



ARISTOTLE
UNIVERSITY OF
THESSALONIKI



“Policies for Enhancing Access to Health Services in Deprived Areas: The Healthy Municipality”

co-funded by INTERREG V-A Cooperation Programme Greece - Bulgaria 2014 – 2020

Deliverable 3.2.2

PETROS STANGOS

Professor at the Law School of Aristotle University of Thessaloniki

Legal Opinion

Subject:

The respect for the applicable legal rules on the processing of specific categories of personal data (concerning health), from the questionnaire prepared within the framework of the research project "The Healthy Municipality"

1. The questionnaire prepared for the needs of the "Healthy Municipality" research project aims to collect information from respondents about their state of health. The applicable law on the collection by a third party (here, by the research program) of such information by the questionnaire method is the Regulation (EU) n° 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 (hereinafter General Data Protection Regulation, or GDPR). The GDPR is published in the Official Journal of the European Union, n°L 119/1 of 4 May 2016.
2. The first and foremost question to be answered in this legal opinion is whether this action (or the persons who carry it out), i.e. the collection of information on the state of human health in the form of this questionnaire, falls or not within the scope of the GDPR. If the answer to the first question is in the affirmative, then the second question is, according to the GDPR, what is the most important obligation to which the research program (or the persons who carry it out) is subject regarding the protection of the personal data of individuals who will have answered the questionnaire.
3. It should be noted that the Regulation (EU) n° 2016/679 is, in Greece, as in the territory of the other 27 Member States of the European Union, the only applicable law in the field of the protection of individuals with regard to the processing of their personal data. As the applicable law, the GDPR has primacy over the law of the Member States in case of conflict between them. Pursuant to the Article 288, second paragraph, of the Treaty on the Functioning of the European Union, any Regulation shall have general application, it shall be binding in its entirety and directly applicable in all Member States. The direct application (or the direct effect) of any Regulation means that any person having a legal interest in the application of the provisions of the Regulation may rely on them before a national court, in order that the national judge either abrogate or leave inapplicable the national act which he considers to be in conflict with the provisions of the

Regulation. In each of the two alternative issues, or alternatively in relation to both of them, the national judge has the jurisdiction to impose fines or other sanctions on the person responsible for the violation of the Regulation. This jurisdiction of the national court must be governed by the Regulation itself. This is the case with the GDPR, which contains detailed provisions on the various and rigorous sanctions that may be imposed on those who, by processing the data of the subject of such data, have been judged to have violated the GDPR.

4. There are two main prerequisites that an activity or act of collecting information relating to the personal situation of individuals falls within the *rationemateriae* scope of the Regulation (EU) n° 2016/679. First, the information must relate to personal data. Secondly, the collection should be a processing of this information. As far as the processing of personal data is concerned, pursuant to Article 4 (2) of the GDPR it includes any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as, first and foremost, collection, then recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. With regard to the definition of what is 'personal data', Article 4 (1) of the GDPR states that it is any information relating to an identified or identifiable natural person (a 'data subject'). An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
5. There is no doubt that the manager of the research project drafted the questionnaire in aiming to collect information on the health status of the respondents, so that he could then proceed to other processing operations such as, for example, recording and storing of data, organizing them, structuring, disseminating or otherwise making available etc. Taking also into consideration the definition of the data processing given in Article 4 (2) of the CPSD quoted above, both the drafting of the questionnaire and the use of the information to be collected and exploited are governed by the substantive provisions of the Regulation providing for the principles relating to processing of personal data (Articles 5 to 11), the rights of the data subjects (Articles 12 to 23) and the obligations of the controller and the processor of the data (Articles 24 to 43). Furthermore, the drafting of the questionnaire and its future use are governed by the Regulation (EU) n°2016/679 in accordance with Article 9 of the Regulation. This Article is entitled "Processing of special categories of personal data". According to paragr. 1 of this Article, the processing of personal data concerning, inter alia, health shall be prohibited. However, this prohibition does not apply where processing is necessary for scientific research purposes, as in this case (Article 9, paragr.

- 2(i) of the Regulation). Therefore, also in this respect, the drafting and use of the questionnaire fall under the substantive provisions of the GDPR.
6. Nonetheless, I appreciate that Regulation (EU) n° 2016/679 does not apply to this questionnaire, although it is intended to process information concerning human health for research purposes only. This is because the questionnaire guarantees the anonymity of the respondents. It does not require that the identity of the persons be disclosed, neither the name, nor the identity card number, nor any other information that would allow the controller and the processor to identify the persons (see Article 4, paragr.1 of the GDPR).
 7. However, despite the anonymity guaranteed by the questionnaire, it cannot be ruled out that the impersonal information gathered could be "transformed", as it was not required, into personal data. To avoid this, it depends on how the manager of the research project will seek that the questionnaire have to be responded by the stakeholders. If the questionnaire is answered anonymously in a public area by people who were there, I appreciate that the information to be collected will not be personal data within the meaning of Article 4 (1) of the GDPR. If, on the other hand, the questionnaire is filled in after the visits to the place of residence or the workplace of the respondents, the identity of these people (their name, for example) can be disclosed and, thus, the simple information on their state of health may become, in the strict sense, personal data. In the later case, if a data subject completing the questionnaire becomes aware, later, that the anonymity of the information has been circumvented, he may complain before a court that the controller or the processor has violated the GDPR. That is, they did not request the consent of the respondent for the processing of the data concerning him/her. Indeed, according to Article 6, paragr. 1 (a) of the GDPR ("Lawfulness of processing"), processing is lawful only if and as long as the data subject has given consent to the processing of his or her personal data for one or more specific purposes.
 8. Article 11 of the Regulation (EU) n° 2016/679 ("Processing that does not require authentication") refers to cases where information about personal status is collected for purposes that do not require the identification of the data subject. According to a wise interpretation of the GDPR (Handbook on European Data Protection Law, 2018, p. 115 et seq.), such is the case of the purpose of carrying out scientific research. However, paragr. 2 of Article 11 of the Regulation stipulates that the controller is able (in an unsolicited way) to demonstrate that it is not in a position to identify the data subject; the controller shall inform the data subject accordingly, if possible.
 9. Taking into account:
 - (a) that the Regulation (EU) n° 2016/679 does not apply to this questionnaire because of the anonymity of the respondents it guarantees, which prima facie excludes the identification of the respondents, and
 - (b) that the manager of the research project will proceed, in any case, to the processing of personal data collected for research purposes,

I appreciate that the manager of the research project, in his/her capacity as data controller, must make a commitment in accordance with Article 11, paragr. 2 of Regulation (EU) n°2016/679. This commitment must be included in the questionnaire in a prominent way so that the respondent to whom it is addressed can read it. The wording of the statement may be as follows:

Commitment

Pursuant to Article 11, paragr. 2 of General Data Protection Regulation n° 2016/679, the manager of the research project “The Healthy Municipality”, in his/her capacity of the controller of processing personal data, states that he/she is able to demonstrate that it is not in a position to identify the subject of the personal data listed in this questionnaire.

Sources :

- GeneralDataProtectionRegulationn° 2016/679
- Treaty on the Functioning of the European Union, 2009
- Handbook on European data protection law, Edited: European Union Agency for Fundamental Rights & Council of Europe, 2018 edition, Vienna, Strasbourg

Thessaloniki, 12 November 2018