ACRO

Data Protection Requirements in the Context of Applications for Clinical Research Approval in Ireland

Executive Summary

The National Office and NRECs require data controllers (Sponsors of clinical research studies) to complete a statement of compliance as part of an application for ethics committee approval of clinical research studies in Ireland. The basis for this requirement stems from the clinical trial regulations and the associated responsibility for national ethics committees of EU member states to review compliance with national requirements on data protection. The requirement has been developed by the National Office and NREC against a complex regulatory backdrop that involves the simultaneous application of clinical trial and privacy-related legislation.

The statement of compliance is a comprehensive declaration, requiring Sponsors to provide details in relation to data protection risk impact assessments, data protection safeguard measures, participant rights, and legislative compliance. In addition, it strongly advises Sponsors DPOs to engage directly with the Irish lead sites DPO with respect to data protection compliance.

In comparing the approach taken by the National Office and the NREC with the approach taken in other EU Member States (including Germany, France, Italy, and Spain), it is noted that others have elected to implement more simplified compliance statements from Sponsors or, in some cases, no statements at all. This is likely, in part at least, because under applicable EU privacy laws, the Sponsor as data controller is responsible for compliance, and the appropriate party to regulate, assess, and enforce compliance is the competent data protection supervisory authority.

Reviewing the content of the statement of compliance in the context of the regulatory landscape, expectations of the NRECs under CTIS Part II and the approaches taken by other EU Member States, it is apparent that the Irish status quo approach is relatively more complex, places additional burden on NRECs to assess privacy compliance aspects that should rest on Sponsors and data protection supervisory authorities, and it is being identified by various stakeholders in the clinical trial process as materially contributing to delayed timelines for study start up for Sponsors, and may contribute to reduced attractiveness of Ireland as a destination for clinical research.

In this paper, we have sought to outline the current approach and regulatory landscape, identify key areas for potential alignment with simplified approaches taken by other EU Member States, highlight the potential negative impacts the status quo has on Ireland as a clinical research destination, and propose suitable practical alternatives that the National Office and NRECs might consider.

NRECs Responsibilities to Review Data Protection-Related Aspects of Research Applications

Irish National Research Ethics Committees ("**NRECs**") currently review three types of research: clinical trials on investigational medicinal products, clinical investigations of medical devices, and performance studies of in vitro diagnostic medical devices. The scope of review of the NRECs is determined by EU Regulations in the areas of Clinical Trials of Investigational Medicinal Products (CTIMP) (EU No. 536/2014) ("**CTR**"), Clinical Investigations of Medical Devices (EU No. 2017/745), and Performance Studies of In Vitro Diagnostic Medical Devices (EU No. 2017/746).

The NRECs have a defined remit to ensure clinical research applications submitted for assessment are conducted to ethically safeguard the well-being, safety, and dignity of research participants. It is noted that it is the responsibility of data protection supervisory authorities to regulate data protection law.

For the purpose of the NRECs ethical assessment, the National Office and NRECs mandate completion by Sponsors of a Statement of Compliance as part of the ethics application documentation (Appendix 1) (the "**Statement of Compliance**").[1] The Sponsor is expected to provide a comprehensive single statement to the NRECs on: (i) legislative compliance; (ii) data protection risk assessment; (iii) participant rights; (iv) Sponsor and study site / clinical investigation site / clinical trial site/performance study site ("**Site**") Data Protection Officer ("**DPO**") engagement; and (v) Sponsor declaration of compliance with national and international data protection standards.

Regulatory Backdrop Informing the National Office and NRECs Procedural Requirements

In seeking to understand the National Office and NRECs approach to reviewing data protection aspects of clinical research applications, it is necessary to review the regulations and related guidance underpinning the position.

- **Declaration of Helsinki** – This declaration notes that "every precaution must be taken to protect the privacy of research subjects and the confidentiality of their personal information" and ethics committees must "take into consideration the laws and regulations of the country or countries in which the research is to be performed".

- **CTRs** – The national ethics committees of EU Member States concerned are responsible for evaluating Part II of the application for authorization for a clinical research study according to the CTR. The Clinical Trials Information System ("**CTIS**") is the online system for the regulatory submission, authorisation and supervision of clinical trials in the European Union and the European Economic Area.

[1] It is noted that an EMA template can be used instead of the NREC template. However, an EMA template for CTIS Part II data protection documentation does not exist.

- Initial Submission – Requirement for a statement of compliance by the Sponsor that data will be collected and processed in accordance with the GDPR ("**EU Statement of Compliance**"). This template statement of compliance is accessible here and in Appendix 2.
- CTIS Part II – Requirement of the competent EU Member State ethics committee to review compliance with national requirements on data protection. Per the EMA CTIS Sponsor Handbook, there is a placeholder for documentation illustrating compliance with national requirements on data protection. EU Member States have discretion on how to address this requirement. Importantly, this is optional and only required by some countries.

- **Regulation (EU) 2016/679 (General Data Protection Regulation) ("GDPR")** – The obligations below applicable to data controllers (i.e. Sponsors) are of particular relevance.
  - Article 9 and Recital 51 of the GDPR – Health data is considered sensitive or a special category of personal data under the GDPR and merit specific protections the context of their processing could create a higher risk to the fundamental rights and freedoms of data subjects.
  - Article 35 of the GDPR – Data controllers are required to conduct a Data Protection Impact Assessment ("DPIA") where personal data processing is likely to result in a high risk to the rights and freedoms of data subjects.

- **Data Protection Act 2018 (Section 36(2)) (Health Research) Regulations 2018 ("Irish Health Research Regulations")** – Ireland implemented regulations specific to the field of health research. The obligations below applicable to data controllers are of particular relevance.
  - Section 3(1) of the Irish Health Research Regulations – A controller who is processing or further processing personal data for the purposes of health research shall ensure that suitable and specific measures are taken to safeguard the fundamental rights and freedoms of the data subject.
  - Section 3(1)(c)(i)&(ii) of the Irish Health Research Regulations – Data Controllers must: (i) carry out a risk assessment of the data protection implications of the health research; and (ii) where the assessment carried out in clause (i) indicates a high risk to the rights and freedoms of individuals, carry out a DPIA.

EU Member States Approach to Fulfilling CTR CTIS Part II Data Protection Related Requirements

Most EU Member States either have no national requirement for a privacy statement of compliance or seek a statement of compliance that is more streamlined than the Irish approach. Such statements are generally limited to an acknowledgement that Sponsor will comply with applicable national data protection laws, similar to the EU Statement of Compliance template.

Below reflect a sample of the positions taken by EU Member States that are extremely active in the clinical research industry and have a strong track record for enforcement of privacy laws.[2]

[2] Written and endorsed by MedEthics EU in a paper entitled "Overview part II requirements in a CT application per MS" accessible here (accurate at the time of publishing).

- **Germany** – No national requirement for separate CTIS Part II document related to data protection. Germany simply relies on the statement of compliance issued as part of the CTIS Part I documentation.
- **Spain** – No national requirement for separate CTIS Part II document related to data protection.
- **Italy** - No national requirement for separate CTIS Part II document related to data protection.
- **France** – National requirement for a statement of compliance with one of the applicable reference methodologies (similar in substance to the CTIS Part I template). If the data processing proposed for a project is not in compliance with the applicable reference methodology, the Sponsor is required to seek authorization from the French data protection authority (CNIL) for the clinical research study.

National Office and NRECs Statement of Compliance Template and Procedural Requirements

Reviewing the content of the Statement of Compliance in the context of the regulatory landscape, expectations of the NRECs under CTIS Part II, and the scope of the National Office and NRECs authority, we have identified the following aspects of the Statement of Compliance and associated procedural requirements that may increase burden on Sponsors seeking to conduct clinical research in Ireland:

- **National and International Laws Compliance Declaration** – The Statement of Compliance requires Sponsors to declare that the processing for the study is compliant with the GDPR (Section 2 of the Statement of Compliance). Given that the Sponsors are already required to submit a statement to this effect as part of the initial CTIS submission, this additional declaration is perhaps unnecessary. The Statement of Compliance also requires the Sponsor to declare that all personal data being processed for the study shall be in accordance with all applicable international data protection legislation (Section 6 of the Statement of Compliance). Given that this requirement is based on international legislation, and the remit of the NRECs is limited to Ireland, the reference to international laws does not appear to be necessary.

- **Data Protection Risk Assessment Declaration** – The Statement of Compliance requires Sponsors to declare that they have conducted a data protection risk assessment for the study and provide details on the outcome of the risk assessment and data protection safeguards implemented for the study (Section 3 of the Statement of Compliance). In addition, the Sponsors' DPO is required to submit a related statement on these points (Section 5 of the Statement of Compliance). Legal obligations on the Sponsor as data controller relating to data protection risk assessments and associated DPIAs are already directly applicable to the Sponsors by virtue of the GDPR and the Irish Health Research Regulations. As highlighted by the National Office and NRECs themselves, the NREC is not responsible for regulating or enforcing compliance with data protection laws.

- **Participant Transparency Declaration** – Sponsors must declare that research participants are fully informed of their data protection rights and freedoms, through clear and unambiguous language within the Participant Information Leaflets and accompanying consent and/or assent forms (Section 4 of the Statement ofCompliance). Given the Participant Information Leaflets and accompanying consent and/or assent forms will be delivered to the NRECs for review as part of the application, allowing for NRECs ethical assessment, and given that Sponsors have directly applicable transparency legal obligations under the GDPR, this requirement is addressed elsewhere already.

- **Engagement with Lead Site DPO Declaration** – The NREC strongly advises the Sponsor DPO to engage directly with the DPO of the lead Site in Ireland to ensure the data processing operations, identified risks, and associated mitigating safeguards have been discussed in relation to the personal data that those sites are the Data Controller for. The designation of roles and responsibilities of Sponsor and site from a privacy perspective in Ireland is that the Sponsor is the data controller of the personal data contained within the study data, and the Site is the data processor of the personal data contained within the study data. It is acknowledged that the Site is independent data controller in respect of the participants´personal data in the medical record and to some extent the study data (e.g. to the extent the Site is fulfilling its independent legal and ethical obligations). In this context, engagement between the controller and processors' DPO is not a legal requirement under the GDPR nor the Irish Health Research Regulations, and based on the independent legal obligations of both parties under these laws, may present a conflict-of-interest risk and a joint controller risk. It should be noted that as data controller, the Sponsor will have rights to audit Sites´ compliance with data processor-related obligations in respect of the clinical research study under the GDPR and contract.

Potential Negative Impacts of the Current Statement of Compliance Template and Procedural Requirements

Considering the regulatory backdrop, the scope of the NRECs authority, the approach taken by other EU Member States and the aspects of the Statement of Compliance and associated procedure that may increase burden for Sponsors, the current approach may contribute to delays in study start up in Ireland and potentially negatively impact the attractiveness of Ireland as a destination for clinical research.

Workable solutions

Importantly, the National Office and NRECs have discretion on how to address the CTIS Part II data protection related requirement. It is important note that Sponsors are ultimately regulated by Data Protection Authorities and may need to evidence GDPR and national compliance via appropriate alternative channels e.g. to the Irish Data Protection Commission. Therefore, we would suggest that consideration is given to updating the current approach with a view to decreasing Sponsor burden and increasing the

attractiveness of Ireland as a destination for clinical research, while at the same time fulfilling the NRECs obligations and alignment with the approach taken in other large EU Member States.

We suggest that consideration is given to the retirement of the current Statement of Compliance in favor of an alternative solution. We have identified two practical and workable options that the National Office and NRECs might consider including:

1. Remove the national requirement for a separate CTIS Part II document related to data protection. This would align with the approach taken in Germany, Spain, and Italy.
2. Require a simplified statement of compliance with national data protection laws, acknowledging the requirement of the NREC to review compliance with national requirements on data protection. We would suggest that this mirrors the template used at the EU level to address the CTIS initial submissions requirement in relation to data protection, substituting reference to the GDPR with the Irish Data Protection Act 2018 and the Irish Health Research Regulations.

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Appendix 1: Statement of Compliance Template

National Research Ethics Committees (Ireland)[3]

'Statement of Compliance' Template for Data Protection Compliance

Instructions

- A 'Statement of Compliance' regarding data protection compliance is a mandatory component of the ethics application documentation for:
  - clinical trials of medicinal products (Clinical Trials Regulation EU 536/2014),
  - clinical investigations of medical devices (Medical Device Regulation EU 2017/745), and
  - performance studies of in vitro diagnostic devices (In Vitro Diagnostic Regulation EU 2017/746)
- This template has been developed by the National Office in consultation with the National Research Ethics Committees (NRECs) to assist Sponsors with informing the respective NRECs of data protection compliance and associated ethical considerations.
- Please consult with the National Office's guidance on the submission of a 'Statement of Compliance' for Data Protection compliance'

If using this template, please complete the following Sections to i) inform the NREC of the suitable and specific data protection measures in place to ensure the fundamental rights and freedoms of the research participants, ii) enable the NREC to consider any ethical aspects of data processing.

1. Trial / Investigation and Site Identification	
Clinical trial number	
Sponsor	
Title of trial / investigation	
Submission date	
Name of site	

[3] Ireland means the Republic of Ireland

2. Legislative Compliance

Tick all boxes that apply or otherwise comment as to why the statements set out below are not applicable.

☐ all applicable personal (including de-identified/pseudonymous) data will be processed in accordance with the General Data Protection Regulation (EU) 2016/679 (GDPR).[4]

☐ in the jurisdiction of Ireland, all applicable personal data (including de-identified/pseudonymous) will be processed in accordance with the Irish Health Research Regulations 2018[5], and as amended.

3. Risk assessment

Tick all boxes that apply or otherwise comment as to why the statements set out below are not applicable.

☐ an assessment of the data protection risks associated with processing personal data for the purpose of the study has been carried out in accordance with GDPR requirements.[6]

Describe the level of risk (ie high, medium, low) associated with processing personal data for the purpose of the study, that is being ethically assessed by the NREC.[7]

Describe the suitable safeguarding measures for processing personal data which will be implemented to mitigate against any identified risks or harms to participants rights, in accordance with all applicable data protection legislation.

Describe any ethical implications that may arise due to the level of risk associated with processing of personal data.

4. Participant Rights

Tick the box if applicable or otherwise comment as to why the statement set out below is not applicable.

☐ the research participants are fully informed of their data protections rights and freedoms, through clear and unambiguous language within the Participant Information Leaflets and accompanying consent and/or assent forms, as applicable.

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN
[5] https://www.irishstatutebook.ie/eli/2018/si/314/made/en/pdf
[6] https://www.dataprotection.ie/en/organisations/know-your-obligations/data-protection-impact-assessments
[7] https://www.dataprotection.ie/en/organisations/know-your-obligations/lawful-processing/special-category-data

5. Data Protection Officer (DPO) Engagement

Insert the Sponsor's DPO statement regarding the data protection risks and mitigating safeguards being implemented in accordance with all applicable data protection legislation.

Describe any engagement with and feedback from the DPO of the lead study site /clinical investigation site / clinical trial site / performance study site in Ireland. Such engagement is strongly advised to ensure the data processing operations, identified risks and associated mitigating safeguards have been discussed in relation to the personal data those sites are the Data Controller for.

5. Data Protection Officer (DPO) Engagement

On behalf of the Sponsor, and as a duly authorised representative, I declare that the information provided herein is accurate and all personal data being processed for the purpose of the study shall be in accordance with all applicable national and international data protection legislation and in accordance with best international ethical standards.

Print Name:

Sponsor:

Role:

Date (dd/month/yyyy):

Appendix 2: EU Statement of Compliance Template

Statement of compliance with Regulation (EU) 2016/679 (GDPR)

Sponsor	
Title of the clinical trial	
EU CT Number	

The sponsor declares that data have been and will be collected and processed in accordance with the General Data Protection Regulation (EU) 2016/679 (GDPR).

Date:

Name and surname[1] :

Role in the sponsor organisation :

[1] The CTR does not require signing individual documents in the clinical trial application – a request for signature could however be subject to national legislation.