



Athens, 18 March 2020

GUIDELINES ON PROCESSING OF PERSONAL DATA IN THE CONTEXT OF THE MANAGEMENT OF COVID-19

The Hellenic Data Protection Authority (henceforth “the Authority”), acknowledging the exceptional circumstances created in the area of personal data protection and respect for the fundamental rights and freedoms of citizens by the extremely urgent and unforeseen need to address the negative repercussions due to COVID-19 outbreak (henceforth “the coronavirus”), contain its spread and take the necessary relevant measures in line with the Legislative Acts that have been adopted (henceforth “LA”) and the relevant legislation as part of the operations carried out by controllers to the degree they constitute processing of personal data, following Decision No. 5/2020 of its Plenary, adopts the following **Guidelines**:

1. Information related to the health of a natural person, including provision of healthcare services to that person, constitutes health-related personal data, namely special category data which are subject to a stricter protection regime. Such information includes, for example, naming or identifying a data subject as patient or not, staying at home due to illness, finding signs of illness, maybe even based on their clinical symptoms (cough, nasal discharge, body temperature higher than normal etc.). Information of interest in this respect, such as whether the data subject has travelled to a foreign country where the coronavirus has spread extensively or if a family member or colleague of the data subject is ill or has contracted the coronavirus, is not relevant to the health of that particular data subject and, therefore, does not constitute special category data, but under specific circumstances it can be considered as simple personal data.
2. The legislation on the protection of personal data applies, in accordance with Art. 2 (1) of Regulation 679/2016 (“GDPR”) and Art. 2 of Law 4624/2019 to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of such data, which form part or are intended to form part of a filing system. So, for instance, while providing oral information that the data subject has been infected with coronavirus or that his/her body temperature has been found to be higher than normal is considered personal data, the relevant legislation does not apply where the above information is not part of a filing system in the case of processing other than by automated means (manually) or has not been subject to processing by automated means. It should be pointed out that the scope of application of the GDPR is determined in a binding manner in Art. 2 (1) thereof and it cannot be expanded by means of provisions of national legislation.
3. In so far as processing of personal data is carried out by competent public authorities in order to take the necessary measures, as appropriate, and in accordance with relevant LAs, aiming to avoid the risk of outbreak or spread of the coronavirus which may have serious implications for public health



Hellenic Data Protection Authority

Athens, 18 March 2020

the GDPR is applied under the aforementioned conditions 1 and 2. In these cases the legal bases that apply are the ones that are set out in particular in Articles 6 (1) (c) (processing is necessary for compliance with a legal obligation to which the controller is subject), (d) (processing is necessary in order to protect the vital interests of the data subject or of another natural person) and (e) (processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller) and 9 (2) (b) (processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law), (e) (processing relates to personal data which are manifestly made public by the data subject), (h) (processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services) and (i) (processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices), Law 4624/2019 according to Opinion No. 1/2020 of the Authority, in combination with any more specific legislation on the protection of personal data, including relevant arrangements provided for in the LAs and their implementing ministerial decisions.

4. 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 be balanced against other fundamental rights, according to the proportionality principle (rec. 4 GDPR). From recitals 1-3 above it becomes clear that implementing the legal framework on the protection of personal data does not constitute an obstacle to taking the necessary measures to tackle coronavirus. On the contrary, the legal bases for the necessary processing are provided, provided that the basic principles are met and that relevant substantive and procedural safeguards and conditions for lawful processing are ensured. It should also be noted that processing of personal data concerning health as part of measures taken against coronavirus is carried out by competent public authorities as a necessary step for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health as per Art. 9 (2) (i) GDPR (see rec. 46 and 52 GDPR). Competent public authorities constitute, thus, controllers that are processing both simple and health related (special category) personal data for the protection of public health.
5. As for the private sector, in particular employment relationships, from the provisions in force (in particular, those in Articles 42, 45 and 49 of Law 3850/2010) it becomes clear that, on the one hand, the employer is obliged to ensure the health and safety of workers by taking the necessary relevant



Hellenic Data Protection Authority

Athens, 18 March 2020

protective measures in order to prevent any serious, immediate and unavoidable risk to them, ensuring a safe and healthy working environment with the assistance of workers; on the other hand, the workers are equally obliged to follow health and safety rules both for themselves and for other persons affected by their acts or omissions, including their obligation to report immediately to their employer and/or the supervisory occupational doctor every situation which may be reasonably considered that it poses an immediate and serious risk to health and safety. In so far as the legislation on the protection of personal data applies according to recitals No. 1-2 above, employers are entitled to process data in order to protect the health of employees and their own in accordance with the principles set out in Article 5 GDPR, under the legal bases provided for in the above provisions of Articles 6 (1) in particular (c), (d) and (e), and 9 (2), in particular (b), (e) and (h) GDPR always under the instructions of the authorities competent to implement the measures¹ taken under the LAs in so far as they constitute processing of personal data.

6. The Authority has received queries from employers in relation to their processing of employees', suppliers', visitors' personal data at their offices and facilities in order to ensure the health of employees under the provisions of Law 3850/2010 as mentioned above, such as, e.g., whether measuring the body temperature of incoming individuals, or submitting a questionnaire regarding the health status of employees or their relatives or a history of recent travel abroad to high risk areas for COVID-19 etc., or informing other employees of the fact that a fellow employee has been infected and/or of the employee's identity is allowed. The Authority wishes to remind that the controller shall carry out the necessary data protection processing operations in line with Articles 5 and 6 GDPR to achieve the intended purposes without it being possible to exclude from the outset that any processing operation is prohibited, especially during this critical and unprecedented time provided that the conditions set out in recitals 1-2 hereof are also met. It is self-evident that such processing is carried out in the context of the principle of accountability. Particular attention should be paid to assessing whether it is possible to only collect the necessary information related exclusively to the intended purpose (principles of restriction of processing in combination with the principle of proportionality), in compliance with the principle of safe processing (in particular, confidentiality of information) by taking the necessary technical and organisational security measures. It should be pointed out that the collection and generally the processing of personal data which are burdensome and constitute a restriction of individual rights, such as, e.g., measuring the body temperature at the entrance to the workplace, should take place, in compliance with the legal requirements, after all appropriate

¹ For the criminal penalties for breaching the duty of compliance with the relevant measures see Circular No. 4 of the Greek Supreme Court prosecutor with Reg. 2433/12-3-2020.



Hellenic Data Protection Authority

Athens, 18 March 2020

means that are selected by the controller have already been excluded, provided that the legislation on personal data is implemented. On the contrary, a systematic, ongoing and wide-ranging collection of personal data leading to profiling the health of employees and to constant updating of their profiling information, could hardly be considered as compliant with the proportionality principle.

7. The processing of personal data of deceased persons does not fall in principle within the protective scope of personal data protection rules (rec. 27 GDPR). Nevertheless, given that revealing identifiers of persons who died of coronavirus is likely to result in indirect identification of living persons who had been in contact with or who were relatives of the deceased to whom relevant rules apply, the processing must be carried out in compliance with the general principles of processing set out in Article 5 (1) in combination with Article 6 GDPR.
8. Voluntary disclosure by persons already infected with coronavirus of the status of their health provides as per Article 9 (2) (e) GDPR the legal basis for the processing of specific health related data on the condition that the principles set out in Article 5 GDPR are met in combination with any more specific provisions of the national legislation, including LAs.
9. Notification of information relating to the status of health of data subjects by controllers to third parties, where this constitutes processing of personal data, subject to the conditions laid down in recitals 1-2 hereof, even if it is carried out in the context of Articles 5, 6 and 9 GDPR, is not allowed where it is creating a climate of prejudice and stigma, while it is also likely to have a preventative effect with regard to complying with the measures announced by the competent public authorities undermining eventually their effectiveness.
10. Finally, before processing any personal data for journalistic purposes,² in particular with regard to the status of health of data subject in relation to coronavirus, except for the above mentioned (in particular, recital 9 thereof) it should be first considered whether it is necessary to disclose identifiers concerning the subject (e.g. name, photo and other identifying information), taking particular account of the fact that the public authorities (the Hellenic National Public Health Organisation [EODY] and the General Secretariat for Civil Protection [GSCP]) are processing citizens' personal data of epidemiological correlation without specifying personal identifiers (see LA No. 19 (2) Government Gazette [GG] Issue A'55/11-3-2020) or following pseudonymisation and taking the necessary technical and organisational security measures (see Article 5 LA GG A'64/14-3-2020).

The Authority reserves the right to issue more specific guidelines, if it becomes necessary, in accordance with the factual and legal developments.

² See Opinion 1/2020 of the Authority on the provisions of Law 4624/2019.