

Personal Data Protection Agency as an independent supervisory body in the field of personal data protection in the Republic of Croatia in accordance with Article 57 (1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation) OJ L119 prompted by inquiries from natural and legal persons concerning the processing of personal data of users / clients in service activities requiring physical contact, in relation to on the revitalization of activities and measures to combat the spread of the virus COVID-19 makes the following recommendation regarding the processing of personal data:

Article 5 of the General Data Protection Regulation prescribes the basic principles applicable to the processing of personal data (principle of lawfulness of processing, principle of accuracy of data, principle of limiting the purpose of processing, principle of reducing the amount of data, principle of data retention and integrity and confidentiality).

Article 6 of the General Data Protection Regulation stipulates that the processing of personal data is lawful only if and to the extent that at least one of the following is met: the respondent has consented to the processing of his personal data for one or more special purposes; processing is necessary for the performance of the contract to which the respondent is a party or in order to take action at the request of the respondent prior to the conclusion of the contract; processing is necessary to comply with the legal obligations of the processing manager; processing is necessary in order to protect the key interests of the respondent or other natural person processing is necessary for the performance of a task of public interest or in the exercise of official authority of the head of processing; processing is necessary for the legitimate interests of the processing manager or a third party.

We also point out that in accordance with Article 9 (2) (i), the processing of special categories of personal data, including health data, is permitted, inter alia, if necessary for the public interest in the field of public health.

Furthermore, in accordance with Articles 24 and 32 of the General Data Protection Regulation, the controller is required to implement appropriate technical and organizational protection measures to ensure the effective application of data protection principles, such as data reduction and the application of appropriate personal data protection measures. could prove that the rights of the respondents (service users) are protected, ie that the processing of personal data is carried out in accordance with the General Data Protection Regulation.

Following the above, regarding the implementation of measures to combat the virus COVID-19, it should be borne in mind that

the Croatian Institute of Public Health (HZJZ) in accordance with the Decisions of the Civil Protection Headquarters published Recommendations for service activities requiring physical contact. In point 2.3. paragraph 2 of the above Recommendations, regarding the processing of personal data of service users, it is recommended that the service provider should record the time of entry into the salon, contact information (mobile phone number) and the time of leaving the salon.

Therefore, processing managers who perform service activities are obliged to ensure that, in accordance with the CNIPH Recommendation, only the above personal data are collected / processed that are relevant for achieving the determined purpose for which they are processed.

According to the above, in addition to contact information (mobile phone number) of the service user within which it is reasonable to consider (although not explicitly stated) the name and surname to know to whom the recorded number and time of arrival and departure belong, for processing other categories of personal data ) we do not find the legal basis from Articles 6 and 9 of the General Data Protection Regulation that would apply to controllers engaged in service activities. In particular, we do not find a legal basis for collecting (meaning data processing in terms of recording and keeping such records) special categories of personal data related to the health of service users (for example: data on respiratory symptoms, fever, self-isolation measures, etc. .) since such processing of special categories of personal data is not within the competence of the subject controllers. Therefore, since the stated information represents particularly sensitive data, which are not stated in the CNIPH Recommendations themselves, along with the associated and other personal data of the respondents (users), the collection, ie. processing them from the aspect of personal data protection and application of Article 5 of the General Data Protection Regulation would be considered excessive, and their further processing would be considered too invasive. Having all the above in mind, when processing personal data, we warn the controllers of the obligation to comply with positive legal regulations on personal data protection, among which we emphasize the direct application of the General Regulation on Data Protection.

It is especially important to point out that the consent of the respondents in the above context of combating the spread of the COVID-19 virus is not applicable as a legal basis as the necessary conditions for the processing of personal data based on consent are not met. First of all, consent would not be voluntary and free if the provision of the service to the user was conditioned by the granting of consent and / or the necessity to fill in certain forms through which personal data are collected. Consequently, we recommend that the processing of personal data of users in service activities that require physical contact,

related to the revitalization of activities and measures to combat the virus COVID-19 respect the basic principles of personal data processing set out in Article 5 of the General Data Protection Regulation. quantities of data and that if the collection of personal data of users is necessary (taking into account Article 9 of the General Data Protection Regulation) during such personal data collection the existence of a legal basis for processing is taken into account (applying Articles 6 and 9 of the General Data Protection Regulation data).

Also, each controller is obliged to take care of the appropriate security of personal data, including protection against unauthorized disposal of personal data (unauthorized access, provision of the same) and keep them in a form that allows identification of service users only as long as necessary for the purpose. which personal data are processed, for example during the COVID-19 pandemic, after which personal data must be destroyed.

Regarding informing the respondents about the collection and processing of personal data, we state that each head of personal data processing must take into account the principles of transparent and fair processing of personal data that require the respondent to be informed about the processing and their purposes. In this case, the provision of information is one of the basic responsibilities of the controller regardless of the legal basis for the collection and further processing of personal data and is necessary in any case processing personal data in an easily accessible and understandable way using clear and understandable language.