

Opinion of the CIT General Secretariat

Legal implications of COVID-19 in relation to data protection

The CIT General Secretariat (hereinafter “the CIT GS”) shares the following opinion on the legal implication of COVID-19 in relation to data protection. These are only considerations coming from the CIT GS and they do not bind the members of the CIT.

1. Processing of personal data in relation to COVID-19

Personal data is defined as any information relating to an identified or identifiable natural person directly or indirectly, e.g.: name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. Therefore, personal data is **any information that can be used to identify the person**.

It is necessary to have a justification to process personal data. **Processing** means activities like collecting, storing, recording, modifying, using, transferring, etc. personal data. In relation to COVID-19, different grounds could be used:

- Consent
- Performance of a contract
- Necessity for compliance with a legal obligation;
- Necessity in order to protect the vital interests of the data subject or of another natural person;
- Necessity for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- Necessity for the purposes of the legitimate interests pursued by the controller or by a third party

1.1 Personal information of employees

National labour law of many countries foresees the obligation for employers to ensure the security (including health) of their employees.

Many data protection authorities admit that it is allowed for employers to collect the contact details (e.g. private number, private e-mail address) of their employees, to be

able to inform but also be informed by their employees of their health. Those data should be deleted as soon as they are not necessary anymore.

The collection of further personal data of employees should be avoided (e.g. travel destinations, etc.).

1.2 Personal information of passengers

In some countries, like in France and Italy, there was the need to show an authorisation to travel. In Italy, the carrier had indeed to check the reasons for the passenger to travel, the address of residence in Italy where the passenger will stay for the period of health surveillance and fiduciary isolation and the private means of transport which will be used to reach it and the telephone number, also mobile, where to receive communications during the entire period of health surveillance and fiduciary isolation. This is an obligation towards the carrier stated by the Italian law, justifying therefore the processing of such personal data.

In other situations, where such a legal obligation does not exist, the carrier shall not be allowed to process such personal data, except if such a processing is necessary for the performance of the transport contract.

2. Processing of sensitive data in relation to COVID-19

Sensitive data mean personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The justifications to process such personal data are stricter than for other personal data. In relation to COVID-19, different grounds could be used:

- Explicit consent
- Necessity in the field of employment and social security and social protection law
- Necessity to protect the vital interests of the data subject or of another natural person
- Necessity for substantial public interest
- Necessity for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services
- Necessity for reasons of public interest in the area of public health

2.1 Health data of employees

According to some national data protection authorities, **taking the temperature** of employees manually is not falling under the scope of the GDPR, if those data are not then collected. The use of cameras to measure temperature of employees (or other visitors) would fall under the GDPR and is, according to certain national authorities, not lawful, except if authorised by the law. It can be argued though that according to

the legal obligation existing in some countries of employers to ensure the security of their employees, the use of such cameras should be allowed, because they permit an easy and quick check of all employees and visitors. The data collected shall nevertheless not be stored.

As far as other health data of employees are concerned, in principle, they don't have to be communicated to the employers, except if a legal obligation exists to do so. One exception can concern the fact if an employee is infected with COVID-19. Indeed, normally, when an employee is ill and needs to stay at home, he has, in principle, no obligation to reveal to his employer the cause of his illness. In relation to COVID-19 though, if an employee, who has or suspects to have COVID-19, was in contact with other colleagues, according to some national data protection authorities, the employee should inform his employer that he has/might have COVID-19, so that the employer can alert those other colleagues that they should be tested. But the identity of the person infected shall not be communicated to the other employees.

2.2 Health data of passengers

Concerning the taking of temperature of passengers, the measurement with a manual device does not pose a problem, for the reasons mentioned under Point 2.1 already. What is more problematic is the taking of temperature with a camera; this should only be allowed if the national law states so.

Other health data of passengers should not be communicated to the carrier, except if a legal obligation to do so exists.

3. Key points

- Don't process personal data (including sensitive data) if not necessary (non-existence of a ground to do so)
- If necessary, process (collect, store, use, disclose, etc.) only the minimum amount of personal data (including sensitive data)
- Comply in principle with the rights of your passengers/employees as regards data protection (right to be informed, right to object, right of access, right to portability, right to be forgotten, right to rectification)
- Ensure that you have measures in place to keep personal data (including sensitive data) secure (e.g. no data breach possible, etc.)

4. Resources

It is important to check the guidelines published at international and national level:

<https://www.coe.int/en/web/data-protection/covid-19-data-protection-resources>

https://edpb.europa.eu/our-work-tools/our-documents/other/statement-processing-personal-data-context-covid-19-outbreak_en

<https://globalprivacyassembly.org/covid19/covid19-resources/>