



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

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Mr Roberto VIOLA
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Subject: Monitoring spread of COVID-19

Dear Mr Viola,

Thank you for consulting the EDPS on the monitoring of the spread of the COVID-19 outbreak. It is indeed a matter of great urgency.

Firstly, let me underline that **data protection rules¹ currently in force in Europe are flexible enough to allow for various measures taken in the fight against pandemics**. I am aware of the discussions taking place in some Member States with telecommunications providers with the objective of using such data to track the spread of the COVID-19 outbreak.

I share and support your call for an urgent establishment of a coordinated European approach to handle the emergency in the most efficient, effective and compliant way possible. There is a clear need to act at the European level now.

On the basis of the information provided in your letter and in absence of a more specific data model, please find below some elements for your consideration.

- ***Data anonymisation***

It is clear from your letter that you intend to use only anonymous data to map movements of people with the objective of ensuring the stability of the internal market and coordinating crisis response. **Effectively anonymised data fall outside of the scope of data protection rules²**.

¹ Regulation (EU) 2016/679 (GDPR), Regulation (EU) 2018/1725, ePrivacy Directive 2002/58/EC, etc.

² Provided that the data to be obtained by the Commission is anonymised, data protection rules would not apply. Therefore, the role of the Commission as a controller under Regulation 2018/1725 would not be relevant in this case.

At the same time, effective anonymisation requires more than simply removing obvious identifiers such as phone numbers and IMEI numbers. In your letter, you also mention that data would be aggregated, which can provide an additional safeguard.³

I understand that the Health Security Committee established by Decision (EU) 1082/2013 you make explicit reference to would be the relevant forum for exchanges with the Member States in this case. The Commission should ensure that the data model would enable it to respond to the needs of the users of these analyses. Moreover, the Commission should clearly define the dataset it wants to obtain and ensure transparency towards the public, to avoid any possible misunderstandings. I would appreciate if you could share with me a copy of the data model, once defined, for information.

- ***Data security and data access***

As mentioned above, to the extent the data obtained by the Commission would be anonymous, it falls outside the scope of data protection rules. Nonetheless, information security obligations under Commission Decision 2017/46⁴ still apply, as do confidentiality obligations under the Staff Regulations for any Commission staff processing the information. **Should the Commission rely on third parties to process the information, these third parties have to apply equivalent security measures and be bound by strict confidentiality obligations and prohibitions on further use as well.**

I would also like to stress the importance of applying adequate measures to ensure the secure transmission of data from the telecom providers. It would also be preferable to limit access to the data to authorised experts in spatial epidemiology, data protection and data science.

- ***Data retention***

I also welcome that the data obtained from mobile operators would be deleted as soon as the current emergency comes to an end.

It should be also clear that these special services are deployed because of this specific crisis and are of temporary character. The EDPS often stresses that such developments usually do not contain the possibility to step back when the emergency is gone. I would like to stress that such solution should be still recognised as extraordinary.

Lastly, allow me to recall the importance of full transparency to the public on the purpose and procedure of the measures to be enacted. I would also encourage you to keep your Data Protection Officer involved throughout the entire process to provide assurance that the data processed had indeed been effectively anonymised.

Finally, let me stress that, should the Commission feel compelled at any point in the future to change the envisaged modalities for processing, a new consultation of the EDPS would be necessary. The EDPS is ready not only to consult the plans but also to actively involve its resources in the process of development of products and services that may have significant value to the public.

My services and I remain at your disposal in case of any further questions.

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

[e-signed]

³ https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp216_en.pdf.

⁴ <http://data.europa.eu/eli/dec/2017/46/oj>.