

Following the inquiry related to the processing of personal data on the health of workers by the employer, the Agency, in the context of the current emergency caused by the COVID-19 virus, states as follows:

First of all, we emphasize that any collection and processing of personal data in accordance with the General Regulation requires the existence of a legal basis referred to in Article 6 (1) of the General Regulation.

In addition, since the data in question are health data which constitute a special category of personal data within the meaning of the provisions of the General Regulation, their processing requires the existence of one of the exceptions in Article 9 (2) of the General Regulation.

Article 6 (1) of the General Regulation provides that processing is lawful only if and to the extent that at least one of the following is met:

- (a) the respondent has consented to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of the contract to which the respondent is a party or to take action at the request of the respondent prior to the conclusion of the contract;
- (c) processing is necessary to comply with the legal obligations of the controller;
- (d) processing is necessary in order to protect the vital interests of the respondent or another natural person;
- (e) processing is necessary for the performance of a task in the public interest or in the exercise of the official authority of the controller;
- (f) processing is necessary for the legitimate interests of the controller or a third party, except where those interests outweigh the interests or fundamental rights and freedoms of the respondent requiring the protection of personal data, in particular if the respondent is a child.

If the legal basis for the processing of personal data is the legal obligation of the controller, then that legal basis must be established in Union law or the law of the Member State to which the controller is subject, and that legal basis must determine the purpose of the processing.

Article 28 of the Labor Act (OG 93/2014, 127/2017, 98/2019) defines the obligations of the employer in the protection of life, health and morals of workers and paragraph 1 of this article stipulates that the employer is obliged to procure and maintain facilities, devices, equipment, tools, place of work and access to the place of work, and organize work in a way that ensures the protection of life and health of workers, in accordance with special laws and other regulations and the nature of the work

performed.

Furthermore, Article 1, paragraph 2 of the Occupational Safety and Health Act (OG 71/2014, 118/2014, 154/2014, 94/2018, 96/2018) stipulates that the purpose of this Act is to systematically improve the safety and health protection of workers and persons at work, prevention of injuries at work, occupational diseases and work-related illnesses, while Article 5, paragraph 1 emphasizes that life, health and preservation of working ability are values of special social interest in the Republic of Croatia. In addition, recital 46 of the General Regulation provides: "The processing of personal data should also be considered lawful if it is necessary to protect the interests necessary to preserve the life of the respondent or another natural person. The processing of personal data on the basis of the vital interests of another natural person should in principle only be carried out if the processing clearly cannot be based on another legal basis. Some types of processing can also serve important public interest and vital interests of respondents, such as if the processing is needed for humanitarian purposes, including monitoring epidemics and their spread, or in humanitarian crises, especially in cases of natural and man-made disasters. human action. "

Article 9 of the General Regulation reads as follows:

1. The processing of 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 an individual, health-related data or sexual life data shall be prohibited. sexual orientation of the individual.
2. Paragraph 1 shall not apply if one of the following is met:
 - (a) the data subject has expressly consented to the processing of such personal data for one or more specific purposes, unless Union law or the law of a Member State provides that the subject may not lift the prohibition referred to in paragraph 1;
 - (b) processing is necessary for the purposes of enforcing the obligations and exercising the prerogatives of the controller or subject in the field of labor and social security and social protection law to the extent permitted under Union law or the law of a Member State or a collective agreement under with the law of the Member State prescribing appropriate safeguards for the fundamental rights and interests of respondents;
 - (c) processing is necessary to protect the vital interests of the subject or another individual if the subject is physically or legally unable to give consent;
 - (d) the processing is carried out as part of legitimate activities with appropriate safeguards by a foundation, association or other non-profit body for political, philosophical, religious or trade union purposes and provided that the processing concerns

only members or former members of the body or persons contact with her regarding her purposes and that personal data have not been disclosed to anyone outside that body without the consent of the respondent;

(e) processing relates to personal data which are obviously disclosed by the respondent;

(f) processing is necessary for the establishment, realization or defense of legal claims or whenever the courts act in a judicial capacity;

(g) processing is necessary for reasons of significant public interest based on Union law or the law of a Member State which is proportionate to the desired objective and which respects the essence of the right to data protection and ensures appropriate and specific measures to protect fundamental rights and interests;

(h) processing is necessary for the purpose of preventive medicine or occupational medicine to assess the working capacity of employees, medical diagnosis, health or social care or treatment or management of health or social systems and services under Union or Member State law or under contract with a healthcare professional and in accordance with the conditions and protective measures referred to in paragraph 3;

(i) processing is necessary for the 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 and medicinal products, based on Union or Member State law and special measures for the protection of the rights and freedoms of respondents, in particular professional secrecy;

(j) processing is necessary for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes in accordance with Article 89 (1) under Union law or the law of a Member State proportionate to the aim pursued and the essence of the right to data protection is respected and appropriate and special measures are provided to protect the fundamental rights and interests of respondents.

Following the above, we point out that in this case the legal basis for the processing of personal data can be found in Article 6, paragraph 1, item c) of the General Regulation if the processing is necessary to comply with the legal obligations of the controller in the form of cited provisions. d) the same Article of the General Regulation if the processing of personal data is necessary in order to protect the vital interests of the respondents or other natural persons. On the other hand, the legal basis for the processing of specific categories of personal data would be Article 9 (2) (b) of the General Regulation.

According to the above, and in accordance with recital 4 of the General Regulation, it is clear that the processing of personal

data should be designed to be in the service of humanity. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and it must be equated with other fundamental rights in accordance with the principle of proportionality.

In this context, it should be emphasized that the processing of personal data on the health of respondents should be necessary and proportionate, and personal data appropriate, relevant and limited to what is necessary for the purposes for which they are processed, in accordance with Article 5 of the General Regulation. .