



Guidance

concerning certain data processing operations related to the measurement of body temperature during the period of epidemiological readiness introduced with ordering a health emergency in view of the novel coronavirus pandemic (Covid-19).

I.

The Nemzeti Adatvédelmi és Információszabadság Hatóság (Hungarian National Authority for Data Protection and Freedom of Information, hereinafter: Authority) received numerous queries again because of the rapid spreading of the novel coronavirus epidemic from entities and institutions both in the public and the private sector concerning the assessment of the lawfulness of data processing operations they intended to introduce to prevent the spreading of the second wave of the epidemic.

In its Guidance NAIH/2020/2586 concerning data processing operations related to the coronavirus epidemic published in its website on 10 March 2020, the Authority – in line with the position of the supervisory authorities of other Member States – stated that in view of the epidemiological situation in Hungary at the time it did not regard the requirement of health care data processing concomitant with the use of diagnostic instruments (in particular, but not exclusively, thermometer), the introduction of mandatory screening for body temperature as proportionate and hence not in compliance with the data protection principles. The questions of the organisations contacting the Authority concerned whether the number of cases substantially higher than in the spring of 2020 could justify the proportionality and necessity of data processing operations of this type.

In addition to the above, Sections 4-5 of Government Decree 431/2020 (IX. 18.) *on the protective measures of the epidemiological readiness period* require the mandatory checking of body temperature in institutions of public education and vocational training, to which everyone has to subject himself upon arrival to the institution as of 1 October 2020. Numerous submissions initiated that the Authority take a position concerning the assessment of the lawfulness of this mandatory processing of data.

On that basis, the Authority issues the following general guidance concerning the data processing operations related to diagnostic instruments used during the period of health care emergency.

II.

It is important to declare that according to Hungarian legal regulations, body temperature checking carried out using digital and analogue thermometers, just as the use of thermal cameras, thermal gates at entry points qualifies as data processing¹, if the data subject is identified or can be identified. Differently from the provisions of the orientations of the European Data Protection Supervisor issued

¹ Pursuant to GDPR Article 4(2) **processing** “means **any operation** or set of operations, which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, **consultation**, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

on the same subject matter², governing exclusively the institutions of the European Union, the Hungarian legal regulations require that the rules of GDPR³ be applied also to data processing operations carried out with non-automated means.⁴ Reference to the different position taken in those orientations, according to which data protection regulations need not be taken into account in the case of using simple digital or analogue thermometers is not appropriate in the Hungarian legal environment as the data protection regulations are applicable also to these devices.

By issuing Government Decree 283/2020. (VI. 17.) *on the introduction of epidemiological readiness*, the Government by ordering **health care emergency** for the entire territory of Hungary introduced epidemiological readiness from 18 June 2020. In the course of examining the questions received concerning this and in view of the continuously and significantly increasing number of cases, the Authority arrived at the conclusion that the use of diagnostic screening devices related to the measurement of body temperature during the current phase of the novel coronavirus epidemic concomitant with community spread and mass infections **qualifies as being in compliance with the principles provided that the all conditions below are met:**

- it is used in the course of allowing entry to the area or buildings owned or used by the controller;
- it is used as a protective measure **uniformly with every person desiring to enter** (“shell protection”);
- **it is not linked to the identification** of the subject of the body temperature check expressly to achieve this processing purpose, and
- **it does not involve the recording, storage or transmission of data** in any way.

III.

First and foremost, the Authority declares that **it is the responsibility of the controller to develop all its data processing operations**, including that related to checking the body temperature, **in compliance with the data protection principles, in particular the principle of accountability.**

As the Authority had already explained, **the conclusion that a person is infected with the novel coronavirus cannot be unambiguously drawn merely from the fact that the person’s body temperature is higher**, hence the controller may not draw any conclusions concerning the health status of any given person based on the measurement of body temperature upon entry, the controller **is only entitled to permit or refuse entry** based on objective criteria specified in advance. With respect to this protective measure, the controller may bring a decision only on whether to permit the entry of all persons attempting to enter its territory, whether those persons are in its employment or not (because the measured value is lower than the predefined value) or to refuse it (because the measured value is higher than the predefined value and so carries a risk for other persons), because checking body temperature can be a suitable instrument for achieving the purpose of the measure only in this case.

If the person taking action on behalf of the controller refuses entry, the further handling of the situation falls to the data subject (consulting a doctor, taking action with regard to sick leave and sick pay, informing the workplace superior, etc.). Furthermore, the Authority calls attention also to the fact that the identification of the subject of the temperature check expressly to achieve this purpose

² Orientations from the EDPS: Body temperature checks by EU institutions in the context of the COVID-19 crisis (p. 5) https://edps.europa.eu/sites/edp/files/publication/01-09-20_edps_orientations_on_body_temperature_checks_in_the_context_of_euis_en.pdf

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).

⁴ Section 2(4) of Act CXII of 2011 *on the Right to Informational Self-Determination and the Freedom of Information* (hereinafter: Privacy Act) and Section 3 of Act VI of 1998 *on the promulgation of the Convention for the protection of individuals with regard to automatic processing of personal data done in Strasbourg on 28 January 1981.*

of processing (establishment of the right to enter based on the measured body temperature) **cannot be justified either prior to the measurement or after refusing entry in the absence of a provision of legal regulations formulated in compliance with data protection principles, and only statistical data can be collected (e.g. how many people were permitted to enter the building by the controller).**

Although this document cannot cover all life situations, **exceptional cases** may occur naturally when a person's body temperature is generally higher than the average because of some kind of disease or medical therapy. In such a case, it is possible for instance for the controller to accept the presentation of a document issued by a doctor stating that the person is entitled to join the community in spite of a higher body temperature provided that this is in line with the controller's procedure developed in advance and the controller provided relevant information on the data processing to the data subject in advance.

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