



**Circular letter / Lettre circulaire / Rundschreiben**

10/2020

Bern, 2020-07-22

Original EN

Réf. / Ref. H08  
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**Opinion of the CIT General Secretariat**  
**Legal implications of Covid-19 in relation to data protection**

À / Geht an /to

Pour votation  
Zur Abstimmung  
To be voted on

Members of the CIT / Membres du CIT / Mitglieder des CIT

Pour consultation  
Zur Konsultation  
For your comments

Pour information  
Zur Kenntnisnahme  
For your information

Dear Colleagues,

The CIT General Secretariat (hereinafter “the CIT GS”) shares the following information and 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**

The 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 email address) of their employees, to enable them to inform (and also be informed) by their employees of their health. In some countries, however, such information may only be provided to the company's doctor. These data should be deleted as soon as they are no longer needed.

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, such as France, passengers have had to show an authorisation to travel. In Italy, the provisions Prime Ministerial Decree of 26 April 2020 have entered the name ticket for all the railway companies active in the long distance, for online bookings of long-haul trains. The provisions require: *"the adoption of the name ticket in order to identify all passengers and manage any cases of presence on board of suspected or known cases of positivity to the virus "*

Trenitalia, contacted by the Health Authorities responsible for epidemiological containment and the search for the chain of contacts, can provide them with the list of passengers and their location, in order to facilitate the reconstruction of the chain of contacts. Trenitalia will not process information regarding anyone's positivity.

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**

Measuring temperature is considered as processing of personal data in most of the countries and is, according to certain national authorities, not lawful, except if authorised by the law. It can be argued, however, that according to the legal obligation of employers to ensure the security of their employees that exists in some countries, the measurement of temperature should be allowed (through manual thermometer or thermo-cameras), because it permits an easy and quick check of all employees and visitors. The data collected can nevertheless not be stored or processed in any other way.

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, however, if an employee, who has or suspects they have COVID-19, has been in contact with other colleagues, according to some national data protection authorities, the employee should inform his employer (or in some countries the company doctor) that they has/might have COVID-19, so that the employer can alert those other colleagues to be tested. In some countries it is the authorities, who then alert the people, who were in contact with the sick employee. But the identity of the person infected should not be communicated to the other employees.

### **2.2 Health data of passengers**

As far as taking the temperature of passenger is concerned, the measurement should follow the same rules as under Point 2.1 for reasons of public interest in the area of public health.

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

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

Yours sincerely,



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Generalsekretär  
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