of the eHealth Network Secretariat: 5.1.5 [@ec.europa.eu](mailto:5.1.5@ec.europa.eu)

## Attachments

1. Data Privacy Concept, DPIA and related documents – for comments
2. Draft roadmap for the Joints Controllers working group – for comments
3. Revised onboarding procedure – for comments

4. Slides from the Piloting Community with the latest state of play in Member States – for information
5. Excel file with the latest figures on the uptake of the contact tracing apps in Member States – for information
6. Updated technical specifications – for information
7. Change request documents (certificate governance) – for information
8. Chat

### Next meeting

9 September 2020 – 14:00-16:00 – eHealth Network Coordinated Actions – COVID-19