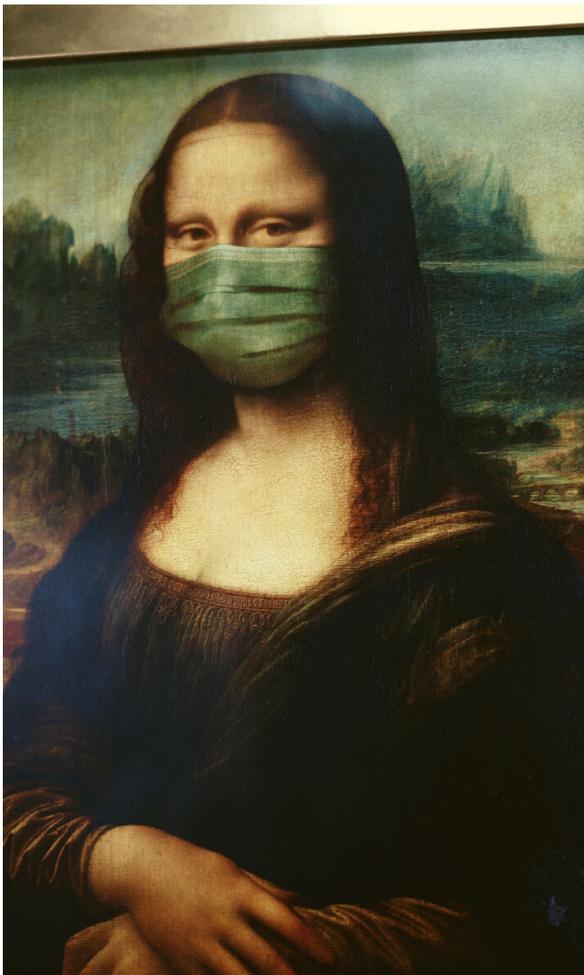


COVID-19: PHASE 2 AND PERSONAL DATA PROCESSING.

Newsletter by the Data Protection and Cybersecurity Team



SUMMARY

On 24 April 2020, the “Shared protocol regulating measures to fight and contain the Covid-19 virus in work environments” (the “Protocol”) was revised.

The implications on the processing of personal data are illustrated below.

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MAY 2020

On 24 April 2020, the “*Shared protocol regulating measures to fight and contain the Covid-19 virus in work environments*” (the “**Protocol**”) was revised.

The Protocol contains guidelines to support companies in adopting anti-infection safety policies to fight and contain the spread of the COVID-19 virus in work environments.

The numerous safety measures in the Protocol include that **before accessing their workplace staff are required to have their body temperature taken** and, where this is higher than 37.5°C, they will not be allowed in.

By using the most appropriate and effective methods, the company needs to inform employees and anyone who has access to its premises, among other things:

- of the obligation to **stay home if they have a fever** (body temperature of more than 37.5°C) or other flu symptoms, and to call their physician and the health authorities;
- that **they will not be allowed to enter or remain on company premises** – and that they are required to immediately report – if, after entering the premises, any **hazardous conditions** subsist (flu symptoms, temperature, they come from a risk area or had contacts with people who proved positive to the virus in the prior 14 days, etc.), in which conditions the measures of the Authorities require to inform the physician and health authorities and to stay home;

The Protocol contains guidelines to support companies in adopting anti-infection safety policies in work environments.

- The undertaking to **immediately and responsibly inform the employer** of any flu symptom while working, being careful of remaining at an appropriate distance from others.

In addition, the Protocol clearly highlights that **taking body temperature is a personal data processing activity** and that, as such, it must occur in compliance with applicable laws and regulations. In this respect, the Italian Data Protection Authority specified that processing activities occur only where taking body temperature is **associated with the identity of the data subject**.



Implementing New Company Measures

In light of the foregoing, the implementation of new measures, aimed to safeguard employees ensuring them a healthy workplace and to fight the spread of COVID-19, including but not limited to adopting **thermal scanning systems** or requesting **self-declarations**, also needs to carefully consider **personal data protection issues**.

COMPLYING WITH PRINCIPLES APPLICABLE TO DATA PROCESSING

In spite of the state of emergency, the European Data Protection Board stated that any data processing cannot disregard the principles sanctioned in the GDPR. In connection with the current situation, great attention needs to be paid to the principles of **lawfulness of personal data processing** and of **data minimization**.

This implies that the company will have to process data lawfully and restricting collection to data strictly necessary to pursue the purpose. This means that:

- in the event of **taking body temperature, data should not be recorded**. The Italian Data Protection Authority specified that, in light of the principle referred to above of data minimization, **data** consisting in measured body temperature **must not be recorded**. The data subject may be identified and having a higher temperature than the threshold recorded, without indicating the value of body temperature, only where such information is required to support the reasons that prevented access to company premises;
- in case of **self-declarations**, only **data that are necessary, appropriate and relevant** to the prevention of COVID-19 infection **are collected**.

In addition to the above, in the event of adoption of new instruments to take body temperature, to control access and more generally any for new personal data processing activities in connection with the health emergency, such new tools used will need to be reviewed in light of the principles of **Privacy by design and Privacy by default**, under article 25 of GDPR.

This requires the data controller to put in place **appropriate technical and organizational measures to effectively implement data protection principles and to add to processing activities any necessary guarantees** to meet the conditions of the GDPR and **protect data subjects' rights**, in addition to implementing **appropriate technical and organizational measures to ensure that by default only necessary personal data are processed** for each specific processing purpose.

PRIVACY POLICY STATEMENT

Since taking body temperature is a personal data processing activity, a **Privacy Policy Statement** under article 13 of GDPR must be provided.

The statement may omit information which the data subject already has and may also be provided verbally, but it must include, among other things:

1. the **purpose of processing**, that is preventing infection from COVID-19;
2. the **legal basis**, that is the implementation of anti-infection safety policies under art. 1, no. 7, lett. d), of DPCM 11 March 2020;
3. **data storage**, for which reference may be made to the end of the state of emergency.

SECURITY AND ORGANISATIONAL MEASURES

The Protocol expressly states that companies are also required to define **security and organizational measures appropriate to protect data**.

In this respect, article 29 of GDPR sets out that anyone acting under the authority of the data controller and having access to personal data cannot process such data unless they received instructions to such effect. Therefore, given, among other things, the peculiar nature of collected data, it is appropriate to identify persons in charge of processing giving them necessary instructions.

Moreover, it is important to highlight that collected data may be processed **only** for the purposes of preventing COVID-19 infection and must not be disclosed or communicated to third parties except as expressly admitted by provisions of law (for example, in the event of requests by health authorities to trace possible “*close contacts of a COVID-19 positive worker*”).

OTHER REQUIREMENTS

Given the introduction of new processing activities, **the records of processing activities**, maintained under article 30 of GDPR, will also need to be updated, and a **Data Protection Impact Assessment** (“DPIA”) under article 35 of GDPR carried out, where it was deemed that processing may feature a high risk for the rights and freedoms of data subjects.

The DPIA, where regarded as necessary, must be carried out “**prior to processing activities**”.



Detection of High Body Temperature or Dealing with a Symptomatic Person

DETECTION OF AN ANOMALOUS BODY TEMPERATURE

The Protocol states that if body temperature is higher than 37.5°C access to company premises must not be allowed. In such event, the person is temporarily isolated and given a face protection mask. Such person shall not go into ER and/or inhouse first aid, but shall contact their physician and follow the health professional's instructions, as soon as possible.

In the event of temporary isolation caused by a temperature higher than 37.5°C, this must be done **in a manner that guarantees the confidentiality and dignity of the employee.**

These guarantees must also be ensured when employees report to the HR management department that they had, outside the company, contacts with COVID-19 positive persons, and in the event employees are asked to leave the premises if they develop a fever and/or respiratory infection symptoms, as well as their co-workers

DEALING WITH A SYMPATICO PERSON WITHIN THE COMPANY

If a worke develops a fever and respiratory infection symptoms **while carrying out their job**, the company will need to **isolate** them, ensuring confidentiality and dignity, and the circumstance will need to be reported to the relevant authorities through dedicated contact details.

It is not up to the company to disclose the identity of a COVID-19 positive worker to other members of staff. It is up to the health authorities having jurisdiction to inform "close contacts" of the infected person, to activate established infection protection measures. Health information may be disclosed, whether inside or outside the organization to which the member of staff belongs, **only where this is provided for by provisions of laws or regulations, or ordered by authorities having jurisdiction** based on powers granted by laws and regulations.

Access to company premises by persons that proved positive to the COVID-19 infection must be **preceded by a prior notice the medical certification attesting that the swab test "proved negative"** according to the procedures set out and issued by the relevant local prevention department.



Access by External Parties

Finally, the Protocol specifies that **access to company premises by external suppliers** must be limited as much as possible. However, when entry by external visitors is necessary (cleaning services, maintenance services, etc.), they must **comply with all the company's safety rules**, including rules on access to premises. Accordingly, the employer is authorized to ask external suppliers for the same information it requests of its employees, provided that it strictly follows the same rules on personal data processing as analysed above.

The Italian Data Protection Authority specified that if body temperature is taken on **customers and clients** (for instance by retailers) **or occasional visitors**, even if it is higher than the threshold stated in emergency provisions, **as a general rule, data on the reasons for denying access need not be recorded.**



Do not hesitate to contact us for any further information.

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