

Processing of health data

In the context of the coronavirus pandemic, as well as the declaration of a state of emergency, with regard to the processing of health data which are data of a special nature, we recommend that operators consider the following:

Article 9 of Regulation (EU) 679/2016 (General Data Protection Regulation - RGPD) provides that health data may be processed by an operator under certain conditions, such as:

LIT b) the processing is necessary for the purpose of fulfilling the obligations and exercising specific rights of the operator or of the person concerned in the field of employment and of social security and social protection, in so far as this is authorized by Union or national law or a collective bargaining agreement concluded under national law which provides adequate safeguards for the fundamental rights and interests of the data subject; (...) or

LIT h) the processing is necessary for purposes related to preventive medicine (...), the establishment of a medical diagnosis, the provision of medical or social assistance or medical treatment or the management of health or social assistance systems and services, under Union law or national law or under a contract with a healthcare professional "and subject to compliance with certain conditions and guarantees or under national law or under rules laid down by competent national bodies or by another person also subject to an obligation of confidentiality under Union or national law or rules laid down by competent national bodies); or

LIT i) processing is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and medicines or medical devices, in accordance with Union law or national law, which provides for appropriate and specific measures to protect the rights and freedoms of the data subject, in particular professional secrecy; or

LIT a) the data subject has given his or her explicit consent to the processing of such personal data for one or more specific purposes, unless Union or national law provides that the prohibition on processing such data may not be lifted by the data subject's consent ;

We specify that other personal data than those of a special nature can be processed in compliance with art. 6 of Regulation (EU) 2016/679.

With regard to the obligation to inform the data subject, we also emphasize that operators must take appropriate measures to provide the data subject with the information referred to in Articles 13 and 14 in a concise, transparent, intelligible and easily

accessible form, using clear language. and simple. This information can be found on the operator's website.

Regarding the security measures adopted by the operators, we specify that art. 32 of Regulation (EU) 2016/679 regulating “Security of processing”, establishes the obligation of the operators and the persons empowered by them to implement the appropriate technical and organizational measures in order to ensure an adequate level of security.

At the same time, art. 24 para. (1) of Regulation (EU) 2016/679 provides that operators shall implement appropriate technical and organizational measures to ensure and be able to demonstrate that processing is carried out in accordance with the Regulation.

Regarding the disclosure in the public space of the name and state of health of a natural person, we emphasize that the processing (disclosure) of this data can be done with the consent of the person concerned.

On the other hand, regarding the restrictions that can be applied, art. 23 para (1) lit. e) of Regulation (EU) 2016/679 provides that “Union or national law applicable to the data controller or the person authorized by the controller may by a legislative measure restrict the scope of the obligations and rights provided for in Articles 12 to 22 and 34, and in Article 5 in so far as its provisions correspond to the rights and obligations set out in Articles 12 to 22, where such a restriction respects the essence of fundamental rights and freedoms and constitutes a necessary and proportionate measure in a democratic society, to ensure:

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e) other important public interest objectives of the Union or of a Member State, in particular an important economic or financial interest of the Union or a Member State, including in the monetary, budgetary and fiscal fields and in the field of public health and social security ; ”

Regarding the activity of prevention, discovery, investigation, criminal prosecution and combating crimes or the execution of punishments, educational and security measures, the provisions of Law no. 363/2018 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating, prosecuting and combating crime or the execution of penalties, educational and security measures, and on the free movement of such data .

In the context of the above, we mention that a statement from 16.03.2020 of the President of EDPB, in the context of the Coronavirus pandemic, is accessible at the following link: https://edpb.europa.eu/news/news_en

Legal and Communication Directorate

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