# Joint Response to public consultation
# 'working document for research on biological materials of human origin'
# Ref: DH BIO/INF (2014) 3

**By the Patient and Ethics Council and the Patient Advisory Council of RD Connect, NeurOmics, EURenOmics in conjunction with the Interdisciplinary Scientific Committee of the International Rare Disease Research Consortium (IRDiRC) and Eurobiobank**

RD Connect: an integrated platform connecting databases, registries, biobanks and clinical bioinformatics for rare disease research, http://rd-connect.eu/

NeurOmics: integrated European project on omics research of rare neuromuscular and neurodegenerative diseases, http://rd-neuromics.eu/

EURenOmics: developing new and better therapies for rare kidney diseases, http://www.eurenomics.eu/

IRDiRC ISC: fostering international collaboration to produce new rare disease diagnostics and therapies, http://www.irdirc.org/

Eurobiobank: European network of DNA, cell and tissue banks for rare disease, http://www.eurobiobank.org/

## Background

Our area of interest is rare disease research. The scarcity and therefore elevated value of biological materials for research in rare diseases provides an argument for making use of all available materials, within a relevant ethical framework and subsequently the encouragement of international sharing of biological materials. This is an important consideration when recognising the right of people living with a rare disease to benefit from health care, prevention, and medical treatment.

## Introduction

The Recommendation by the Bioethics Committee correctly emphasises the right of autonomy of each (European) citizen and from this the subsequent duties of governments, public authorities, universities and private organisations to protect privacy and restrict access to personal sensitive data. However, the recommendations do not, in our view, fully reflect the significant rights of each citizen to health and prevention of illness, through health research. In particular we would like to emphasise that, with regard both to autonomy rights and rights to health care, broad consent should be the favoured procedure for prospective sampling and for previously collected samples,

re-consent, opt out or no re-consent(with approval from an ethical review board) should be the options considered.

It should be recognised having participants specify the types of research their samples can be used for is not in the best interests of scientific progression. Participants in rare disease research recognise that there is an element of solidarity in their actions and also that they may benefit from unrelated research in the future. This potential crossover of benefit can not be anticipated and it is important not to unduly restrict research to particular disease boundaries.

Alongside this we would encourage improved transparency as per Recommendation 20 as well as better on-going contact between researchers and participants through the use of information and communication technologies.

We respond firstly in order of priority highlighted by the Council's specific request for comments on Articles 13, 12, 14, 17(4), 20, 21, 22, 23 and 24.

**Article 13 – Storage for future research of residual biological materials**

Given our context, this article will be helpful for rare disease research in that it outlines how some existing clinical collections may be utilised. We are aware of the fact that in some member states the law is stricter than this Recommendation and therefore prevents such utilisation.

**Article 12 – Removal of biological materials from persons not able to consent for storage for future research**

Paragraph 4 – is this paragraph intended to refer to both adults and children? We think the terminology is fine for adults but should be different where materials from minors are concerned. Given that parental consent is already in place for materials taken from minors we believe that when re-contacting the child at the age of majority where this is feasible), the following information should be provided:

i. a statement about the nature of the collection;
ii. the reason for re-consent (eg: this is the organisation's policy or a new project is proposed)
iii. a reminder of the possibility of withdrawal
iv. a clear mechanism for withdrawal.

We believe this approach will prove less burdensome to participant and collection holder alike.

We would also like paragraph 4 (and all other paragraphs in the Recommendation where the same wording appears) to include provision for the use of materials where an attempt at re-contact has been unsuccessful. Taking into account our earlier comments on the scarcity and elevated value of biological materials for rare diseases we would again like to stress the need to make use of all available materials within a relevant ethical framework.

For adults the time scale between moving in and out of capacity tends to be limited and so re-contact is generally unproblematic. The case is different for children where there could be a long period of time (potentially 16 years) between parental consent being given and the child reaching

the age of majority. The child may have died, and this is more likely in the case of a child with a rare disease than in the general population. While we recognise that keeping details up-to-date and re-contacting an individual is always preferable, this will not always be possible.

If the collection holder has lost contact with the family/child it could transpire that

i. re-contacting a family where the child has died without the collection holder being aware is burdensome and upsetting for family members and/or
ii. the collection holder does not have sufficient resources to track down contact details for all those concerned, given the possibility that the family could have moved to another location (more than once), moved to another country and/or that parents may have divorced, died or remarried.

We think this paragraph (and all others with the same wording) should therefore include the possibility of using samples where re-contact has not been successful, as long as the research is subject to local ethical review.

**Article 14 – Storage for future research of residual biological materials from persons not able to consent**

We do not think this article accounts for the fact that children, as they get older, may benefit from sampling made when they were young. A growing body of data shows that health events early in life may affect adolescent and adult health. Other empirical studies support the hypothesis that epigenetic changes caused by environmental conditions early in human life can have effects throughout life. It is likely that genetic epidemiology will uncover more of these gene-environment interactions making it essential for scientists with multiple backgrounds and expertise to have access to samples and data that are representative of the different phases of life and that sampling can be done for children even when the benefits may come later.

**Article 17 – General rule**

We think the Recommendation needs to recognise that research falling outside the scope of consent may be authorised by law in certain countries. Everyone agrees that when someone has explicitly said “no” for a certain purpose or for other purposes than the one consented for, this should be respected. However, often the scope of the consent in association with previously collected samples is unclear, or just silent about possible purposes. As noted in our response to article 12, seeking renewed consent may have a cost for both researchers and participants, where there could be drop outs leading to a decrease the scientific value of a study and therefore not fully respecting the rights of access to preventive health care and the right to benefit from medical treatment through medical research. We support the move towards better on-going communication with participants using new ICT technologies and in the future would like to see re-contact becoming more common. However, such models are relatively new and at the moment some flexibility is required whereby regulatory frameworks usually assign ethical review boards the right to approve appropriate information and a consent procedure, as well as the possibility to approve research without (renewed) consent. This circumstance should be clearly reflected in the Recommendation.

**Article 20 – General principles (governance)**

Paragraph 4: In line with other comments in this submission, where the collection purpose is specified it should also explicitly state that the collection may additionally be used for purposes outside this.

Otherwise, we welcome these principles as a contribution to good governance. Guidance on transfer and closure policies in paragraph 6 are timely and necessary to ensure biological materials' collections are not unnecessarily destroyed, unused or inaccessible and to provide transparency around management for interested parties. We believe paragraphs 7-9 are an important development in the partnership between collection holders, interested publics, disease groups and participants and we view the provision of information and ongoing communication about outcomes as crucial to promote openness in the pursuit of common goals.

**Articles 21 – Individual feedback; 22 – Access; 23 – Transborder flows; 24 – Oversight**

We are pleased to see an explicit outline of these standards, to which we already aspire. In particular the specifics of paragraph 24, which assign duties outlined earlier in the Recommendation will be helpful to collection holders, researchers and participants.

## Comments on areas other than those highlighted by the Council

We believe that the Recommendation needs to better reflect rights to privacy as well as rights of access to preventive health care, and the right to benefit from medical treatment.

The preamble rightly states the significance of protecting private life. However it should also explicitly address the rights of each citizen to access to prevention and medical treatment. The Charter of Fundamental Rights of the European Union (2010/C 83/02) emphasises the right of each individual to integrity within the fields of medicine and biology, implying free and informed consent according to the procedures laid down by law (article 3). Article 8 in this Charter grants the individual the right to the protection of their personal data, implying that the processing of such data requires the consent of the person concerned or some other legitimate basis laid down by law. These articles are in agreement with the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe.

These and other rights in the Charter may be motivated by a fundamental respect of each individual's autonomy and right to have control of matters related to oneself, e.g. the processing of personal data and the use of biological samples of human origin. In addition to these autonomy rights the Charter of Fundamental Rights of the European Union also lays down rights of each individual to social security benefits and social services in cases of illness (article 34) and the rights of access to preventive health care as well as the right to benefit from medical treatment under the conditions established by national law and practice (article 35). As described, the Charter of the European Union recognises both the autonomy right and the right to health care and social services in cases of illness as fundamental individual rights, notwithstanding that there may also be societal and public health related interests concerned.

**Article 11 – Removal of biological materials for storage for future research**

There is a need to balance autonomy rights and rights to health care, prevention, and medical treatment and this needs to be better described in the Recommendation. The present formulation of this article does not reflect the rights of access to *preventive* health care and the right to benefit from medical treatment via medical research. The scope of the Recommendation is stated in article 2 as obtaining, storage and use of biological materials of human origin for future research and the use of biomaterials previously obtained for another purpose In this context, the requirement in article 11, that information and consent should be specific about the intervention carried out to remove the materials, is misleading as it does not apply to materials already collected. Furthermore, it is not clear what is meant by an "intervention carried out to remove the materials". If this refers to the method of sampling, e.g. drawing blood or taking biopsies then the Recommendation is redundant. Every individual is already protected by law against someone drawing blood or performing biopsies without their knowledge and consent. If "intervention" here has some implication for the purpose of the samples taken and the need to be specific, this would exclude taking broad consent which allows using the samples for future research purposes. We see this section of article 11 as counterproductive for the fulfilment of rights of access to preventive health care and the right to benefit from medical treatment

The recommendation that information and consent should be as precise as possible with regard to the research use is also potentially misleading since the sampling referred to is for future research with only general purposes described. It is today common knowledge within biobank based research that samples collected for general medical purposes often later deliver great benefit for patients with other types of diseases. For example the identification of factors causing Rheumatoid Arthritis were discovered through a cardiovascular biobank, showing that this secondary research can be of tremendous importance for unrelated conditions. Given this, we do not think participants should be allowed to select types of research that their biosample may be used for. Neither patients nor researchers know at the time of sampling what good purpose the samples may be used for.

This general use of samples should be made clear in the information to participants and the consent form. The consent should also include a statement as to whether a participant is willing to be re-contacted should the need arise. In addition we encourage secondary researchers to publicly disseminate aggregate results and research progress. We suggest therefore that the appropriate term to be used is broad consent for future research purposes and this should be made explicit in article 11. It should also be made explicit that each future research project would have to be approved by an ethical review board.

As the Recommendation also involves previously collected samples, information and consent procedures should also be specified for these cases, including re-consent, opt-out or use without renewed consent, with the latter two being subject to approval by an ethical review board.

**Article 10 – wider protection**

While we appreciate the wording in this article is the same as in the current (2006) Recommendation, the details of the Recommendation are now different. We would like to see a change in emphasis in this article which encourages equal standards in the pursuit of achievement of greater unity and which reminds MS that enacting stricter standards and/or legislation can hamper the sharing of biological samples for research – a consideration which has added importance for rare diseases and could lead to discrimination regarding access to health care, prevention, and medical treatment for people living with a rare disease.

**Article 3 – Identifiability of biological materials**

We note that this article outlines the differences between identifiable and de-identified materials but then switches to using the term anonymised. This is confusing and we recommend using identifiable/de-identified only and avoiding the use of anonymous. This will bring the document in line with practice in the USA as per the HIPAA Rule[i] which is significant, as the standardisation of terms is key for expediting the international sharing of materials and data.

**Article 19 – Availability of results**

We support the zeitgeist towards transparency of results and back the dissemination of summary results and data. Where secondary research has made use of external biobanks, registries or research collections we would like to see researchers report back to the interested communities. However, where reporting to ERBs is concerned, it is not at all clear what an ERB would do with a report from scientists, or what use it may have.

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[i] (http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf)

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