The new EU regulation on SoHO: strengthening the protection of donors, recipients and offspring

Aurélie Mahalatchimy[1], Valentin Roby[2], Christian Chabannon[3]

[1] CNRS Permanent Researcher in law (CR), EuroGCT Deputy coordinator and WP4 leader, I-BioLex PI, Law Faculty, Aix Marseille Univ, CNRS, DICE, CERIC, Aix-en-Provence, France;
[2] Research Engineer in law, EuroGCT and I-BioLex research projects, Law Faculty, Aix Marseille Univ, CNRS, DICE, CERIC, Aix-en-Provence, France;
[3] Centre de Thérapie Cellulaire. Institut Paoli-Calmettes Comprehensive Cancer Center & module Biothérapies du Centre d'Investigations Cliniques de Marseille, Inserm CBT-1409 –AMU –AP-HM -IPC.

Funded by the European Union

Background and Method

The European Union (EU) Regulation 2024/1938 on standards of quality and safety for Substances of Human Origin (SoHO) intended for human application was adopted on 13 June 2024 to solve issues that were not (sufficiently) addressed by the previous EU directives on blood (Directive 2002/98/EC) and tissues and cells (Directive 2004/23/EC). Among them, an extensive evaluation of the EU legislation led by the European Commission highlighted that there were avoidable risks for donors and for children born from donated gametes, and that patients were not fully protected from avoidable risks.

Based on an analysis of the EU regulation on SoHO regarding the protection of SoHO donors, recipients and offspring, this poster clarifies the new EU legal measures targeting the protection of SoHO donors, recipients and offspring.

These measures provide obligations mainly for Member States (MS) (and their national SoHO competent authorities (NCAs) by delegation) and SoHO entities which are defined widely as entities legally established in the Union that carry out one or more of the following SoHO activities: SoHO donor registration; SoHO donor history review and medical examination; testing of SoHO donors or of persons from whom SoHO are collected for autologous or within-relationship use; collection; processing; quality control; storage; release; distribution; import; export; human application; clinical-outcome registration.

These new rules shall apply from 7 August 2027.

New EU law provisions strengthening the protection of donors, recipients and offspring

Fundamental principles

Dignity and integrity of SoHO donors, SoHO recipients and offspring

- donors — Use: No promotion of commercial purpose or false / misleading information on effectiveness
- donors — Free consent
- donors — Information on the intended use of the donated material
- donors — Eligibility criteria based on scientific evidence
- donors & recipients — Transparent activities, and priority to safety
- recipients — Equitable access to SoHO in accordance with national law

The principle of voluntary & unpaid donation

does not prohibit compensation BUT compensation is framed by EU rules ensuring financial neutrality of donation

Consent (Art. 3.11):
Permission given freely without coercion

MS' obligations if allowing compensation

- Conditions for compensation to be communicated and updated without delay to the SoHO CB and NCAs of other MS via EU SoHO Platform.
- No reference to compensation in promotion's activities supporting SoHO donation.
- Compliance with standards on voluntary and unpaid donation, **including when SoHO donated exclusively for research use without human application**.

Compensation of living donors

- To be allowed or not by MS.
- Transparent criteria:
  - Fixed allowances or non-financial forms of compensation,
  - Upper limit for compensation
- Criteria based on SoHO CB documents.
- Conditions in national legislation (possible delegation to national independent bodies)
- SoHO donors may choose not to be compensated.

Compensation (Art. 3.56):
Making good of any losses or reimbursement of expenses linked to SoHO donation

Financial neutrality of donation (Art. 3.57):
No financial gain or loss will be incurred by the SoHO donor as a result of the donation

SoHO entities' obligations

- No financial incentives or inducements to SoHO donors or any persons granting consent on their behalf.
- Compensation of living SoHO donors if and as provided for by their National legislation.
- Information to SoHO NCAs in a transparent manner on how they have implemented national legislation.

Informed consent (Art. 55)

SoHO entities:

To provide living SoHO donors (or, where applicable, any persons granting consent on behalf of a SoHO donor), with all appropriate information on the SoHO donation process, in accordance with national legislation: before the consent is granted, in an accurate and clear manner (easily understandable terms), no misleading information.

Content of information to living SoHO donors OR to person granting consent on behalf of deceased SoHO donors:

(a) purpose and nature of donation;
(b) intended use of the donated SoHO (proven benefits and any possible research or commercial uses, **specific consent for the use of SoHO to manufacture medical devices and medicinal products**);
(d) obligation for consent to collect SoHO;
(e) right to revoke consent and any restrictions on that right after the collection;

Additional information to living SoHO donors:

(c) consequences and risks of donation;
(f) purpose of the tests conducted for donor health evaluation;
(g) right of donor to receive the confirmed results of their health relevant tests (in accordance with national legislation);
(h) recording and protection of donor's personal data;
(i) possibility to reveal donor identity to offspring born from SoHO donation (if allowed by national legislation);
(j) other applicable safeguards to protect the donor.

High level of safety and health protection of SoHO donors, recipients and offspring from MAR

Obligations for SoHO entities when collecting SoHO (regardless of the intended recipient) (Art. 53):

(a) To meet all applicable consent or authorisation requirements at National level;
(b) To provide donors with adequate information (understable) and contact details of SoHO entity
(c) To safeguard rights of living donor to physical and mental integrity, non-discrimination, privacy and protection of their personal data
(d) To ensure that donation is voluntary and unpaid
(e) To verify the eligibility of the living donor
(f) To document results of living donor health evaluation
(g) To communicate and clearly explain the results of the living donor health evaluation to the living donor
(h) To identify and minimise risks to health of living donor during SoHO collection procedure
(i) If repeated SoHO donations, to register donors in a SoHO entity registry or in national / international registries (donation frequency and monitoring of relevant health indicators)
(j) If significant risk to a living donor (surgical procedure or prescribed medication), to develop and implement a plan for monitoring the donor's health after donation;
(k) If unrelated SoHO donation, to refrain from revealing the donor's identity to the recipient or to the offspring from MAR, except if allowed by MS concerned.

Obligations for SoHO entities in procedures with SoHO recipients (Art. 58)

Procedures shall high levels of quality and safety of SoHO AND Ensure a positive benefit/risk balance for SoHO recipients and offspring from MAR.

SoHO entities shall inform and obtain consent from SoHO recipients AND ensure that procedures achieve a high level of assurance that pathogens, toxins or genetic conditions potentially life-threatening, disabling or incapacitating and originate from a third-party donor, are not transmitted to recipients or offspring from MAR.

Risks to be mitigated by SoHO entities

- Communicable disease transmission
- Non-communicable disease transmission, (incl. genetic conditions and cancer)
- Microbial contamination of SoHO from environment, personnel, equipment and materials.
- Reagents and solutions added to SoHO or coming into contact with SoHO
- Inherent properties of SoHO that might be changed by any SoHO activity performed
- Unexpected immune reaction in recipients
- Any other avoidable risk to health (incl. protection of dignity)
- Risk of human error

Mitigation

- Verify and document SoHO donor eligibility and to take measures to mitigate those risks
- Avoid contact between SoHO from different donors during collection, processing, storage or distribution
- Specifying and verifying:
  - hygiene procedures,
  - cleanliness of collection areas
  - reagents and solutions prior to their purchase and use
  - any required certifications of reagents and solutions
- Conducting comprehensive process validation and equipment qualification

SoHO entities shall not:

- apply SoHO preparations to SoHO recipients unnecessarily or without proven benefit (except clinical-outcome monitoring plan approved by SoHO NCA, individual treatment by treating physician's therapeutic decision, or health emergency situation).
- advertise / promote particular SoHO to potential recipients or to healthcare professionals using misleading information
- distribute / apply allogeneic SoHO for purposes other than the prevention or treatment of a medical condition (incl. reconstructive surgery), or for MAR.

Note: Additional EU rules for SoHO establishments regarding SoHO release (Art. 60) and exceptional release (Art. 61) also contributes to the protection of recipients and offspring from medically assisted reproduction.

The European Commission can adopt additional binding

Delegated acts regarding SoHO donors and recipients

- Where additional standards are deemed necessary to ensure the protection of recipients or offspring from MAR from risks associated with SoHO (Art. 58.16 & 77)
- Where additional standards are needed to ensure donors' protection (Art. 53.5 & 77)
- Imperative grounds of urgency linked to risk to recipients and offspring from MAR arising from inadequate levels of SoHO quality and safety (Art. 58.17 & 78)
- Imperative grounds of urgency linked to risk to living donors' safety (Art. 53.6 & 78)

Delegated acts regarding SoHO donors

- Duly justified imperative grounds of urgency relating to a risk to donor health (Art. 56.2 & 79.3)
- Implementation of a particular standard or element of a standard on donors' protection (voluntary and unpaid donors, informed consent, and health protection) to ensure convergent and high levels of donors' protection

Conclusion

The EU regulation on SoHO operates a major shift from the quality and safety of SoHO to the wider protection of SoHO donors, recipients and offspring which is either strengthened or newly covered.

Such protection is also enhanced due to the wider meaning of SoHO in comparison with the previous directives on tissues and cells and blood and blood components. Indeed, SoHO meaning "any substance collected from the human body, whether it contains cells or not and whether those cells are living or not, including SoHO preparations resulting from the processing of such substance", more persons are considered SoHO donors, recipients and offspring and thus protected in accordance with this new EU regulation.

Abbreviations
MAR: Medically Assisted Reproduction
MS: Member state
NCAs: National Competent Authorities
SoHO CB: SoHO Coordination Board

www.ebmt.org