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Subject: Your letters of 25 and 27 May 2020

Dear Ms Weber,

Thank you for your letters received by email on 25 and 27 May 2020 on the body temperature checks at buildings entrances and the disclosure of aggregated telecommunications location data, respectively, as part of the measures and initiatives taken in the context of the COVID-19 pandemic. I appreciate your interest in the work of the European Data Protection Supervisor and our expertise in these fields. Since the beginning of this pandemic, the EDPS has been closely monitoring the developments in both matters, as well as the complex data protections issues that have arisen in this context at a pan-European level, and is now able to share with you the information below.

As a starting point, please let me recall that the EDPS is the independent authority of the European Union (EU) that deals with the supervision of the processing of personal data done by EU institutions, agencies and bodies (hereafter ‘EU institutions’)¹. In this sense, our tasks are similar to the tasks of national data protection authorities in the EU Member States, but apply only at the level of the European Union and its institutions. The EDPS has no supervisory powers over processing done by public or private organisations at Member State level. The Member States’ data protection authorities are fully responsible for such supervision.

¹ See Regulation (EU) 2018/1725 ([OJ L 295, 21.11.2018, p. 39–98](#)), notably Articles 2 on scope of the Regulation and 57 on the tasks of the EDPS.

Body temperature checks

In your first letter you drew my attention to the Government Decision no. 394/2020 from 18 May 2020, which established an obligation of public institutions and authorities (...) to put in place several measures aimed at limiting the impact of the pandemic, including body temperature checks. You also suggested that a distinction should be made between such obligation put on the employees, both in public and private sector, and on the consumers/visitors. Such measures, as you rightly pointed out, might pose questions concerning fundamental rights including in particular related to data protection.

Indeed, the EDPS has been following developments in the field of body temperature checks since such measures started to be put in place. A number of EU institutions have implemented body temperature checks as part of the health and safety measures adopted in the context of their ‘return to the office’ strategy in order to prevent the spread of COVID-19 contamination.

As a supervisor of EU institutions, the EDPS saw the necessity to provide the controllers with clear guidance on data protection dimension of body temperature checks, in particular those conducted at the entrance to the buildings, both on employees and on visitors. The complexity of the issue at stake, stemming not only from the fact that different technologies might be used in place, but also from the risk of linking such data with other personal data, has led the EDPS to issue, on 1 September 2020, an Orientations paper² on body temperature checks by EU institutions in the context of the COVID-19 crisis. We believe this document can help EU institutions and their Data Protection Officers meet the requirements of Regulation (EU) 2018/1725 (‘the Regulation’), but can be also useful for other public authorities.

In the opinion of the EDPS, a distinction should be made between ‘basic body temperature checks’ and ‘other systems of temperature checks’. The former, ‘basic body temperature checks’, are understood as designed to measure body temperature only, operated manually and not followed by registration, documentation or other processing of an individual’s personal data would, in principle, not be subject to the scope of the Regulation.

Conversely, the EDPS considers that systems of temperature checks, operated manually and followed by registration, documentation or further processing of an individual’s personal data, or systems operated automatically using automated digital means such as thermal cameras or thermal scans would, in general, fall under the scope of the Regulation.

It is important to underline that when it comes to lawfulness of personal data processing, the legal basis available to EU institutions might be- and in fact very often is - different than those applicable to entities acting under the jurisdiction of national law, including when the European Union law is directly applicable e.g. General Data Protection Regulation.³ Therefore, the application of the EDPS guidance outside of the EU institutions legal environment, should take this into account.

In the particular case of the EU institutions, the EDPS is of the opinion that the lawfulness of these processing operations could, in principle, be based on the Staff Regulations, supplemented

² Orientations from the EDPS: Body temperature checks by EU institutions in the context of the COVID-19 crisis, September 2020. Available at https://edps.europa.eu/data-protection/our-work/publications/guidelines/orientations-edps-body-temperature-checks-eu_en.

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

by an executive decision of an EU institution which provides for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

The EDPS notes that in compliance with Article 24 of the Regulation, which refers to automated individual decision-making, including profiling, temperature checks applied on a mandatory basis should not be based solely on automated processing. There should be a meaningful human involvement at all relevant stages of the check.

In addition, and probably more interestingly from the point of view of non-EU institutions, the orientations paper provides a non-exhaustive list of technical and organisational recommendations that should be taken into account in order to ensure that appropriate safeguards are in place. These include, among others:

- systems for carrying out body temperature checks should be operating independently and not be linked to any other IT system and, in particular, should not be connected to the security system such as the CCTV network. Being independent also means that the system for carrying out body temperature checks is not linked to any form of identity check;
- such systems should be designed as a real-time system and no recording should be made of the reading. EU institutions may place a remote viewing system close to the thermal scanner that does not allow the recording of the images;
- it must be verified that there is no recording of the thermal images and the results are only displayed on “live” screen. If the system can transmit images remotely via a wired or wireless protocol (e.g.: ZigBee, Bluetooth, Wi-Fi, Ethernet), it needs to be isolated from other networks;
- In addition, since there is approximately a difference of one degree Celsius between a regular temperature and the threshold, the accuracy of the devices need to be verified and might involve regular calibration of the sensor;
- the personnel who will be in charge of the checks need to be properly trained for the operation and interpretation of results.

The EDPS further specifies recommendations regarding transparency towards individuals. For instance, the EDPS suggests that any person entering the building should be clearly informed that a temperature check system is in place with a clear indication of the reason of such a check and by whom and when these checks were decided. Signs with information about the temperature checks should be placed at such locations and be large enough so that individuals can notice them and can read them without difficulty. If there is any question on how the temperature measurement device works and what data are collected, individuals should be able to receive appropriate information.

We also suggest that, in case of a ‘positive’ temperature check, a suitable follow-up procedure should be in place. For instance, the person could be given the opportunity to benefit from a second measurement. The second measurement should make it possible to rule out a cause linked to a malfunction or calibration issue of the device

Finally, the EDPS advises EU institutions implementing temperature checks to regularly review the necessity and proportionality of such measures, against the evolution of the epidemic and its scientific understanding.

This paper is attached to this letter for your convenience, and provides an in depth analysis of the abovementioned matters. I hope that you will find it useful for your own review of the issue, despite the fact that this document is primarily addressed to EU institutions and is tailored to the specific legal framework in which all EU institutions operate. It contains data protection considerations to be taken into account in the context of Regulation (EU) 2018/1725, which shares numerous similarities to the General Data Protection Regulation. As already stated, while the EDPS paper does not take into account a specific national legal context, we hope it might provide useful guidance in your assessment of the specific legal context at place.

Location data

In your second letter, you drew our attention to the collection of data by Vodafone Romania S.A. in the context of the request from the European Commission. You also took note of the EDPS position expressed in March 2020 on the monitoring of Covid-19 spread.⁴ The EDPS emphasises in this letter that any information provided by the mobile network operators should be appropriately anonymised and aggregated. As already mentioned, the EDPS is regularly monitoring the relevant developments and is currently assessing the European Commission's implementation of the recommendations made in that letter.

According to the information possessed by the EDPS, the European Commission (DG CNECT) launched in March an initiative to gather information on aggregated patterns of mobility in the Member States. The European Commission has been cooperating with the Commission's Joint Research Centre (JRC) on this project. The European Commission has been addressing Member States' mobile network operators directly, in order to receive datasets, which are to be used for modelling purposes. These models should contribute to an understanding of the dynamics and propagation of the epidemics, as well as to the evaluation of the effectiveness and impact of social distancing measures.

In reply to your question, I can therefore confirm that such data gathering has indeed been taking place based on the decision taken at the level of the European Commission.

The EDPS is aware that the following mobile network operators have been contacted by the European Commission at a national level, in the context of this project: A1 Telekom Austria Group, Altice Portugal, Deutsche Telekom, Orange, Proximus, TIM Telecom Italia, Telefonica, Telenor, Telia Company and Vodafone.⁵ However, the EDPS is not aware of which information concerning similar national projects, is available to the European Commission.

As the EDPS is not in a position to speak on behalf of the European Commission, I encourage you to seek further information directly.

⁴ EDPS Comments to DG Connect of the European Commission on the monitoring of COVID-19 spread, March 2020. Available at https://edps.europa.eu/data-protection/our-work/publications/comments/monitoring-spread-covid-19_en.

⁵ Measuring the impact of COVID-19 confinement measures on human mobility using mobile positioning data. A European regional analysis, September 2020. Available at <https://www.sciencedirect.com/science/article/pii/S0925753520303222?via%3Dihub>.

I trust that this information answers the questions raised in your second letter.

I hope you will find this helpful.

Yours sincerely,

[E-signed]

Wojciech Rafał WIEWIÓROWSKI

Attachment: Orientations from the EDPS: Body temperature checks by EU institutions in the context of the COVID-19 crisis, September 2020.