

The contact tracing app to be implemented in France: the legal ground and data protection aspects

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1.) A brief overview of the measures adopted to combat the Coronavirus which affect the right to protection of personal data

The first law proclaiming the state of emergency in France was adopted on the 23th of March. It didn't contain any specific measure concerning limitations of the right to data protection. This subject matter was addressed by the Data protection authority which issued guidelines regarding mostly the collection and processing data by the employers. As reported by the European Union Fundamental Rights Agency, Data Protection Authority in France established the criteria according to which the employers may not collect and process personal data related to either symptoms or infection among employees unless workers have voluntarily provided their personal data and agreed to their processing.¹

Law adopted on 11th of May which extends the state of emergency has amended some provisions of the previous Law and introduced those addressing the contact tracing programme.

2.) StopCovid App as Government's project for the contact tracing app and the law extending the state of emergency

While the French government is working on the project StopCovid, the French Parliament was supposed to discuss on this issue on the 28th and 29th April, but it was postponed as the project at that moment was not ready to be discussed.

According to this project the App would be based on voluntary, centralized system developed by the research institutes Inria and Fraunhofer as a common project between France and Germany. While Germany has recently abandoned idea to use a contact tracing app based on centralized architecture, France is going on with the project. This system, managed by a national authority, would use pseudonymization to match contacts on a central server.²

¹ Coronavirus Pandemic in the EU – fundamental rights implications, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf

² France postpones parliament debate on contact-tracing app, available at: <https://techcrunch.com/2020/04/28/france-postpones-parliament-debate-on-contact-tracing-app/>

On the 9th of May the Parliament passed the law extending the health emergency up to the 10th of July. The law has been confirmed by the Constitutional Council on the 11th of May.³

Article 6 of the Law provided for an information system to trace ill people and any of their contacts. This Article authorized government to adopt a decree which would address the application of the contact tracing app. It is not specified whether such an application is to be based on a voluntary ground. Instead it allows government to adopt a compulsory contact tracing system, if necessary. Furthermore, it provides for that the government decree is to establish which public authority will be empowered to manage the contact tracing programme as well as the categories of data to which that authority would have access and the duration of this access⁴

In the meantime many privacy and data protection concerns has been raised. It is pointed out that such an interfere with the privacy and such a limitation of fundamental rights must be based on the law and not on a government decree as it is foreseen by the Law adopted on 11th May.⁵

³ StopCovid détaché du projet de loi de prorogation de l'état d'urgence sanitaire, available at: <https://m.nextinpact.com/news/108953-stopcovid-detache-projet-loi-prorogation-letat-durgence-sanitaire.htm>

⁴ Projet de loi prorogeant l'état d'urgence sanitaire et complétant ses dispositions, available at: <https://www.senat.fr/leg/pjl19-417.html>

⁵ StopCovid. È necessaria una legge, available at: https://www.huffingtonpost.it/entry/stop-covid-e-necessaria-una-legge_it_5ea7d837c5b6a30004e7bbad