Apps for COVID-19 Tracing
An EU Data Rights View
Tracing Apps May Be Good

But good intentions can't exempt governments, platform providers or developers from Data Protection
Legal Basis?

Legislative Requirement?
Consent?
Public Health?
Legitimate Interest
Consent needs four elements to be valid

Freely given
Specific
Informed
Unambiguous
Consent, Freely Given

Power imbalance will invalidate consent
- Public Authorities
- Employers
“consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority.”

- Recital 43, GDPR
Free consent is granular consent

Agree to Processing X

But must be able to disagree with Processing Y too
Specific Purpose

Before you can get Freely Given consent, you must have decided what you’re asking people to agree to.

“Just tick the box if you consent”
Consent but for a Specific Purpose

**Specific Consent**  
Vs  
**Function Creep**

Know what use the data will be put to.  
Collect data for one purpose but then start using it for one or more extra purposes.  
State that clearly.  
Never say  
Use it only for that purpose.  
"I wonder what else we could do with this?"
Informed Consent

You need to meet certain criteria if you want to say you’ve received Informed Consent.
## Information about processing

<table>
<thead>
<tr>
<th>Who and why</th>
<th>What and how</th>
<th>Where and how</th>
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<tbody>
<tr>
<td>(i) the controller’s identity,</td>
<td>(iii) what (type of) data will be collected and used,</td>
<td>information about the use of the data for automated decision-making on risks and safeguards of data transfers in the absence of an adequacy decision</td>
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<td>(ii) the purpose of each of the processing operations for which consent is sought,</td>
<td>(iv) the existence of the right to withdraw consent,</td>
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Unambiguous Consent

You need to meet certain criteria if you want to say you’ve received Informed Consent.
Withdraw Consent

Should be as easy to say No as it was/is to say Yes
To get valid consent

<table>
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<th>Be humble</th>
<th>Be honest</th>
<th>Be Willing to Take No for an answer</th>
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<tr>
<td>Even in a pandemic, what researchers want is not preeminent. Ask politely for the right to use someone’s data. It is their dignity at stake.</td>
<td>Show citizens what you want to do. Explain it. Tell them why you want to do it. Transparency breeds trust.</td>
<td>Seriously.</td>
</tr>
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“Necessary and Proportionate”

The key provision for all data processing not performed under explicit consent.
ICCL/DRI Principled Framework

- Have a clear and limited purpose:
- Be necessary and proportionate to the problem:
- Be effective:
- Embrace transparency and promote trust:
  - Subject to statutory oversight:
  - Subject to timely deletion of personal data:
- Privacy and data protection by design:
  - Subject to a sunset clause:
  - Broaden the range of actors involved and foster engagement:
Scorecard

An easy to understand assessment for the public
THANKS!

Any questions?
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