

10 key-considerations for data protection in the pandemic situation

In the new context imposed by the pandemic situation we are going through, the European data protection supervisory authorities have issued useful recommendations for proper protection of personal data, adapted to the new global challenges.



All companies have to implement specific measures for limiting the spread of the new COVID-19 virus, such as limiting travel and meetings, respecting hygiene measures, and work from home, but must also treat with the utmost care the privacy and personal data of each individual.



The European and national provisions on data privacy are not an obstacle in the fight against the COVID-19 virus, but even in a critical health crisis period, companies have to ensure the protection of the personal data handled and processed in this context. All principles provided by art. 5 GDPR are applicable, especially the principles of lawfulness, transparency, minimization and purpose limitation.

A number of key-considerations are outlined at European and national level in relation to data processing:



Category of personal data

Some of the data processed by companies in the context of limiting the spread of the COVID-19 virus are health data, a special category of personal data, which should be collected in a limited manner and with care by companies. However, not all data processed in this context is health data but may still qualify as personal data.

Examples: the information that a person is infected with COVID-19 virus is considered health data. On the contrary, information that a person has returned from a "red area" or has been quarantined (but without giving details of the cause) is not health data but it is still (general) personal data and requires adequate security measures and safeguards to be put in place.



Data processing basis

In the context of epidemics, personal data may be processed by companies and competent public health authorities without the need to obtain the consent of the data subject but based on other grounds provided by art. 6 GDPR.

Nevertheless, for the processing of health data, a legal basis needs to be identified, in accordance with art. 9.1 and 9.2 GDPR, since COVID-19 may be considered "a serious cross-border threat to health" and the measures taken by companies are meant to protect the health of their employees.

However, these extraordinary grounds for data processing do not justify any type of measures, but only necessary and reasonable measures.

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Necessity and proportionality

The measures taken by companies in response to the COVID-19 virus which involve the processing of personal data should be necessary and proportionate and should be properly assessed with regard to the right to privacy for employees and others.

Examples: measuring the temperature of employees is an excessive processing of health data; likewise similar mandatory medical checks performed by employers in this context. However, questionnaires asking for information on "red areas" visited, contacts with persons suspected of having COVID 19 or who have tested positive for it or on the presence of typical COVID-19 symptoms may be legitimately used by companies.

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Adequate organizational measures

By introducing a questionnaire to collect information on the possible risk of infection for employees, agents or visitors that have returned from a "red area" or have specific symptoms of infection with the COVID-19 virus, companies must strictly limit access to the collected data in the company and observe mandatory limitation of retention periods.

04



Specific measures to avoid

Companies should not collect information on symptoms presented by an employee, agent or visitor in a systematic and generalized manner.

Examples: it is not recommended to introduce a daily mandatory reading of body temperatures to be sent to a dedicated person in the company or a daily mandatory questionnaire for all employees, agents or visitors.

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Respect confidentiality

If a COVID-19 case appears among its employees or on its premises, a company is required to inform its employees accordingly. However, companies should not communicate to other employees or third parties outside the company the identity of the person in the company who has been infected with the COVID-19 virus, or any further information on the infection.

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Public disclosure

European data protection supervisory authorities have recommended that the name and health status of an individual should not be publicly disclosed. However, the Romanian National Supervisory Authority for Personal Data Processing issued a recommendation on 18 March 2020 that the controller may disclose in the public space only the name and health status of an individual, for whom consent for that data processing (disclosure) has previously been obtained.

Note: the recommendation of the Romanian National Supervisory Authority for Personal Data Processing does not distinguish between private and public entities as controllers and further assessment on the lawfulness of such disclosure should be carried out on a case-by-case-basis.

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Respect transparency

Companies should provide the information about the data processing activities realized in this context in a concise and easy to understand manner and should inform individuals especially with respect to

- (i) the purpose*
- (ii) the basis of data processing and*
- (iii) the retention period.*

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Records of processing

Companies should update their data registry in order to ensure the proper recording of all data processing activities carried out for the purpose of limiting the spread of the COVID-19 virus.

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Rights of data subjects

Companies should respect all data subjects' rights as provided under GDPR.



This legal alert comprises relevant GDPR topics addressed at EU level by supervisory authorities in their recommendations and related questions received in the context of COVID-19 from our clients, that may provide initial guidance for a compliant approach to the implementation of health related measures within organizations.

For further immediate guidance and tailored advice on any of the topics above or any other legal issues related to the current COVID-19 global outbreak please contact us.



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