

Ms. Sophie in 't Veld  
Member of the European Parliament

15 December 2020

By e-mail only

Ref: OUT2020-0134

Dear Ms in't Veld

Thank you very much for your letter dated 4 June 2020 in which you raise a series of questions regarding the processing of reservation data in the context of measures adopted to fight the spread of COVID-19

As Member States continue to fight the spread of the COVID-19 pandemic, some of the measures to be implemented and steps to be taken will involve the processing of personal data. The challenge going forward, for Member States' public health authorities, will be to ensure that these measures can be implemented in a manner that complies with the data protection legislative framework and respects the fundamental rights and freedoms of individuals. In this regard, the EDPB has published several documents related to the processing of personal data in the context of the fight against the COVID-19 pandemic, emphasising the importance to ensure the protection of personal data in these exceptional circumstances and the respect of the principles of necessity and proportionality of the measures in place.

With regard to the processing of reservation data provided by patrons for contact tracing purposes, the EDPB underlines that, as with any other processing, it must be in line with the GDPR. Therefore, it must respect the data protection principles and be conducted under one of the legal bases identified in Article 6 GDPR. If special categories of personal data are processed, such as health data, Article 9 GDPR should also be considered.

Some Member States have regulated this processing by imposing a legal obligation to collect data of patrons. In this case, the legislative measures must meet, among other things, the requirement for justification on the basis of necessity and proportionality. This is a consideration to be made by each Member State, with due consideration also for consultation with the national Supervisory Authority as required by Article 36(4) GDPR.

Currently, the EDPB does not have an exhaustive overview with regard to the specificities of the processing activities taking place in every Member State for the contact tracing purposes, as the situation may evolve in the Member States. As mentioned above, if a legal obligation has not been imposed for restaurants and other businesses to collect such data, this can only take place if another appropriate legal ground in article 6 GDPR has been identified.

In the implementation of these measures, business owners and service providers collect and retain personal data for contact tracing purposes. Depending on the legal basis identified by the Member States' authorities, they may be under a legal obligation to do so. It is important that they are aware of their responsibilities to do this in a manner that adheres to the principles of data protection, as they

must already in the processing of personal data in the conduct of their business. In this regard, in addition to the lawfulness of the processing, the EDPB considers that the following principles may be of particular importance:

- Data Minimisation – only the personal data strictly necessary for contact tracing purposes should be collected. An example of a data minimisation measure is to request from customers only the provision of their name, surname and phone number.
- Purpose Limitation – neither the business nor their employees should process the personal data collected for contact tracing purposes for any other purpose, such as marketing.
- Integrity and Confidentiality – the security of this personal data should be ensured, in particular to avoid accidental disclosure to unauthorised parties. In this respect, appropriate technical and organisation measures should be put in place. For example, asking customers to add their data in a file where personal data of other customers is visible would not comply with the principle of integrity and confidentiality.
- Storage limitation – personal data collected for contact tracing purposes should be retained only for as long as necessary, based upon the guidance or instruction of the relevant Member State authorities.

In addition, data subjects should receive transparent information with regard to the processing activities, including the legal basis, retention period and the purposes of the processing, as well as the rights that assist the data subject, in accordance with article 13 GDPR. The information should be easily accessible and provided in clear and plain language.

Finally, with regard to the provision of guidelines, the EDPB does not intend to adopt formal guidance on this matter for the moment. Given the variety of approaches that may be adopted by Member States in the implementation of contact tracing measures, it would be more appropriate that guidance be issued at Member State level to reflect the specific requirements of the national contact tracing system, and national public health recommendations. National Supervisory Authorities may also have a role to play in the provision of such guidelines, as has taken place already in some Member States.

Yours sincerely,



Andrea Jelinek