



## Data Protection Audio Transcript

### Principle 2: Proportionality

[Beat Rudin]: One of the measures that has been used to combat the coronavirus pandemic is contact tracing. Special apps have been developed for this purpose. In Switzerland, we have the SwissCovid app. Its development and use have involved many conversations about data protection and weighing use of sensitive data. Professor Marcel Salathé speaks in more detail about the challenges of digital epidemiology in his lecture, which is linked to below in this step. A central concern was the proportionate use of the data. Proportionality also comes up in § 9 Para. 3 IDG, and is another principle of data processing.

But what does it mean in concrete terms? How do we define or measure proportionality? Three aspects play an important role. Data processing is deemed proportionate if it is *appropriate* and *necessary* in order to achieve the goal, and if it can be *reasonably justified* to the affected person.

Data processing is deemed *appropriate* if it enables the desired purpose; that is, it accomplishes the legal task.

Data processing is *necessary* if the legal task cannot be accomplished without this data processing – that is, without or with less sensitive personal data – and if there is no more benign means by which this purpose can be achieved.

And data processing is *reasonable* if the purpose of the data processing and the infringements it creates upon the personal rights of the affected individuals exist in a reasonable relationship to one another.

The question of *suitability* – that is, whether the data processing enables the legal task to be accomplished – is generally easy to answer. It's harder then to determine whether the data processing is *necessary*, or, in the case of special personal data, *absolutely essential*, such that the task could not be fulfilled without this particular data processing.

For example, if a maternity clinic asks for the occupation of the father of the child to be born on the clinic intake form, one must ask the question: what does the clinic actually need this information for? What task cannot be accomplished without knowing the occupation of the child's father? So, as people processing data, we must be able to explain the reasons why we need particular data and why things won't work without this data.

Proportionality plays a role both in cases of *direct* and *indirect* legal bases. But it is especially important in the case of the indirect legal basis, because there the law does not specify exactly what data may be collected. The law only states what the task is that a public institution has to fulfill. This public institution must then examine and justify for itself what personal data is *necessary* – or, in cases of special personal data, *absolutely essential* – to fulfill the task.

Let's return again to the example of Child and Youth Health Services, which we looked at above under the principle of legal basis. We determined there that this office is required to participate in combating



infectious diseases among children. For this task, it is absolutely necessary to collect health data – special personal data, in other words. We found the legal basis for this in § 140 Para. 4 Letter f of the School Law.

Because this is only an *indirect* legal basis – i.e. only a description of the task – the staff of Child and Youth Health Services must now be able to justify exactly what data they need to be able to perform this task. To take the example of a sick child: do they need to know with whom the child was playing on previous days, whether they have siblings in other classes, and which children these siblings played with?

In cases of *direct* legal basis, it is primarily the legislative body that must determine whether the principle of proportionality is being observed, but in cases of *indirect* legal basis, this task falls to the public institution and/or its staff.

To summarize: when it comes to proportionality, it depends greatly on the purpose of the data processing. This data processing must be appropriate and necessary to fulfill the purpose, and, finally, the purpose and level of infringement must exist in a reasonable relationship to one another. The purpose is also the subject of another principle, which we will look at next.