

The apparent antagonism of data protection rights and the fight against the Covid-19

By Aline Zinni

The pandemic declaration and the increasing number of infections and deaths due to the Covid-19 have been causing countless effects around the world. Health is one of the most impacted sectors, since it covers not only researchers working against the clock to find the cure and develop the vaccine, but also the overcrowds in hospitals and the lack of medicines and medical supplies.

Social impacts are also relevant. The need for deploying policies aiming at “flattening the contamination curve” (such as the collection of employees’ health data, the monitoring of geolocation data, as well as the implementation of home-office) is forcing companies and governments worldwide to rapidly adapt into situations that intrinsically involve the processing of personal data.

In this sense, it is impossible to ignore the amount of personal and sensitive data being collected, analyzed and shared. And there is a very plausible reason for that: such data, specially those related to the health of the infected individuals, are crucial to the development of vaccines and the outlining of strategies aimed at slowing the virus dissemination.

The publication of guidelines by data protection authorities due to the crisis triggered by the Covid-19 caused the European Data Protection Bureau (“EDPB”), an independent organization responsible for ensuring the enforcement of coherent data protection rules in Europe, to issue a public statement.

EDPB’s chair, Andrea Jelinek, explained that data protection rules do not hamper the implementation of measures against the virus dissemination, and highlighted the importance of such rules to be continuously enforced. The Global Privacy Assembly stated likewise, in the sense that the principles of several data protection legislation do not inhibit or frustrate measures against the pandemic.

Both organizations understand that health data (considered sensitive data by most countries) not only should but also must be collected when facing the pandemic, regardless of having to infringe the principles of data protection regulation around the world.

Aligned with such legislations, the Brazilian Data Protection Act (Law no. 13,709/2018 – “LGPD”) sets forth the following principles, amongst others: principle of purpose, adequacy, necessity and security. Although the law is not yet effective, such principles must henceforth be complied with by agents processing personal data; not only because they elucidate constitutional and legal principles, but also because they can be considered as best practice.

The law is clear when it admits the processing of personal data (regardless of consent) when the purpose is the protection of life and physical integrity. It also specifies that health professionals, services and authorities may process personal data to protect the data subject’s health. However, it does not disregard the importance of protecting such data, since it prohibits the unjustified collection and processing, as well as compels the employment of acceptable security measures which such data will be subject to.

Therefore, if the collection, analysis, sharing or any other processing activity needs to be carried out for the implementation of measures aimed at controlling the virus dissemination and protecting the well-being, it will have full support in the law.

In short, data protection principles and regulations will save lives; they allow for the data processing in the fight against the virus, while protect data subjects, controllers and processor against the undue use of personal information. That is the “peace of mind” brought by the law, provided it is complied with.

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