



19.2.2025

NOTICE TO MEMBERS

Subject: Petition No 0966/2024 by Isabelle Duchateau (Belgian), on behalf of Notre Bon Droit, on the ‘European Vaccination Beyond COVID-19’ project and its compliance with the General Data Protection Regulation

1. Summary of petition

The petitioner expresses her concerns with regard to the EUVABECO (European Vaccination Beyond COVID-19) project, which is financed by the European Union and aims to develop digital tools related to vaccination practices in the European Union. She mentions that, among the tools to be developed, are the digital vaccination card, the centralisation of health data and the integration of electronic health records. The petitioner considers that this project carries a risk of violation of the General Data Protection Regulation, including the principles of data minimisation, clarity of consent, data security, traceability of data usage, data sovereignty and the right to treatment limitation. She, therefore, calls on the European Union to set up a Data Protection Impact Assessment (DPIA) for each tool to be developed, an information and transparency obligation regarding data collection and use, the right to oppose data sharing for all citizens without leading to discrimination or social exclusion, free and unconstrained participation in the pilot project, to request data protection authorities to monitor the implementation of the EUVABECO project and its compliance with the General Data Protection Regulation, and finally to ensure the absence of obligation to hold a digital vaccination card in order to comply with the principle of free movement.

2. Admissibility

Declared admissible on 21 November 2024. Information requested from Commission under Rule 233(5).

3. Commission reply, received on 19 February 2025

The Commission's observations

The General Data Protection Regulation (GDPR)¹ sets the rules on the protection of personal data as well as the rights of individuals as concerns their personal data. The Regulation provides for all the necessary safeguards to protect personal data of individuals in the EU. It establishes a set of comprehensive rules for the protection of personal data, which apply directly to public and private organisations in the EU.

While the EUVABECO (European Vaccination Beyond COVID-19) project is funded by the European Commission's EU4Health program, the actual beneficiaries (i.e. the consortium's partners²) conduct the project and are therefore responsible for compliance with the GDPR and the applicable national data protection legislation whenever they process personal data throughout the implementation of the project.³

When it comes to the new digital tools to be developed by the project, about which the petitioner is concerned, it must be noted that the project's consortium has to design them in a way that they meet the principles of 'data protection by design and by default' enshrined in Article 25 GDPR. Recital 78 GDPR clarifies that "[w]hen developing, designing, selecting and using applications, services and products that are based on the processing of personal data or process personal data to fulfil their task, producers of the products, services and applications should be encouraged to take into account the right to data protection when developing and designing such products, services and applications and, with due regard to the state of the art, to make sure that controllers and processors are able to fulfil their data protection obligations." Consequently, one can mitigate the hypothetical risk alleged by the petitioner that those future digital tools would violate the GDPR if the project's consortium takes their responsibility seriously in terms of *building in data protection requirements throughout the design and development cycle* of the future digital tools.⁴

To the extent that the latter would process health data (in particular data concerning vaccination of citizens), it must be recalled that the processing of this type of special categories of data is authorised only if one of the conditions in Article 9(2) GDPR is fulfilled. This provides an additional layer of protection whenever sensitive data are processed.

Concerning the concrete requests expressed by the petitioner, she asks first that the Commission requires a Data Protection Impact Assessment (DPIA) for each tool that will be developed by the project. The Commission underlines that, in accordance with the GDPR risk-based approach, carrying out a DPIA is not mandatory for every processing operation; it is only required when the processing is "likely to result in a high risk to the rights and freedoms of natural persons" (Article 35(1) GDPR). More concretely, the circumstances in which a DPIA is mandatory are described in Article 35(3) GDPR and the European Data Protection Board (EDPB) has provided guidelines on this question. In the case at hand, it is for the respective controllers (the organisations which will be responsible for the operation of the future digital

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

² More information about the project's partners can be found on the project's website: <https://euvabeco.eu/partners/>

³ More information about the project's data processing activities can be found on the project's website: <https://euvabeco.eu/privacy-policy/>

⁴ [EDPB Guidelines 4/2019 on Article 25](#) provide general guidance on how to comply with the obligation of 'data protection by design and by default'.

tools) to assess if they are subject to the requirement of a DPIA considering the specific circumstances of the envisaged data processing activities.⁵

Secondly, the petitioner asks that European citizens are fully informed about how their data will be processed in the context of the project in line with Articles 12-14 GDPR. The Commission fully agrees that the project consortium, acting in its capacity as a controller in the sense of Article 4(7) GDPR, must take the necessary measures to comply with its transparency obligations stemming from Articles 12-14 GDPR. The same applies to the organisations that will act as controllers for the data processing activities necessary for the operation of the future digital tools.

Thirdly, the petitioner requests that European citizens have the right to object to the inclusion of their data in the future digital tools, without suffering from exclusion or discrimination. The Commission recalls that, according to Article 21(1) GDPR, the right to object can be exercised if the data processing is based on Article 6(1)(e) or (f) GDPR. Furthermore, Article 21(6) GDPR introduces some limitations to the right to object where personal data are processed for scientific or historical research purposes or statistical purposes. Consequently, the exercise of the right to object is not unconditional but conferred subject to those conditions and limitations.

Fourthly, the petitioner requests that the national data protection authorities monitor actively the implementation of the project, in cooperation with the EDPB, to ensure its conformity with the GDPR. The Commission highlights that the monitoring and enforcement of the application of the GDPR falls indeed within the competence of the national data protection authorities and courts, without prejudice to the competences of the Commission as guardian of the Treaties. Having regard to the GDPR cooperation and consistency mechanism, the national data protection authorities cooperate at the level of the EDPB on data protection matters of general application and the EDPB strives to foster the consistent interpretation of the GDPR. It is therefore the prerogative of the competent data protection authorities to monitor the project and cooperate with their counterparts.

Fifthly, the petitioner requests that citizens' participation in the pilot project is strictly voluntary and free of any pressure or constraints. The Commission stresses that the conditions for the processing of citizens' personal data in the context of the pilot project depends on the applicable legal basis under Article 6(1) GDPR. If it is consent, it must be freely given, specific, informed and unambiguous (Article 4(11) GDPR). In any event, in accordance with the 'lawfulness, fairness and transparency' principle enshrined in Article 5(1)(a) GDPR, the personal data "shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

Finally, as regards her last sixth request, the petitioner asks for guarantees that the future digital vaccination card would never become mandatory for travelling within the EU. In this context, it must be recalled that EU citizens and their family members have the right to move and reside freely within the EU in line with the Treaties⁶ and the Charter of Fundamental Rights.⁷ The conditions for the exercise of free movement rights are set out in the Free Movement Directive

⁵ Article 29 WP guidelines endorsed by the EDPB on [Data Protection impact assessments High risk processing](#) provide clarifications on the interpretation of the circumstances in which a DPIA is mandatory.

⁶ Article 21(1) Treaty on the Functioning of the European Union.

⁷ Article 45 Charter of Fundamental Rights.

2004/38/EC.⁸

The right to move and reside freely within the territory of the Member States is not absolute. Its exercise may be subject to limitations, as long as these are applied in compliance with the general principles of EU law and, in particular, the principles of non-discrimination and proportionality.

As stipulated in Article 27(1) of the Free Movement Directive, Member States may restrict the freedom of movement of EU citizens on grounds of public health. However, under Article 29(1) of that directive, the only diseases justifying measures restricting freedom of movement are diseases with epidemic potential that are classified as such by the relevant instruments of the World Health Organization (WHO), as well as other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.

Conclusion

The Commission considers that the ‘data protection by design and by default’ principles enshrined in Article 25 GDPR should, if complied with, dispel the petitioner’s concerns that the future digital tools to be developed by the EUVABECO project would violate the GDPR. Furthermore, in the view of the Commission, if the respective controllers comply with their other obligations stemming from the GDPR, notably the requirement of a DPIA (if applicable), the transparency obligations, the exercise of the right to object and the principle of lawfulness and fairness, the petitioner’s concerns will be sufficiently addressed. The monitoring of the compliance with those obligations is the responsibility of the competent national data protection authorities.

⁸ Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004, p. 77.