

Covid-19 | EDPB Guidelines on Location Data and Tracing Tools

On 21 April 2020, the European Data Protection Board (the **EDPB**) published guidelines on the use of location data and contact tracing tools in the context of the Covid-19 outbreak (the **Guidelines**). The Guidelines discuss how to use location data and build contact tracing apps in compliance with EU data protection and ePrivacy rules. In addition, the EDPB provides a guide setting out an itemised list for developing contact tracing tools in the fight against Covid-19.

First, the EDPB explains the legal framework for using location data. It reminds readers that ePrivacy Directive 2002/58 requires consent to use location data that are stored on the terminal equipment of a user, unless access to such information is necessary to provide the service or a derogation is available.

Considering the significant impact that location data can have on the rights and freedoms of data subjects, the EDPB calls on authorities to rely as much as possible on anonymised data. Anonymisation of location data has been a topic of debate, as research shows that many anonymisation techniques still allow uniquely identifying data subjects. Therefore, the EDPB's recommendation is to "*carefully consider location datasets as a whole, as well as processing data from a reasonably large set of individuals using available robust anonymisation techniques, provided that they are adequately and effectively implemented*". It also encourages transparency over the anonymisation techniques that are used.

With regard to contact tracing apps, the Guidelines discuss the principles of data minimisation (stating that contact tracing does not require tracking a user's location); lawfulness (recalling that this must comply with the requirements of the GDPR and the ePrivacy Directive), and storage limitation (noting that personal data should only be kept for the duration of the Covid-19 crisis). In addition, the EDPB considers that a data protection impact assessment (**DPIA**) should be carried out before implementing a contact tracing tool.

In an annex to the Guidelines, the EDPB provides an "Analysis Guide" with general guidance for designers and implementers of contact tracing apps. While it emphasises that the guidance is not exhaustive, and other solutions may also be possible, the EDPB provides definitions of key terminology (including the meaning of a "contact") and an itemized lists of design criteria, including:

- *General criteria*: such as the requirement that the app should be a complementary tool, have procedures to stop collection and activate deletion when things return to normal, and source code must be open;
- *Purposes*: such as the requirement that the app must pursue the sole purpose of contact tracing;
- *Functional considerations*: users must be informed if they have been exposed to the virus; the app must provide clear instructions regarding the measures to follow; and the factors of distance and time to determine a contact (i.e., how near does a person need be to a confirmed carrier to have a substantial risk of contamination, and for which period of time) must be adaptable to the latest knowledge of the spread of the virus;

- *Data*: such as the requirement to use random identifiers that are changed frequently, data collected is limited to what is strictly necessary, and the app should not collect data for purposes other than contact tracing;
- *Technical properties*: the EDPB recommends using proximity technology such as Bluetooth Low Energy, and relying as much as possible on users' devices although a central server can be used for some functionalities;
- *Security*: the EDPB sets out various security items, including on authentication, encryption, and secure transfers.
- *Protection of personal data and privacy*: this section contains various items to ensure data minimisation, verifying whether DPIA was carried out, and stipulating that users must be able to exercise their rights via the app, among others.
- Finally, when a central server is used, the Guidelines list requirements for managing the list of contacts and the list of own-identifiers of the users.

Moreover, the EDPB states that any contact tracing app should be used on a voluntary basis.

The full text of the Guidelines can be consulted [here](#). The Guidelines focus on the requirements under the GDPR and ePrivacy Directive. This guidance comes in addition to the “EU toolbox” presented recently by the European Commission, which also relates to the use of mobile apps for contact tracing. A short article discussing this EU toolbox can be found [here](#).