

Announcement on the processing of personal data in the context of the Decision on the introduction of a special security measure for testing officials, civil servants and employees, employees and employees in public services, employees and employees in local and regional (regional) self-government, and employees of companies and institutions

Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46/EC (General Data Protection Regulation) is fully binding and directly applicable in the Republic of Croatia from May 25, 2018.

When it comes to the processing of special categories of personal data (here health data), in addition to the legal legal basis for data processing from Article 6, paragraph 1 of the General Data Protection Regulation, it is necessary to establish an exception to the principle prohibition of processing special categories of personal data from Article 9 Paragraph 2 of the General Data Protection Regulation.

Article 6, paragraph 1 of the General Data Protection Regulation stipulates that processing is lawful only if and to the extent that at least one of the following is met:

- (a) the subject has given his consent for the processing of his personal data for one or more specific purposes;
- (b) the processing is necessary for the execution of a contract to which the respondent is a party or in order to take actions at the request of the respondent before concluding the contract;
- (c) the processing is necessary to comply with the legal obligations of the controller;
- (d) processing is necessary to protect vital interests of the data subject or other natural person;
- (e) the processing is necessary for the performance of a task of public interest or in the exercise of the official authority of the data controller;
- (f) processing is necessary for the purposes of the legitimate interests of the controller or a third party, except when these interests are stronger than the interests or fundamental rights and freedoms of the data subject that require the protection of personal data, especially if the data subject is a child.

Point (f) does not refer to the processing carried out by public authorities in the performance of their tasks.

If the legal basis for the processing of personal data is a legal obligation of the controller or the performance of a task in the public interest/official authority of the controller, then that legal basis must be established in the law of the Union or the law of the Member State to which the controller is subject, and that legal basis must be determined and the purpose of the processing

or, with regard to the processing from paragraph 1 point e), must be necessary for the performance of a task of public interest or the exercise of the official authority of the controller.

In the specific case, the Law on the Protection of the Population from Infectious Diseases (Official Gazette 79/07, 113/08, 43/09, 130/17, 114/18, 47/20, 134/20) is applied, which in Article 47 determines that in order to protect the population of the Republic of Croatia from, among other things, the disease COVID-19 caused by the SARS-CoV-2 virus and other infectious diseases, measures are taken as determined by this Act and international treaties to which the Republic of Croatia is a party. In the continuation of the article in question, it is determined that in order to prevent and suppress infectious diseases from paragraph 1 of this article, at the proposal of the Croatian Institute of Public Health, the minister can order special security measures to protect the population from infectious diseases, among other things, and ban or limit the holding of public events and/ or gatherings, prohibition or restriction of holding private gatherings or other necessary measures.

Furthermore, in accordance with paragraph 4 of the aforementioned article, when, in accordance with article 2, paragraphs 4 and 5 of this Act, an epidemic of an infectious disease or a threat of an epidemic of an infectious disease has been declared in relation to which the World Health Organization has also declared a pandemic, i.e. an epidemic or danger from it, security measures from paragraphs 1 to 3 of this article may be ordered by decision, in cooperation with the Ministry of Health and the Croatian Institute for Public Health, and the Headquarters of Civil Protection of the Republic of Croatia. Decisions of the Headquarters are made under the direct supervision of the Government of the Republic of Croatia.

Therefore, the relevant Decision of the Headquarters of the Civil Protection of the Republic of Croatia represents the legal legal basis for the processing from Article 6, paragraph 1 of the General Regulation on Data Protection, because the processing is necessary to comply with the legal obligations of the controller (point c)), i.e. because the processing is necessary for the performance of the task in the public interest or when exercising the official authority of the controller (point e)).

Furthermore, in the specific case, exceptions to the principle prohibition of processing special categories of personal data from Article 9, paragraph 2 of the General Data Protection Regulation fall under the following points:

(b) the processing is necessary for the purposes of fulfilling the obligations and exercising the special rights of the data controller or the data subject in the field of labor law and social security and social protection law to the extent that this is approved under the law of the Union or the law of a member state or a collective agreement in accordance with the law of the member state that prescribes appropriate protective measures for the fundamental rights and interests of the respondents,

(g) the processing is necessary for the purposes of significant public interest based on the law of the Union or the law of a Member State which is proportional to the desired goal and which respects the essence of the right to data protection and provides appropriate and special measures to protect the fundamental rights and interests of the data subject and

(i) processing is necessary for the purpose 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 health care and medicines and medical products, based on Union law or the law of a Member State which prescribes the appropriate and special measures for the protection of the rights and freedoms of respondents, especially professional secrecy.

Therefore, in accordance with the relevant Decision of the Headquarters of the Civil Protection of the Republic of Croatia, viewing the EU COVID certificate or other relevant evidence when entering official premises is legal. It is understood that viewing the EU COVID certificate may also include checking its validity through the CovidGO application.

Furthermore, in relation to the inspection of the personal identification document for the purpose of verifying the identity of the person (the holder of the specific certificate), please note that this is non-automated processing of personal data without a storage system, that is, inspection of the personal data of individuals that are not intended to be part of the storage system and in that case, it is not about the application of the General Data Protection Regulation in the sense of Article 2, Paragraph 1 of the same.

We particularly emphasize that any further processing (after inspection or validation), which includes, for example, copying, scanning, photographing, etc. of the EU COVID certificate or other appropriate evidence, would constitute excessive processing that is not in accordance with the regulations governing the protection of personal data.

However, if the employer wants to store information on the duration of the above-mentioned certificates of its employees for the purpose of facilitating/accelerating the implementation of the special security measure of mandatory testing, the employer is obliged to find another legal basis from Article 6, paragraph 1 of the General Regulation on Data Protection for the legality of such processing or storage .

Equally, since, we repeat, we are dealing with the processing of special categories of personal data, if the employer wants to store information about the duration of the said certificates of its employees for the purpose of facilitating/accelerating the implementation of the special security measure of mandatory testing, the employer is obliged to apply one of the exceptions to the principle prohibition processing of special categories of personal data from Article 9, paragraph 2 of the General Data

Protection Regulation.

Although the employee's consent in most cases is not an applicable legal basis for the legality of processing in employment relations due to the imbalance of power between the worker and the employer, the Agency for the Protection of Personal Data considers that in this particular case consent can be given voluntarily because the worker has an alternative and because it is unlikely that he will suffer negative consequences if he refuses consent.

In this sense, the Agency for the Protection of Personal Data considers that, in a specific case, the express consent of the employee can represent a valid legal basis for storing data on the duration of the EU COVID certificate or other appropriate evidence, i.e. an exception to the principle prohibition of the processing of special categories of personal data from Article 9. paragraph 2 of the General Data Protection Regulation, provided that the employer can really facilitate/accelerate the implementation of the mandatory testing security measure by storing the specified data.

Equally, the same is possible under the stated conditions for service providers from Article V of the relevant Decision of the Headquarters of Civil Protection of the Republic of Croatia.

It is understood that in the case of storage of data on the duration of the EU COVID certificate or other appropriate evidence, the same data must be deleted upon withdrawal of the express consent of the subject, upon the expiration of the validity of the said certificates, or upon the termination of the validity of the relevant Decision of the Civil Protection Headquarters of the Republic of Croatia.

On the other hand, taking into account all of the above, it follows that the storage of data on the duration of the EU COVID certificate or other appropriate evidence of the parties who come to the official premises would not be in accordance with the regulations governing the protection of personal data.

Following on from the above, the Personal Data Protection Agency, and taking into account the obligation to undertake appropriate personal data protection measures, considers it necessary for the data controller (authority) to clearly define the processes necessary for the verification and processing of personal data. It is therefore particularly important: to define the persons who are authorized for certain processes, to prescribe in detail the procedure for visual and digital verification (QR code) of the EU COVID certificate, as well as the procedure for processing the personal data of persons who possibly refuse to act in accordance with the decision in question.

In this way, the Agency for the Protection of Personal Data particularly emphasizes the need for transparent handling of

personal data, especially in terms of providing accurate and complete information about the processing of personal data of individuals. Thus, even in the specific case, it is necessary to provide information about the fact that the data controller processes personal data, for what purpose it is processed, to what extent, whether personal data is only viewed or is it stored, if it is stored - how long it is stored, how the respondent can exercise his rights in the field of personal data protection, contact details of the data protection officer and other information from Article 13 of the General Data Protection Regulation. Namely, the Agency's recommendation is that the information be provided concisely, clearly and comprehensibly, and that it be easily accessible to all subjects concerned.

Related to Article XI. of the relevant Decision of the Headquarters of the Civil Protection of the Republic of Croatia, which prescribes a recommendation to all other employers regarding the introduction of mandatory testing of their employees and other persons who come to their business premises, the Agency for the Protection of Personal Data considers it necessary to prescribe the same as a mandatory Decision of the Headquarters of the Civil Protection of the Republic of Croatia at the moment of fulfillment of the conditions with regard to the epidemiological situation. Namely, the recommendation of the Headquarters of the Civil Protection of the Republic of Croatia, due to its non-binding nature, cannot constitute a legal basis for the legality of the processing referred to in Article 6, paragraph 1, point c) or e) of the General Data Protection Regulation.