

# **TaylorWessing**

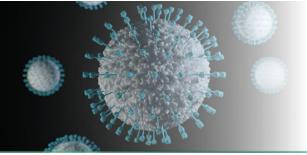
Version 3.0, 31 March 2020

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

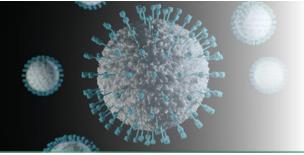
Since the WHO declared COVID-19 (Corona) a pandemic on 11.03.2020, the political measures to contain the virus have intensified across all countries. Employers are facing the dilemma of having to maintain normal business operations on the one hand, while at the same time complying with their duty of 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:

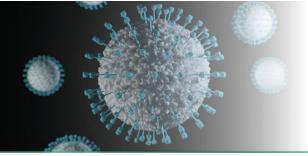
Data Protec- tion Authority	May the em- ployer collect travel-related data from em- ployees?	May the em- ployer collect data on COVID- 19 symptoms from employ- ees?	May the employer collect data on the infection with COVID-19 from employees?	May the employer disclose data con- cerning an infected person within the company?
<u>Austria</u> *	Yes	May be justified in case of reason- able concerns; prior information regarding pur- pose and extent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	N.A., however disclo- sure seems possible if the information is necessary for further precautionary measures (e.g. with regard to persons who have had per- sonal contact with- someone infected with COVID-19).



	TaylorWessing Insight: Data protection - even in times of COVID-19?* (German)				
<u>Belgium</u>	No, unless the employee has provided the in- formation volun- tarily.	No, this is the re- sponsibility of oc- cupational physi- cians.	No, this is the re- sponsibility of occu- pational physicians.	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the company may be dis- closed.	
<u>Croatia</u>	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.				
<u>Denmark</u>	Yes	Yes, however, limited to the nec- essary scope; prior information regarding pur- pose and extent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for pre- ventive measures (e.g. with regard to persons who have had personal contact with someone in- fected with COVID- 19). Information that makes identification possible should not be disclosed.	
<u>Estonia*</u>	Yes	No, unless the employee has provided the in- formation volun- tarily.	No, unless the em- ployee has pro- vided the infor- mation voluntarily; However, the em- ployee is obliged to inform the employer in case of an infec- tion.	N.A., however disclo- sure of the identity seems prohibited.	
<u>Finland</u>	No, unless the employee has provided the in- formation volun- tarily.	No, unless the employee has provided the in- formation volun- tarily.	No, unless the em- ployee has pro- vided the infor- mation voluntarily.	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the company may be dis- closed.	

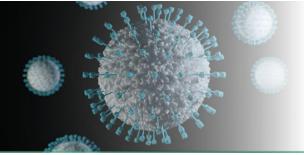


France	Yes	No, this is the re- sponsibility of the health authorities.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Yes, however the data processing must be limited to the nec- essary scope.	
	TaylorWessing Insight: Coronavirus – The CNIL issues reminders on personal data collection*				
<u>Germany</u>	Yes	May be justified in individual cases; prior infor- mation regarding purpose and ex- tent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for pre- ventive measures (e.g. with regard to persons who have had personal contact with someone in- fected with COVID- 19).	
<u>Greece</u>	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 discrimina- tion against affected employee.	
<u>Hungary</u>	No; exception- ally, question- naires can be used if the em- ployer has a reason to be- lieve that an em- ployee might be infected with COVID-19.	No; as an excep- tion, question- naires can be used if the em- ployer has a rea- son 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; fur- ther health data may not be pro- cessed.	N.A., however disclo- sure of the identity seems prohibited.	
<u>lceland</u>	Yes	Yes, prior infor- mation regarding purpose and ex- tent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for pre- ventive measures (e.g. with regard to persons who have had personal contact with someone in- fected with COVID- 19).	
<b>Ireland</b>	Employer may ask employees to give notice if they have trav- elled to areas	Employer may ask employees to report symptoms. Questionnaires can only be used	Yes, prior infor- mation regarding purpose and extent	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the	

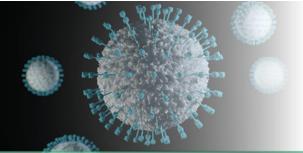


## Opinions of the European supervisory authorities: Data protection and COVID-19

	deemed risky. Questionnaires can only be used in case of increased risk.	in case of in- creased risk.	of data processing may be necessary.	company may be dis- closed to the extent necessary for the health authorities' ability to work.
<u>ltaly</u> **	No, unless the employee has provided the in- formation volun- tarily.	No, unless the employee has provided the in- formation volun- tarily.	No, unless the em- ployee has pro- vided the infor- mation voluntarily.	Only if the information is necessary for pre- ventive measures (e.g. with regard to persons who have had personal contact with someone in- fected with COVID- 19).
	containing the sp subjected to body ployees need to in COVID-19 of if the	9 virus in the workplace efore entering the workplace they have had contact v l/or symptoms of respirate	ures for combating and e* the employees can be place. Furthermore, em- with people infected with atory infection. Italy's nks to Mr. Alessandro De	
<u>Lithuania</u>	Yes	Yes, however no systematic pro- cessing (e.g. via questionnaires); prior information regarding pur- pose and extent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the company may be dis- closed.
<u>Luxembourg</u>	Yes	No; systematic processing (e.g. questionnaires) or individual re- quests are pro- hibited.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the company may be dis- closed.
<u>Malta</u> *	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.			
<u>Netherlands</u>	No, unless the employee has	No, unless the employee has	No, unless the em- ployee has pro- vided the infor- mation voluntarily.	Identity must not be disclosed; the fact <i>that</i> there is a COVID-19-case in the



	provided the in- formation volun- tarily.	provided the in- formation volun- tarily.		company may be dis- closed.	
<u>Norway</u>	Yes, employees can ask ques- tions related to COVID-19.	Yes, employees can ask ques- tions related to COVID-19; prior information re- garding purpose and extent of data processing may be neces- sary.	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 envi- ronment"; disclosure to third parties is not permitted.	
<u>Poland</u>	Yes	Yes, prior infor- mation regarding purpose and ex- tent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	N.A., however disclo- sure seems possible if the information is necessary for further precautionary measures (e.g. with regard to persons who have had per- sonal contact with someone infected with COVID-19).	
<u>Romania</u>	N.A., however collection does not seem to be prohibited.	N.A., May be jus- tified in individual cases; prior infor- mation regarding purpose and ex- tent of data pro- cessing may be necessary.	N.A., May be justi- fied in individual cases; prior infor- mation regarding purpose and extent of data processing may be necessary.	Identity may only be disclosed if affected employee has given their consent.	
<u>Slovakia</u>	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: <u>COVID-19 – FAQ</u> *				
<u>Slovenia</u>	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.				



<u>Spain</u>	Yes	Yes, prior infor- mation regarding purpose and ex- tent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for pre- ventive measures (e.g. with regard to persons who have had personal contact with someone in- fected with COVID- 19).
<u>Sweden</u>	N.A., systematic collection should be avoided; col- lection does not seem to be pro- hibited.	N.A., May be jus- tified in individual cases; prior infor- mation regarding purpose and ex- tent of data pro- cessing may be necessary.	N.A., May be justi- fied in individual cases; prior infor- mation regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for pre- ventive measures (e.g. with regard to persons who have had personal contact with someone in- fected with COVID- 19).
<u>United King-</u> <u>dom</u>	Yes	May be justified in individual cases; prior infor- mation regarding purpose and ex- tent of data pro- cessing may be necessary.	Yes, prior infor- mation regarding purpose and extent of data processing may be necessary.	Only if the information is necessary for pre- ventive measures (e.g. with regard to persons who have had personal contact with someone in- fected with COVID- 19).

\* UR: Update to Version 2.0 from 24 March 2020.

\*\* Content: Update to Version 2.0 from 24 March 2020.

#### Authors:



Paul Voigt, Lic. en Derecho, CIPP/E Partner p.voigt@taylorwessing.com



Wiebke Reuter, LL.M. (London) Associate w.reuter@taylorwessing.com

### Europe > Middle East > Asia

## taylorwessing.com

© Taylor Wessing 2020 This publication is not intended to constitute legal advice. Taylor Wessing entities operate under one brand but are legally distinct, either being or affiliated to a member of Taylor Wessing Verein. Taylor Wessing Verein does not itself provide services. Further information can be found on our regulatory page at https://deutschland.taylorwessing.com/en/regulatory.