

Brussels, 03 June 2020

Ref: OUT2020-0046

Subject: Letter of 11 May 2020 from the Civil Liberties Union for Europe, Access Now and the Hungarian Civil Liberties Union (HCLU)

Dear Ms. Massé, Mr. Szabó and Mr. Dénes,

Thank you for your letter related to the adoption by the Hungarian government of the Decree 179/2020 of 4 May 2020 on the derogations from certain data protection and access to information provisions during the state of danger¹.

The EDPB dedicates special attention to the measures involving the processing of personal data adopted in the context of the fight against COVID-19 pandemic. Let me recall in particular the recent adoption of the guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak, the guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak, the Statement on the processing of personal data in the context of the COVID-19 outbreak and the letter concerning the European Commission's draft Guidance on apps supporting the fight against the COVID-19 pandemic.

In this context, and as already highlighted, the GDPR remains applicable and allows for an efficient response to the pandemic, while at the same time protecting fundamental rights and freedoms. Data protection law, including relevant applicable national law, already enables data-processing operations necessary to contribute to the fight against the spread of a pandemic, such as the COVID-19 pandemic.

The EDPB would like to recall that the rights of data subjects are an essential and integral part of the implementation of the fundamental right to data protection as enshrined in the Charter of fundamental rights of the European Union and are key to the implementation of the GDPR in the Union. In that sense, as laid down in Article 23 of the GDPR, any restriction to the rights of data subjects must respect the essence of the fundamental rights and freedoms and must be a necessary and proportionate measure in a democratic society to safeguard an important objective of general public interest of the Union or of a Member State. Even in these exceptional times, the protection of personal data must be upheld in all emergency measures, including restrictions adopted at national level, as per Article 23 of the GDPR thus contributing to the respect of the overarching values of democracy, rule of law and fundamental rights on which the Union is founded.

¹ Decree 179/2020 (V. 4.) Korm. rendelet a veszélyhelyzet idején az egyes adatvédelmi és adatigénylési rendelkezésektől való eltérésekről (<https://net.jogtar.hu/jogszabaly?docid=a2000179.kor>).

With respect to supervision over restrictions on data subject rights and over compliance of Member States' data protection law with EU law, I would like to stress that the EDPB does not have the same competences, tasks and powers as national supervisory authorities and as the European Commission.

At national level, the assessment of alleged infringements of the GDPR falls within the competence of the responsible and independent national supervisory authority, subject to the cooperation and consistency mechanisms set out in the GDPR when applicable. Data protection supervisory authorities are responsible for monitoring and, if necessary, enforcing the application of data protection principles in the context of the state of emergency, including on the lawfulness of any restriction on the exercise of data subject rights. A judicial remedy should also always be available in accordance with Articles 78 and 79 of the GDPR.

At European level, under Article 70 of the GDPR, the EDPB has the power to advise the European Commission on any issue related to the protection of personal data in the Union and to examine any question covering the application of the GDPR in order to encourage its consistent application. According to Article 258 of the Treaty on the functioning of the European Union, only the European Commission may take legal steps against a Member State in case of a breach of EU law.

The EDPB is committed to ensure a full and consistent implementation of the GDPR throughout the EU and, to that end, will issue guidelines on the implementation of Article 23 of the GDPR in the coming months. In the meantime, the EDPB adopted a statement recalling main principles related to the restrictions on data subject rights in connection to the state of emergency in Member States. The statement is annexed to this letter. I wish to reassure you that the EDPB will continue to pay special attention to the developments of personal data processing and restrictions on data subject rights in connection to the state of emergency in Member States and will remain ready to support all members of the EDPB, including the Hungarian Supervisory Authority, in such matters.

Yours sincerely,



Andrea Jelinek