Hogan Lovells

Privacy 2040

Coronavirus and data protection – Guidance by data protection authorities

The table below sets out the guidance provided by data protection authorities in relation to the processing of personal data in the context of the fight against the coronavirus across various jurisdictions. The table is colour-coded by reference to the position expressed by each data protection authority.

Restrictive approach to data processing activities

Neutral approach to data processing activities

Permissive approach to data processing activities

Jurisdiction	Guidance	Key messages
Austria	Guidance of the Austrian DPA FAQ on Coronavirus and Privacy Template for the collection of emergency contact information from employees Information on data security and home office (in German)	Employers can: • process employees' personal data if they have tested positive, had contact with an infected person or stayed in a risk-area. • process health data in order to fulfil their obligation to eliminate health risks in the workplace. • collect and temporarily store personal contact details voluntarily provided by employees on the basis of legitimate interests. The Austrian DPA provides templates for this purpose. Any such personal data may only be processed for the purpose of COVID-19 containment and healthcare and must be deleted once storage is no longer necessary. Employers are not permitted to disclose the names of infected employees unless this is necessary to allow the employer to take effective precautionary measures. Employers may also transmit health data to the public health authorities given that the epidemic is considered a "disaster" under Austrian law. Employers must comply with data security requirements and should point out to their employees that hardware should be stored securely and that a secure Wi-Fi connection with a strong password (ideally also an encrypted VPN connection) should be used. There should be increased attention to phishing messages. The DPA provides more information here.

Jurisdiction	Guidance	Key messages
Belgium	COVID-19 and processing of personal data at work (in French)	Public health and disease prevention are not incompatible with the right to private life. Evaluation of health risks must be carried out by an occupational health doctor (not businesses or employers) who is competent to detect infections and inform the employer and those who have been in contact with the infected individuals. This processing of personal data can be based on Article 6(1)(c) and 9(2)(b) GDPR. The principles of proportionality, data minimisation and transparency must be observed. General and systematic testing, for example systematic temperature checking of workers and visitors, cannot be considered to be proportionate. Employers may not compel workers to complete medical questionnaires or questionnaires about their recent travel. In light of the principles of confidentiality and data minimisation, an employer may not reveal the names of the infected employee(s). The employer may only inform other employees of the situation without mentioning the identity of the data subject(s).
Czech Republic	Processing personal data in connection with the spread of coronavirus (in Czech)	Sensitive personal data, including health data, may be processed on the basis of public health legislation (including legislation which is intended to address serious health threats). Regional hygiene stations and the Ministry of Health, Home Affairs and Defence are authorised to process personal data to the extent and for the purpose stipulated by the Act on public health protection. Appropriate measures include informing the population by sending SMS alerts. The legal basis of processing sensitive personal data where processing is necessary for reasons of public interest in the field of public health should be applied to this situation. Public or private entities should follow the guidelines and recommendations of the competent authorities.
Denmark	How about GDPR and coronavirus? (in Danish)	It may be justified for employers to register and pass on coronavirus information. An employer can to a large extent record and disclose information that is not so specific and specific that it can be considered health information when the situation necessitates that. The employer should consider: • whether there is a good reason to record or disclose the information in question. • whether it is necessary to specify the information, including whether the purpose can be achieved by "telling less". • whether it is necessary to name names - e.g. the name of the person infected and / or in quarantine.

Jurisdiction	Guidance	Key messages
European Data Protection Board (EDPB)	Statement of the EDPB Chair on the processing of personal data in the context of the COVID-19 outbreak	Data protection rules do not hinder measures taken to fight the coronavirus, but controllers must ensure the protection of personal data. GDPR provides legal grounds for employers and public health authorities to process personal data in the context of epidemics, without the need to obtain the consent of the data subject. For example this applies when personal data processing is necessary for employers for reasons of public interest in the area of public health or to protect vital interests, or to comply with another legal obligation. Additional rules apply when processing electronic communications data, such as mobile location data. Public authorities should aim to process location data anonymously, which could generate reports on the concentration of mobile devices at a certain location. When anonymous processing is not possible, Article 15 of the ePrivacy Directive enables member states to introduce legislative measures pursuing national security and public security.
Estonia	Can an employee be required to tell everything about their health? (in Estonian)	The legal basis for processing of health data must not be legitimate interests. In some cases, employers are required by law to obtain a medical certificate before commencing work, but this applies only in certain areas such as food handling, healthcare and animal husbandry. It is unlikely that the government will be able to create a right for employers to process health records in emergency situations. The Health Board has currently restricted coronavirus testing to those with symptoms and those without who have paid. It is therefore crucial that employers and employees voluntarily provide their employer with health information that will allow the employer to organise work as safely as possible. The principle of data minimisation should be adhered to.
Finland	Data protection and limiting the spread of coronavirus (in English, also available in Swedish and Finnish)	Processing personal data to combat COVID-19 is permitted. Processing of personal data must be necessary and proportionate. Information that an employee has contracted coronavirus is health data, but information that employees have returned from a risk zone or are in quarantine are not health data without more. It is all personal data, however. The Finnish Act on the Protection of Privacy in Working Life and Contagious Diseases Act could both apply. If an employee is diagnosed with COVID-19, the employer may not name the employee in question. They can inform other employees of the infection or potential infection in general terms and instruct them to work from home.

Jurisdiction	Guidance	Key messages
France	Coronavirus (Covid-19): reminders from the CNIL on the collection of personal data (in French)	Employers must refrain from collecting in a systematic and generalised manner, or through individual inquiries and requests, information relating to possible symptoms presented by an employee / agent and their relatives. It is therefore not possible to implement, for example: • mandatory readings of the body temperatures of each employee / agent / visitor to be sent daily to their hierarchy. • or the collection of medical sheets or questionnaires from all employees / agents. The assessment and collection of information relating to symptoms of coronavirus and information on the recent movements of certain people is the responsibility of public health authorities.
Germany **(Conference of German DPAs; DPA of Baden-Wuerttemberg)**	Guidance of the Conference of German DPAs ("Datenschutzkonferenz") (in German) Guidance of the DPA of Baden-Wuerttemberg (in German)	Only the public health authorities, not the employer, have investigative and intervention powers. In case of doubt, employers are therefore requested to contact the health authorities and not to collect health data on their own initiative, and certainly not against the will of their employees. Employers may collect and process personal data (including health data) of employees and visitors in order to detect whether they were tested positive themselves, had contact with an infected person or stayed in a risk-area (legal bases: Sec. 26(3) FDPA and Art. 9(2)(b) GDPR regarding employees; Art. 6(1)(f) GDPR, Art. 9(2)(i) GDPR, Sec. 22(1) No 1(c) FDPA for visitors). The data may only be processed for a specific purpose (COVID-19 containment) and must be deleted after the end of the pandemic, at the latest. Employers are generally not permitted to disclose the name of infected employees, as this could lead to social stigmatization and discrimination. Exemptions may apply where disclosure of the name is necessary in order to allow the employer to take effective precautionary measures. Employees may be obliged under employment law to inform the employer in case they are infected with the virus. As a consequence, they may disclose information to their employer about persons they have been in contact with (legal basis: Art. 6(1)(f) GDPR).

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Greece *(with thanks to NIKOLINAKOS & PARTNERS LLP)*	Guidelines for processing of personal data in the context of managing COVID-19 (in Greek)	Employers may legally process personal data for the purpose of protecting their health and that of their employees. Extra care must be taken to observe the principles of purpose limitation, proportionality and security of processing. Personal data protection legislation will not be applicable to verbal communication of data concerning health. Burdensome measures such as temperature measurement at the entrance to the workplace can only be carried out after any other available measure has been excluded. If disclosing information about deceased persons leads to indirect identification of the natural persons the deceased were connected to might mean that data about those deceased persons is subject to GDPR. Disclosure of data subjects' health condition to third parties is prohibited if it results in prejudice and stigmatisation.
Hungary	Information on processing data related to the coronavirus epidemic (in English)	If an employee reports possible exposure to their employer or the employer suspects exposure has happened due to data provided by the employee, the employer may record the data of the report and the personal data of the employee concerned. It acceptable to have the employees complete questionnaires, but questionnaires may not include data concerning the medical history of the data subject and the employer may not require employees to enclose health documentation. The legal basis for processing of personal data can be legitimate interests or performance of public tasks, and the legal basis for health data processing can be Article 9(2)(b). Requiring screening with any diagnostic device, in particular a thermometer, is disproportionate. In individual cases employers can call for individuals to be tested by health professionals on the basis of a risk assessment or report from an employee.
Ireland	Data Protection and COVID-19 (in English)	Data protection law does not stand in the way of the provision of healthcare and the management of public health issues. Nevertheless there are important considerations which should be taken into account when handling personal data in these contexts, particularly health and other sensitive data, including: lawfulness, transparency, confidentiality, data minimisation and accountability.

Jurisdiction	Guidance	Key messages
Italy	Joint protocol for regulating the measures in order to contrast and to reduce the spread of COVID-19 at the workplaces[1]	Companies are allowed to collect information about COVID-19 symptoms or location of their employees within the anti-contagion safety protocols aimed at combatting and reducing the spread of COVID-19 at the workplace. GDPR privacy principles (e.g., minimisation and retention) and the other relevant requirements (i.e., privacy notice, written instructions to persons in charge, and security measures) must be considered.
Lithuania	Personal Data Protection and Coronavirus (in English)	Personal information about employees can be processed in accordance with the principle of data minimisation by including only information about whether the person was travelling to a country of risk, whether they were in contact with a person travelling to the country of risk, whether the person is at home due to quarantine and whether the person is ill. Employers may ask their employees if they have a diagnosis or symptoms of COVID-19. This does not imply that employers can document such information or compile relevant data files. Data protection principles must be observed when personal data is shared with public authorities for public health purposes. Requests for personal data must be assessed on a case-by-case basis. Employers should refrain from collecting temperature readings from staff or visitors, medical records or similar.
Luxembourg	Coronavirus (COVID-19): CNPD recommendations relating to the collection of personal data in the context of a health crisis (in French)	While private bodies may implement measures to contain the coronavirus (e.g. travel restrictions. hygiene measures), such measures must take into account the privacy of the data subjects. Organisations should therefore avoid systematic collection of data about coronavirus infection symptoms of employees, externals and relatives, particularly by means of daily body temperature measurements, medical questionnaires which have been prepared in advance, or requesting that visitors sign a pre-written declaration stating that they have no symptoms or that they have not recently been travelling to a risk area. The identity of data subjects (potentially) infected may not be disclosed to third parties or colleagues without clear reasons.

[1] This protocol, executed between the Government and main trade union associations on 14 March 2020, superseded initial guidance published by the Italian DPA on 2 March 2020.

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Netherlands	My sick employee (in Dutch)	Employers should not normally draw conclusions about the health of individual employees, for example by keeping track of where they have been or recording their temperature. However, employers can call in the occupational health and safety service or company doctor to check for corona.
Norway	Coronavirus and privacy (in Norwegian)	Employers can process specific categories of personal data when necessary to carry out employment law duties or rights. Information that someone is infected with the coronavirus is considered health information. Information that an employee has returned from a so-called "risk area" is not to be considered health information. Information that someone has been quarantined (without giving further details on the cause) is not to be considered health information.
Poland	Statement by the President of UODO on the coronavirus (in Polish)	The GDPR cannot be seen as an obstacle to the fight against coronavirus, The provisions of the special COVID-19 act (adopted on 2 March) give the General Sanitary Inspector the right to issue decisions imposing certain preventive obligations on employers, whereas the Prime Minister may impose certain obligations on all entrepreneurs, both of which correspond with the GDPR provisions (Article 9.2(i) and 6.1 (d)), According to Recital 46 GDPR the processing of personal data is lawful also when this is necessary to protect an interest which is essential for the life of the data subject, including monitoring of epidemics and their spread.
Romania	Processing of health status data (in Romanian)	Health data can be processed under Article 9(2)(a), (b), (h) or (i). The relevant information required under Articles 13 and 14 GDPR must be provided to affected data subjects in a concise, transparent, intelligible and easily accessible manner. This can be done using a website. The name and health condition of a particular person can only be disclosed in a public space with the prior consent of the affected person.

Jurisdiction	Guidance	Key messages
Russia	Guidance regarding use of thermal imagers and related processing of data on body temperature of employees and visitors (in Russian)	Information about body temperature is a special category of personal data, which can be processed without the consent of the data subject if carried out in accordance with labour legislation. Employers may request information about the health status of their employees. The consent of visitors to the organisation to thermal imaging is manifest in their actions of choosing to visit the organisation. Employees and visitors must be notified that temperatures are being measured. The information should be retained only for one day.
Slovakia	Coronavirus and processing of personal data (in Slovak)	The indication of the measured temperature falls within the processing of a specific category of personal data, and for the lawful processing of such data, the GDPR provides for special conditions in Article 9 and the disposal of the legal basis in Article 6.
Slovenia	Responsible behaviour is crucial during a viral crisis (in Slovenian)	Competent authorities have to make case-by-case assessments and determine what information is needed to protect people's vital interests.
Spain	Report on data processing in relation to COVID-19 (in Spanish) Report on data processing in relation to COVID-19 (in English)	The Spanish DPA appears to favour Article 6.1.(d) GDPR as the legal basis for processing (i.e. where the processing is necessary in order to protect the vital interests of the data subject or of another natural person). Following public authorities' directions would generally not entail a breach of GDPR rules. GDPR principles must still be complied with.
Sweden	Coronavirus and personal data (in Swedish)	Information that someone has contracted coronavirus is sensitive personal data, but information that someone has recently returned from a high-risk area is not. Information that someone is in quarantine (without more) is also not sensitive personal data. However, even if information about returning from risk areas or being in quarantine is not sensitive personal data, it can still be personal data. There must be a legal basis for processing and the fundamental data protection principles must be observed.

Jurisdiction	Guidance	Key messages
United Kingdom	Data protection and coronavirus: what you need to know (in English)	The Government, NHS and health professionals may send public health messages to individuals by phone, text or email, as these do not constitute direct marketing. The ICO will take the compelling public interest in the current health emergency into account regarding compliance. If data protection practices do not meet an organisation's normal standard or responses to information rights requests take longer, the ICO will not take regulatory action as they understand the need to prioritise other areas. The ICO will tell people that they may experience delays when making information rights requests during the pandemic. Employers should keep staff informed about cases but there is no need to name individuals and employers should not provide more information than is necessary. Data protection law is not an obstacle if it is necessary to share information with public health authorities.