

Resolution of the Conference of Independent Data Protection Authorities

Federal and state governments from March 29th, 2021

Coronavirus: proof of vaccination, proof of negative test results and

Proof of recovery in the private sector and in employment

are regulated by law!

May participation in private-sector offers such as restaurants - or

Concert visits are made dependent on the visitors and

visitors have had an anti-corona vaccination or have recovered from an infection

prove or present a negative test result? In addition to this about in

Link to the "digital green certificate" planned at EU level

The data protection supervisory authorities are constantly receiving this much-discussed question

Consultation requests from employers who have health data such as body temperature

or want to collect and process the vaccination status of employees.

The conference of the independent data protection supervisory authorities of the federal and

Countries (DSK) points out that the processing of health data

private-sector purposes (be it in the general economic sector or in

area of employment) the requirements of the European data protection

Basic Regulation (GDPR) must comply. Information about the vaccination status of a

person is just as much health data as the result of a corona test or the

Evidence of a recovered infection. Health information is below

particularly strict protection of the GDPR and may only be understood under narrow

exceptions are processed.

As a rule, concrete legal regulations are required that require processing

expressly allow such health data, as required under Section 20

German Infection Protection Act

at

the measles vaccination

in the

Area

from

day-care centers is the case. Such regulations on the obligation to provide evidence of a

Vaccination, recovery or negative test to access

to enable private-sector events or facilities are missing

so far largely in connection with the corona pandemic.

In the absence of a legal basis, one is therefore usually required

Consent of the restaurant or concert visitors, employees etc. in the

collection and processing

of their health data, where above all

in the

The voluntariness of consent is regularly problematic in the field of employment

is.

Without a legal regulation, it must always be checked in each individual case to what extent

the processing of data on the vaccination status or as part of a test

is permissible under data protection law. This case-by-case analysis is due to

complex legal considerations to be made for all those involved with great

effort and legal uncertainties. An inconsistent approach

for example through different regulations in the municipalities, could also lead to a

practice that is difficult for the citizens to understand.

In order to avoid this and for data collection and processing in

private sector legal clarity, legal certainty and a uniform

In the opinion of the DSK, achieving a solution requires a specific

Pandemic situation-related, temporary legal regulation. Herein is

to regulate clearly and transparently who, by whom and under what conditions

Vaccination data, test results, proof of a survived infection and others

may use health data in the private sector. It has to

comply with the strict requirements of Article 9 Paragraph 2 GDPR.

The DSK

calls on the legislature to take a corresponding action in the short term

initiate legislative processes.