
SHORT NEWS

The Coronavirus Crisis: New relaxations - new information obligations

The decreasing number of coronavirus cases in Germany has led to a gradual easing of the strict safety measures and, depending on the federal state, citizens are again allowed to visit a number of public meeting places, in particular restaurants and pubs. The operator of such meeting places is obliged to implement a concept for hygiene measures, including, among other rules, the keeping of guest lists. Guest lists are supposed to make it possible to quickly and comprehensively identify those who have had contact with infected individuals.

Since this involves the collection and storage of personal data, the operators are faced with the challenge of complying with the requirements of the General Data Protection Regulation (GDPR).

In the following, we explain the obligations associated with this and on whom these obligations are imposed (as of 4 June 2020).

I. Data Protection Responsibilities

1. Collection of personal data

With the exception of the state of Thuringia, the Coronavirus Protection Regulations (*Corona-Schutzverordnungen*) of the German states determine - almost uniformly - the details to be requested in the guests lists. The following are the details to be obtained from the guest/visitor (or in case of several persons of at least one guest/visitor of each household):

- a) First and last name
- b) (full) Address
- c) Telephone number
- d) E-mail address (in the state of Schleswig-Holstein, as an alternative to the telephone number or address in the states of Bavaria, Bremen and, from 6 June, in the state of Saxony)
- e) Duration of stay

2. Legal basis of processing

a) *Coronavirus Protection Regulations*

The legal basis for data processing is the respective provisions contained in the Coronavirus Protection Regulations of the federal states. Both collection and storage can therefore be based on Article 6 (1) lit. c) GDPR in conjunction with the respective norm of the Coronavirus Protection Regulation and thus have a solid legal basis.

Practical advice: The relevant legal basis should be disclosed to the guests.

b) *Consent*

Somewhat unfortunate special provisions have been introduced in the states of Bremen and North Rhine-Westphalia, which, while imposing an obligation on the owner or operator of the meeting place to keep a guest list, at the same time require the consent of guests to the collection and storage of data in terms of Article 6 (1) lit. a) GDPR.

That puts the operator in an awkward position as it does not provide a clear legal basis for processing.

Saxony and Thuringia at least rely entirely on the consent of guests.

For consent under data protection law to be effectively granted, it must be given freely, informed and unambiguous.

aa) *Freely given consent*

Consent is only given freely if it is given without any pressure or force. The data subject must therefore have the opportunity to refuse or withdraw consent without suffering any disadvantages. Since, at least in Bremen and North Rhine-Westphalia, it is not possible to visit selected public meeting places without providing the aforementioned personal data, there is at least considerable doubt as to whether consent is given freely. After all, there is no alternative for the data subject to go to a restaurant, for example. Ultimately, this even suggests a violation of the tie-in ban under Article 7 (4) GDPR.

Practical advice: Since the collection and storage of guest data cannot be based on the Coronavirus Protection Regulations of Bremen and North Rhine-Westphalia (alone) with legal certainty, the consent of the guests should nevertheless be obtained. However, the guest should not be given the impression that he/she has to provide his/her data in the declaration of consent. Phrases such as "*You are obliged to provide information about yourself,*" or "*You must provide the following information,*" should therefore be avoided.

The declaration of consent must be presented to guests/visitors before ordering or using a service, so that they may leave the premises without further ado if necessary, that is if they wish not to disclose their data.

bb) Informed

Informed consent can only be given if the data subject is given transparent information about the nature and scope of the processing of his or her personal data (see also item 5 below).

cc) Unambiguous

In order to be able to prove the unambiguousness of the consent, the form with the guest details should end with the note "*I hereby consent to the collection and storage of the above-mentioned data*" and be signed by the data subject.

dd) Right to withdraw

It is very important to observe that the data subject has the right to withdraw his or her consent at any time in accordance with Article 7 (3) GDPR. The data subject must also be informed thereof. Once consent has been withdrawn, the data in question may not be processed further, here, in particular not be stored further.

At the same time, however, the operator of the meeting place is still obliged to keep the data in order to be able to present it to the competent authorities in the event of infection. Here, however, it will be possible to continue to store the data until the retention period expires.

Practical advice: Even when a data subject has withdrawn his or her consent, the data in question should not be deleted until the retention periods specified by the respective Coronavirus Protection Regulation have expired.

3. Purpose limitation

The data may only be collected and stored to enable the health authorities to trace possible chains of infection. The operator of the meeting place may therefore not use the data for own purposes, especially not for advertising purposes.

Practical advice: The purpose must be disclosed to the guests.

4. Obligation to store the data

The operator of the meeting place is obliged to store the collected data for the following periods:

Six weeks: Schleswig-Holstein

One month: Bavaria, Hesse, Rhineland-Palatinate, Saarland and Saxony

Four weeks: Baden-Württemberg, Berlin, Brandenburg, Hamburg, Mecklenburg-West Pomerania, North Rhine-Westphalia and Saxony-Anhalt (erasure after two months at the latest)

Three weeks: Bremen, Lower Saxony (erasure after one month at the latest) and Thuringia (if there is a collection of data given freely at all)

After the expiry of these retention periods, the legal basis for storage of data ceases to apply and the data must be irretrievably deleted.

Practical advice: The operator of the meeting place should develop a deletion concept that ensures that the data concerned is deleted exactly to the day when the deadline expires, i.e. usually that the relevant forms are destroyed.

5. Information obligations

Under Articles 12, 13 GDPR, the operator of the meeting place must fulfil certain information obligations towards visitors and guests as data subjects, whereby the information must be provided in a precise, transparent, comprehensible and easily accessible form and in clear and simple language.

How this is implemented in individual cases is left to the operators. Individual Coronavirus Protection Ordinances (such as the one in Mecklenburg-West Pomerania) suggest a notice board for this purpose.

The following details are required as a minimum:

- a) Name and contact details (address, as well as telephone or e-mail-address) of the Controller
- b) the purposes of the processing (here: in each case the tracing of the chain of infection)
- c) Recipient: in case of infection, the competent health authorities
- d) Duration of storage: See information under item 4.
- e) Rights of data subjects: access, rectification, erasure, restriction of processing, objection, transferability of data, withdrawal, complaint to the supervisory authority

Practical advice: The details mentioned should either be given directly on the guest list or on a separate sheet which the visitor/guest may take home. Ideally, you should use the title "Privacy Policy". It is not necessary for the visitor/guest to agree to the Privacy Policy.

Insofar as the information is to be provided by means of a notice board, this must be pointed out on the guest lists. Further, there should be enough notices so that the visitors/guests have the opportunity to take note of the content of the Privacy Policy while observing the minimum distance and without waiting times.

6. Technical and organisational measures

The operator of the meeting place must further take appropriate measures to protect personal data. In particular, he must prevent unauthorized third parties, such as other guests, from accessing the data. It is therefore essential to avoid that the guest lists lie around openly visible.

Practical advice: The guest lists should only be kept in areas that are only accessible to selected personnel, such as lockable cupboards.

7. Request for information

In future, the operator of the meeting place might receive requests for information from data subjects under Article 15 GDPR. In order to fulfil these requests, the operator must ensure that such a request is answered within one month.

Practical advice: The operator should ensure that the operator can provide information in a timely manner about the purposes of processing, any recipients of the data, the storage period, the categories of data processed, the existence of a right to correction or deletion or to restriction of processing or a right of objection or complaint to the competent supervisory authority.

II. **Obligated Parties**

The following list covers obligated parties as of 4 June 2020.

1. Baden Württemberg

Offers of child and youth work, leisure activities in closed rooms, theme parks, hospitals, restaurants, accommodation facilities, music and youth art schools.

2. Bavaria

Facilities for physical activity in the fresh air, accommodation facilities, gastronomy and tourist service providers.

3. Berlin

Fairs, special markets, amusement arcades, cinemas, personal hygiene services, gyms, restaurants and hotels, with further restrictions swimming pools and sports facilities.

4. Brandenburg

Meetings in closed rooms with up to 75 participants, civil marriages, church services, appointments with authorities, courts, bailiffs, lawyers and notaries, instrumental lessons at

music schools, theme parks, restaurants, gyms and dancing schools.

5. Bremen

Events in closed rooms for up to 20 people, restaurants, amusement arcades and casinos.

6. Hamburg

Hairdressers, personal hygiene services, restaurants and senior meeting places.

7. Hesse

Theatre, opera and concerts up to a maximum of 100 participants, amusement arcades and restaurants

8. Mecklenburg-West Pomerania

Gyms, dancing schools, restaurants, open-air meetings with up to 150 participants, meetings of religious communities and family gatherings in private homes of no more than 30 people.

9. Lower Saxony

Private childcare, gyms, hospitals, health care facilities, rehabilitation facilities, adult education centres, amusement arcades, casinos, betting shops, tourist boat trips, boat and bicycle rentals, restaurants, physical services and workshops for disabled people.

10. North Rhine-Westphalia

Church services in closed rooms, meetings, conventions and events for professional, commercial or service reasons within companies, enterprises and authorities, internal teaching events and practical exercises and examinations at universities and schools, libraries, facilities for youth work, adult education centres, music schools, theatres, opera and concert halls, cinemas, guided tours of museums, galleries, castles, memorials, operation of excursion boats, restaurants, accommodation facilities, hairdressing salons, podological practices, cosmetic and nail studios, gyms and outdoor swimming pools.

11. Rhineland-Palatinate

Outdoor events with up to 100 people, blood donation centres, hairdressing salons, chiropody facilities, nail studios, beauty salons, massage parlours, tattoo studios, piercing studios, restaurants, pubs, cafés, ice cream parlours, wine bars, day-trip boats, hotels, youth hostels, camping sites, outdoor swimming pools, dancing schools, gyms, classes at universities, cinemas, theatres, concert halls, small theatres and similar institutions, circuses and similar outdoor facilities, educational opportunities in public or private institutions outside of general and vocational schools (except for singing lessons) and opportunities for youth and youth social work.

12. Saarland

Restaurants and other catering establishments, theatres, opera houses and concert halls (from 15 June), indoor playgrounds, open-air and indoor events with more than ten people outside the direct family (*familiärer Bezugskreis*).

13. Saxony

Currently no obligation, from 6 June on for sports facilities, restaurants, hotels, accommodation facilities and gatherings in public spaces, unless 35 new infections per 100,000 inhabitants occur within seven days. The competent authorities will then provide more details.

14. Saxony-Anhalt

Meetings of political parties, weddings, funerals, birthdays, restaurants, museums, memorials, libraries, exhibition halls, amusement arcades, theatres, cinemas, concert halls, planetariums, observatories, houses of literature, gyms, child and youth work and senior citizens' meeting places.

15. Schleswig-Holstein

Events in public spaces, restaurants, providers of indoor leisure activities, operators or organisers of indoor sports facilities, facilities and services of child and youth welfare services, accommodation facilities.

16. Thuringia

No obligated parties, recommended at least for the hotel, restaurant and catering industry.

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