

## Opinions of the European supervisory authorities: Data protection and COVID-19

Since the WHO declared COVID-19 (Corona) a pandemic on 11.03.2020, the political measures to contain the virus have intensified across all countries. Employers are facing the dilemma of having to maintain normal business operations on the one hand, while at the same time complying with their duty of care towards their employees. In order to minimize the risk of infection within their business premises, they depend on additional information. Which employee has recently been in an area that is deemed risky? Do some employees already have the first disease related symptoms? Has any of my employees been confirmed carrying COVID-19? How do I communicate a COVID-19 case within my company? May I disclose names? As these questions concern personal data, the data protection regulations of the GDPR apply. Processing data is made even more difficult as health data (i.e. special categories of personal data within the meaning of Art. 9 (1) GDPR) are affected. Such data may only be processed under strict conditions. According to a statement of the [EDPB\\*](#), the GDPR does not hinder measures taken in the fight against COVID-19. Despite these “exceptional times”, the protection of the data subjects’ personal data must be ensured. The personal data of some employees may be processed – even without their consent – in accordance with Articles 6 and 9 GDPR either to comply with legal obligations or to protect vital interests.

In the last few days, the first European supervisory authorities have published statements on the issue of "Data protection and COVID-19". For a preliminary overview, we have compiled for you the rough positions of the individual supervisory authorities:

<b>Data Protection Authority</b>	<b>May the employer collect travel-related data from employees?</b>	<b>May the employer collect data on COVID-19 symptoms from employees?</b>	<b>May the employer collect data on the infection with COVID-19 from employees?</b>	<b>May the employer disclose data concerning an infected person within the company?</b>
<a href="#">Austria*</a>	Yes	May be justified in case of reasonable concerns; prior information regarding purpose and extent of data processing may be necessary.	Yes, prior information regarding purpose and extent of data processing may be necessary.	N.A., however disclosure seems possible if the information is necessary for further precautionary measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).

TaylorWessing Insight: [Data protection - even in times of COVID-19?\\*](#) (German)

<a href="#">Belgium</a>	No, unless the employee has provided the information voluntarily.	No, this is the responsibility of occupational physicians.	No, this is the responsibility of occupational physicians.	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the company may be disclosed.
<a href="#">Croatia</a>	Rather generic statement; emphasizes that employers have to adhere to the principles of the GDPR despite these exceptional circumstances. Employers need to rely on a legal basis pursuant to Art. 6 GDPR. As far as health data are concerned – which is the case with COVID-19 infections and symptoms – the additional requirements of Art. 9 GDPR need to be considered.			
<a href="#">Denmark</a>	Yes	Yes, however, limited to the necessary scope; prior information regarding purpose and extent of data processing may be necessary.	Yes, prior information regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for preventive measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19). Information that makes identification possible should not be disclosed.
<a href="#">Estonia*</a>	Yes	No, unless the employee has provided the information voluntarily.	No, unless the employee has provided the information voluntarily; However, the employee is obliged to inform the employer in case of an infection.	N.A., however disclosure of the identity seems prohibited.
<a href="#">Finland</a>	No, unless the employee has provided the information voluntarily.	No, unless the employee has provided the information voluntarily.	No, unless the employee has provided the information voluntarily.	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the company may be disclosed.



<a href="#">France</a>	Yes	No, this is the responsibility of the health authorities.	Yes, prior information regarding purpose and extent of data processing may be necessary.	Yes, however the data processing must be limited to the necessary scope.
<p>TaylorWessing Insight: <a href="#">Coronavirus – The CNIL issues reminders on personal data collection*</a></p>				
<a href="#">Germany</a>	Yes	May be justified in individual cases; prior information regarding purpose and extent of data processing may be necessary.	Yes, prior information regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for preventive measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).
<a href="#">Greece</a>	A verbal request is possible.	A verbal request is possible.	A verbal request is possible.	Identity must not be disclosed if this could lead to a discrimination against affected employee.
<a href="#">Hungary</a>	No; exceptionally, questionnaires can be used if the employer has a reason to believe that an employee might be infected with COVID-19.	No; as an exception, questionnaires can be used if the employer has a reason to believe that an employee might be infected with COVID-19.	If the employer has reason to believe that an employee is infected with COVID-19, he can collect information on the result of a COVID-19 test; further health data may not be processed.	N.A., however disclosure of the identity seems prohibited.
<a href="#">Iceland</a>	Yes	Yes, prior information regarding purpose and extent of data processing may be necessary.	Yes, prior information regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for preventive measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).
<a href="#">Ireland</a>	Employer may ask employees to give notice if they have travelled to areas	Employer may ask employees to report symptoms. Questionnaires can only be used	Yes, prior information regarding purpose and extent	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the



deemed risky. Questionnaires can only be used in case of increased risk. in case of increased risk. of data processing may be necessary. company may be disclosed to the extent necessary for the health authorities' ability to work.

**Italy\*\***

No, unless the employee has provided the information voluntarily. No, unless the employee has provided the information voluntarily. No, unless the employee has provided the information voluntarily. Only if the information is necessary for preventive measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).

Note that according to the [Joint regulatory protocol for measures for combating and containing the spread of the Covid-19 virus in the workplace\\*](#) the employees can be subjected to body temperature control before entering the workplace. Furthermore, employees need to inform their employer if they have had contact with people infected with COVID-19 or if they develop a fever and/or symptoms of respiratory infection. Italy's DPA has not updated their statement accordingly yet. (With thanks to Mr. Alessandro De Vico).

**Lithuania**

Yes Yes, however no systematic processing (e.g. via questionnaires); prior information regarding purpose and extent of data processing may be necessary. Yes, prior information regarding purpose and extent of data processing may be necessary. Identity must not be disclosed; the fact *that* there is a COVID-19-case in the company may be disclosed.

**Luxembourg**

Yes No; systematic processing (e.g. questionnaires) or individual requests are prohibited. Yes, prior information regarding purpose and extent of data processing may be necessary. Identity must not be disclosed; the fact *that* there is a COVID-19-case in the company may be disclosed.

**Malta\***

Rather generic statement; emphasizes that employers have to adhere to the principles of the GDPR despite these exceptional circumstances. Employers need to rely on a legal basis pursuant to Art. 6 GDPR. As far as health data are concerned – which is the case with COVID-19 infections and symptoms – the additional requirements of Art. 9 GDPR need to be considered.

**Netherlands**

No, unless the employee has No, unless the employee has No, unless the employee has provided the information voluntarily. Identity must not be disclosed; the fact *that* there is a COVID-19-case in the



	provided the information voluntarily.	provided the information voluntarily.		company may be disclosed.
<b><u>Norway</u></b>	Yes, employees can ask questions related to COVID-19.	Yes, employees can ask questions related to COVID-19; prior information regarding purpose and extent of data processing may be necessary.	Yes, employees can ask questions related to COVID-19; prior information regarding purpose and extent of data processing may be necessary.	Only if disclosure is necessary to ensure "a safe working environment"; disclosure to third parties is not permitted.
<b><u>Poland</u></b>	Yes	Yes, prior information regarding purpose and extent of data processing may be necessary.	Yes, prior information regarding purpose and extent of data processing may be necessary.	N.A., however disclosure seems possible if the information is necessary for further precautionary measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).
<b><u>Romania</u></b>	N.A., however collection does not seem to be prohibited.	N.A., May be justified in individual cases; prior information regarding purpose and extent of data processing may be necessary.	N.A., May be justified in individual cases; prior information regarding purpose and extent of data processing may be necessary.	Identity may only be disclosed if affected employee has given their consent.
<b><u>Slovakia</u></b>	Rather generic statement; emphasizes that employers have to adhere to the principles of the GDPR despite these exceptional circumstances. Employers need to rely on a legal basis pursuant to Art. 6 GDPR. As far as health data are concerned – which is the case with COVID-19 infections and symptoms – the additional requirements of Art. 9 GDPR need to be considered.			
	TaylorWessing Insight: <a href="#">COVID-19 – FAQ*</a>			
<b><u>Slovenia</u></b>	Rather generic statement; emphasizes that employers have to adhere to the principles of the GDPR despite these exceptional circumstances. Employers need to rely on a legal basis pursuant to Art. 6 GDPR. As far as health data are concerned – which is the case with COVID-19 infections and symptoms – the additional requirements of Art. 9 GDPR need to be considered. The authorities need to evaluate the cases individually in order to determine what processing is necessary for protecting vital interests.			



<b><u>Spain</u></b>	Yes	Yes, prior information regarding purpose and extent of data processing may be necessary.	Yes, prior information regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for preventive measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).
<b><u>Sweden</u></b>	N.A., systematic collection should be avoided; collection does not seem to be prohibited.	N.A., May be justified in individual cases; prior information regarding purpose and extent of data processing may be necessary.	N.A., May be justified in individual cases; prior information regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for preventive measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).
<b><u>United Kingdom</u></b>	Yes	May be justified in individual cases; prior information regarding purpose and extent of data processing may be necessary.	Yes, prior information regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for preventive measures (e.g. with regard to persons who have had personal contact with someone infected with COVID-19).

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