Q&A from the online seminar

"HRA ordinances: What has changed?"

Monday, Oct 28, 2024; 12.00-13.00

Disclaimer: This document addresses questions raised during the aforementioned seminar. While SCTO RA Platform strives to provide accurate and helpful information, readers should verify details with the appropriate regulatory body for definitive guidance.

- ClinO Art. 4a: inclusion of relevant group of people: What is the situation in the field of intellectual disability (about 2% of the population)? Improvements in order to meet the requirements of the Convention on the Rights of Persons with Disabilities (CRPD)?

    - The revised Clinical Trials Ordinance represents progress towards fulfilling the requirements of the CRPD, as it emphasizes the inclusion and protection of diverse population groups in clinical research to ensure study findings are applicable to all segments of society. Historically, individuals with intellectual disabilities have been underrepresented in clinical trials. Obtaining informed consent from individuals with intellectual disabilities is complex, often requiring adapted communication strategies or the involvement of legal proxies to ensure full understanding of the study and its implications. The need for inclusion needs to be balanced with the protection of vulnerable populations.

- How a sponsor in Switzerland ensures qualification of investigators of sites in EU and Turkey, as these countries have less strict regulations? Also, for medical device ordinance.

    - Both the EU and Turkey follow the ICH GCP guidelines, which require investigators to be qualified by education, training, and experience to conduct clinical trials. The sponsor must verify qualifications through review of credentials (e.g., medical licence, accreditation), relevant education and training, (CVs and GCP certificates) and records of past clinical trial involvement. The sponsor may provide additional training to investigators to meet requirements in specific fields (such as data protection). Regular monitoring and auditing will assess compliance with guidelines. For medical devices the analogous applies, following ISO 14155:2020.

- How can the professional qualification for data protection of a principal investigator be proven to the ethics committee?

    - Theoretically, through a combination of formal trainings (participation in courses, workshops, conferences handling data protection), practical experience (PI's previous experience managing clinical trials, emphasizing specific roles and responsibilities regarding data protection), and quality management at an institutional level (institutional policies, SOPs, institutional endorsement stating the PIs adherence to data protection regulations).
    - However, the PI can also guarantee compliance with the new provisions (ClinO Art. 6 Para. 1) by ensuring that he/she has the corresponding expertise, either within the project team itself, or by delegating specialists of data protection. It is the investigator's

responsibility to assess whether the corresponding skills can be provided by resources within the institution or whether they should be provided by external experts.

- Is an observation by a questionnaire defined as an intervention?

    - If a participant receives only a questionnaire for data collection about their health, experiences, or behaviours, without any intervention, it is classified as an observational trial, as there is no intervention involved Ordinance on Human Research with the Exception of Clinical Trials (HRO, Chapter.2).
    - (An intervention is any action whose effect is investigated. If the intention of a questionnaire is to have itself an effect on the participant and which is the objective of the research, then the questionnaire is an intervention. If the questionnaire serves to collect solely data as outlined above, the observation by a questionnaire is no intervention.)

- What kind of information has to be given to the health insurances? The presymptomatic analysis or risks from polygenic risk scores have to be transmitted? Is it the same for all the health insurances or are there differences between the insurances?

    - In Switzerland, providers of mandatory health insurance (*dt. Grundversicherung, fr. assurance de base*) are obligated to cover treatments as defined by law. Incidental findings, especially those of presymptomatic nature or derived from polygenic risk scores, are typically not required to be disclosed. If this information affects a specific insurance claim, its disclosure requires generally explicit patient consent. Supplementary health insurance (*dt. Zusatzversicherung, fr. assurance complémentaire*) is governed by private law. For the application process insurers may request health information, different in scope for each insurer and insurance type. Disclosure of genetic information is subject to the terms of the insurance contract and existing data protection regulations. For further information see the Federal law on human genetic analysis (section 3).

- There seems to be a significant increase in complexity and bureaucracy with the new ordinance. Two questions in that regard:
  1) Are there any worrying statistics in EU and/or Switzerland in the recent years concerning damage to the patients' health or privacy which justifies these new stricter rules?
  2) The increasing complexity clearly favours the industry with lots of resources and causes a disservice to non-Industry sponsored projects (e.g. IICTs). Speaking of sources of discrimination, was that considered during the decision process of the new ordinance?

    - During the partial revision of ordinances, FOPH concluded that given the advances in digitisation, but also the possibilities and risks associated with data processing, it is appropriate to pay greater attention to the security of the data of trial participants. The changes aim also to enhance participant protection and align with EU clinical trial regulations.

    - The public consultation procedure on the partial revision of the implementing provisions of the HRA took place from April 26, 2023 to August 16, 2023. The opinions from all interested parties are submitted as part of the cantonal consultation procedure, as well as the report on the results of the consultation, can be found on the Federal Chancellery's website "Concluded consultation procedures

- Retention of 20 years of documents for a study closed in the summer 2024 should be under the old law. Sponsor requested a storage of 20th years. Where is the text about the activation?

    - The following transitional regulation apply to research projects that were authorised before 1 November 2024: "The liability, liability coverage and **retention duties** for research projects under ClinO, ClinO-MD and HRO will continue to be governed, even after 1 November 2024, by the old law." https://www.swissmedic.ch/swissmedic/en/home/news/mitteilungen/neues-verordnungsrecht-ab-1-nov-2024.html
    However, it is difficult to comment on a specific case without all details in disposition. In case of doubt, it is recommended to seek advice through your CTU or cantonal ethic committee.

- HRO Art. 6a: End of study: is this also valid for HRO Chapter. 3 Further use….?

    - The HRO Art. 6a is outlined in Chapter 2 (which regulates prospective research projects involving measures for sampling of biological material or collection of health-related personal data from persons) and defines end of project as "[...] the last collection of health-related personal data or the last sampling of biological material in a research project, in the absence of provisions to the contrary in the protocol".
    - It is not applicable to the HRO Chapter 3 (Further use of biological material and health-related personal data for research).

- HRO Art. 6a "End of Study": Doesn't the definition contradict with the article about the surplus Information? The surplus Information can arise after the statistical analysis done in a later stage. But then the project is "ended" formally.

    - HRO Art. 6 a defines the end of the study as the last recording of health related data and/or the last sampling of biological material within the scope of a research project. This does not refer to the time of data analysis.
    - Moreover, the researcher has the ongoing responsibility to ensure ethical handling and communication of significant incidental findings, as surplus information may emerge after the formal conclusion of the study, particularly during extended data analysis or subsequent research.

- HRO: is a lay summary also necessary for HRO Projects?

    - The HRO does not explicitly mandate the submission of a lay summary.

- What are the requirements for anonymization to be considered "state of the art"?

  - The Federal Act on Data Protection (FADP) outlines legal requirements of data processing. You can also consult on Ethical Framework for Responsible Data Processing in Personalized Health Research (SPHN), Sharing of Data from Clinical Research Projects: Guidance (SCTO) for a more complete view.

- HRO Chapter 3 Further use: is it also compulsory to archive the data for 10 years as well?

  - No, Clause 23a of the HRO applies only for research according to Chapter 2. (HRO, Chapter.2, Art.23a)

- Has anyone already set up an ICH-GCP compliant System and infrastructure for all possibilities of e-consent?

  - For the time being, e-consent has not been yet implemented within the SCTO CTU network. However, several SCTO platforms are working collaboratively on an e-consent project. We will continue to inform the clinical research community on the advances in e-consent.

- Are there any more details about what "knowledge about data privacy and data security" actually means?

  - ClinO Art. 6 al. 1 let. C now requires that investigators should have appropriate knowledge and skills in the fields of data security and data protection, (or be able to guarantee these by an expert). Ensuring compliance with the Federal Act on Data Protection; understanding the principles of data governance; having the knowledge of organizational data protection safeguards (encryption, secure storage, access controls, etc.); quality management (risk assessment, incident response planning, training, etc.) are the basis of this know-how. Also, the draft ICH E6 (R3) provides new information regarding data governance (Chapter 4). (ICH Official web site)

- How about archiving? is there a (national...?) digital solution by now? or is it ok to now have everything fully digital on local hospital servers?

  - While there isn't a centralized national digital archiving solution for clinical trial data, institutions are permitted to utilize their own digital systems, provided they comply with regulatory requirements, and meet quality criteria (e.g., audit trail regarding security, protection from loss and/or modification, validation, access control, accessibility, documentation, etc.)

- Regarding ClinO Art. 4a: must an exclusion of study participants below age 18 or older than 65 (for instance) be justified?

  - Research projects must include the groups of people to be taken into account for the scientific problem being studied. If the eligibility criteria omit specific age groups, researchers must provide a rationale explaining why these groups are not included.

- ClinO Art. 64: Will BASEC be updated to allow submission of the Kofam study summary in all national languages in which recruitment is intended?

    - The submission forms have been adapted according to the new provisions of the revised ordinances ClinO, ClinO-MD and HRO that came into force on November 1, 2024." (https://submissions.swissethics.ch/en/)

- HRO, Chapter 3 Further use:

1. Incidental findings: Is the current handling in the national GC template still OK? For further use projects based on GC, there is no original study through which the patient-physician relationship exists.

    - According to swissethics, the institutions based in the cantons of Ticino, Vaud, Fribourg, Valais and Neuchâtel must consult with the competent Ethics Committee on the valid version of the Consent General before using them: https://swissethics.ch/en/documents/generalkonsent
    - (For the time being, available GC templates on swissethics website date back to 2019-2021, therefore might not be up to date with the recent modifications).

- If I understood correctly, HRO Projects do not need to be amended. What needs to be changed for a HRO Project that is doing genetic testing for patients regarding surplus information (incidental findings?)

    - By principle, if there is a modification to participants' rights:
        - The PIC needs to be updated and submitted to the Ethics Committee.
        - Participants should be informed, and their preference whether they wish to be notified regarding surplus information needs to be documented.
    - In line with your institutional requirements, a SOP detailing how incidental findings will be identified, evaluated, and communicated could also be established.

- Is there going to be a confirmation of participation for this Seminar?

    - No, it was purely an informational session.

- Question after the lecture: 'You quoted the explanatory report several times, including on the subject of encryption/anonymisation. Do you have to adhere to the explanations in the report? How binding are they?

    - RA platform representative from the University Hospital Basel discussed this issue with their legal department and swissethics. Their opinion is that: Yes, the explanatory report is binding. It is considered an extension of the law and serves the purpose of interpretation. It is intended to explain what the legislator wanted to implement and is therefore consulted by ethics committees, other parties involved, but also by courts to arrive at a judgement. This is only rarely the case in the area of human research, but in other areas, such as tenancy law, it is common practice.