COVID-19 AND DATA PROTECTION

Supervision and Enforcement Unit
European Data Protection Supervisor
08/05/2020
The EU context

- **EDPS blogpost**: “Carrying the torch in times of darkness” (April 30)
- **EDPB statement** on the processing of personal data in the context of the Covid-19 outbreak (March 19)
  - GDPR does not hinder the fight against the pandemic and applies to context such as Covid-19 outbreak
  - GDPR actually contributes to an efficient response
- **EDPS call** for a pan-European approach against the pandemic (April 6)
The EU context

• **Use of location data for pandemic spread mapping**
  – [EDPS Comments](#) on the European Commission’s plan to access telecommunications data from telecommunications service providers to monitor the COVID-19 spread (March 25).
  – [EDPB GL 04/2020](#) on the use of location data and contact tracing tools in the context of the Covid-19 outbreak (April 21)

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The EU context

• **Contact tracing apps**
  – [COM Recommendation](#) towards a common Union toolbox for the use of technology and data to combat and exit from the Covid-19 crisis of 8 April + [Guidance](#) on contact tracing apps.
  – [EDPB Letter](#) concerning COM Draft Guidance (April 14)
  – [EDPB Guidelines 04/2020](#) (April 21)
The EU context

• **Scientific research**
  – [EDPB GL 03/2020](#) on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak (April 21)
What are the DPOs’ biggest challenges during this unprecedented pandemic crisis?
Results of the survey on COVID-19 challenges

DPOs’ participation in the survey

- Participated: 47%
- Did not participate: 53%
Results of the survey on COVID-19 challenges

1. What are the biggest challenges for you as a DPO during the COVID-19 crisis?

- Additional workload;
- Time pressure;
- Children at home;
- Independence.
Results of the survey on COVID-19 challenges

2. Did you find a solution to those challenges?
Results of the survey on COVID-19 challenges

3. Which additional support would you like to receive from the EDPS?

- EDPS guidance on COVID-19 data processing
- Blogpost and more guidance in the pipeline
- To be considered
- Timely guidance;
- Dedicated channel for COVID-19 questions;
- Auditing;
- Guidance on teleworking, video-conferences.

a. Document clarifying that EUIs need to comply with data protection rules also during the COVID-19 crisis
b. Additional guidance
c. Virtual meetings with the managers
d. Other
New trends in EUIs

• Many organisational adaptations in EUIs and more to come:
  – Lockdown/confinement: close to 100% telework, videoconferencing...
  – reopening: preventive measures, ensuring health and safety in the workplace...
  – “new normal”: more to come...

• NB: this is all from the “EUI as employer” perspective

• Guidance document to come very soon!
Tips to have in mind I

• Telework and videoconferencing tools
  – controller/processor relationship
  – monitoring by provider and/or employer
  – transfers?
  – security
  – decision-making processes: beware of lock-in!

• Recording video calls?
  – same approach as for recording or streaming in-person meetings: (most often) consent
Tips to have in mind II

• DS requests for access etc.
  – possible issues on remote access to systems where information is held
  – deadlines still apply; if you can’t make them, inform people as soon as possible, explain reasons and document

• Leave requests
  – imposing restrictions on travel during leave is not the employer’s role (unlike for duty travel)
Tips to have in mind III

• Temperature checks at entrance?
  – EUIs are employers here, not border control!
  – Role of seat agreement and privileges and immunities
  – Check the approach in your host country; if under national rules, employers are...
    • ... obliged to check: can check (would be difficult to argue that EUI privileges and immunities get you out)
    • ... not required to check: would require autonomous ground for lawfulness under Art. 10 of the Reg. (would need to find it in Union law)
Tips to have in mind IV

• Role of medical services
  – can give advice on preventive measures
  – not primary care provider, do not interfere with health privacy

• Contact tracing / exposure notification?
  – not for EUIs as employers, but for public health authorities. You can provide info if requested, but don’t try to take over their role.

• Health/immunity certificates?
  – many issues: kinds of tests and their accuracy, scientific uncertainty => WHO scientific brief
  – Advise against, even more so as employers
Thank you for your attention!

For more information:

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