



MAY 23, 2018

CIRCULAR NO. 17/18

TO MEMBERS OF THE ASSOCIATION

Dear Member:

IMPLEMENTATION OF GDPR PRINCIPLES IN CLAIMS HANDLING

As advised in [Circular No. 09/18](#) of February 23, 2018, the General Data Protection Regulation (GDPR or Regulation) provides for significant penalties in the event of a data breach. This Circular supplies Members, correspondents and others with further guidance on how to try and reduce the risk of a breach. It also contains news of some changes the Club will be making in how it handles personal data.

Claims involving people, such as crew or passenger illness and injury matters, present the greatest challenge to the Club in ensuring the adequate protection of personal data.

Data minimisation and privacy by design

As mentioned in the Circular referred to above, the Club is a controller for the purposes of the GDPR, and thus responsible for demonstrating compliance with the Regulation. As a result, and in line with the key GDPR principles of data minimisation and privacy by design, the Club wishes to:

- start limiting the amount of personal information in circulation; and
- make greater use of existing technology to transfer personal data more securely; and
- where possible, anonymise the data that is exchanged.

E-mail circulation lists continue to expand. This means it can be difficult to spot when someone who should not be included has inserted themselves into an email chain. In addition, attempted fraud by e-mail is increasing, with communications received from impersonators of those involved in the industry. These imposters are usually seeking financial gain, but responding to such a message could lead to a data breach by the Club as well.

In handling personal illness or injury files, it is often necessary to exchange sensitive personal data with Members, correspondents and service providers around the world on an urgent basis. Implementing GDPR principles is particularly important in this connection.

Accordingly, the following “best practice” guidance in the form of ten tips for the treatment of personal data may be helpful:

1. **Respect** - Treat everyone’s personal data with the same respect you would wish for your own.
2. **Minimise the generation of personal data by email and on paper** – The less personal data being created and circulated, the easier it is to protect. Only send information which is necessary for the handling of the claim.

3. **Cybersecurity** – Ensure computer systems are secure and make use of security measures such as password protection and secure email servers when transferring attachments containing passports, medical reports, contracts of employment etc. Encryption or secure web portals should be used when appropriate to protect sensitive information.
4. **Anonymisation** – Aim to use identifiers for individuals, like crewmember, broker, surveyor etc. instead of names and dates of birth. Other identifiers could be the vessel name, the nature of the incident, or the port of disembarkation, with a reference number. This applies not just to the subject heading and body of an e-mail but also, where possible, to any documents which support the claim. If there is no alternative to using a name, it is recommended that it is cited with as few other identifiers as possible. It is also intended to adopt this approach for claim descriptions. If these steps are put into practice, it is hoped that, except for those directly handling the claim, it will not be possible to identify the individual who is the subject matter of the claim.
5. **Start afresh** - If you cannot avoid identifying an individual, do so once and then start a new email so that the same personal data is not repeated in the email chain.
6. **Reply all?** - Before using “reply all”, check that it is appropriate that everyone in the circulation list should actually receive the e-mail you are about to send.
7. **Use official email addresses** – Do not use unofficial, private, or any other non-secure email accounts.
8. **Clear and lock** - Keep your desk clear and your computer screen locked when you are away from your desk. Dispose of hard copy data in a secure manner.
9. **Familiarise yourself with GDPR**, including how it applies to your business and the penalties for non-compliance.
10. **Communicate these guidelines** to everyone in your organisation.

Since the Club understands that Members, brokers and external service providers such as Club correspondents, surveyors, and experts will generally be data controllers, as will the Club, implementing the above security measures minimises the risks arising from handling personal data to which both the Club and Members are exposed, and implementing these and other measures appropriate to your organization should be considered.

Extra-territorial reach of the GDPR as it applies to crew engaged within and outside the EU/EEA

As referred to in the above-mentioned Circular, the Regulation applies to shipowners and/or their managers who have establishments within the EU/EEA where they are processing personal data on EU/EEA individuals who are within the EU/EEA. For example, where a shipowner has its management within Greece and provides Greek senior officers to its ships, the personal data of those individuals will fall squarely within the scope of the Regulation.

Where the Regulation can have extra-territorial reach is if there is transfer of data from EU/EEA to outside EU/EEA, such as in the following cases:

The recruitment of crewmembers where:

- the shipowner/manager is located in the EU/EEA but engages crewmembers from outside the EU/EEA;
- the shipowner/manager is located outside the EU/EEA but engages crewmembers from the EU/EEA;
- the shipowner/manager is located outside the EU/EEA and engages crewmembers from outside the EU/EEA, but the voyage passes through the EU/EEA, which may lead to the transfer of data from the EU/EEA to outside EU/EEA.

For many Members, local manning agents are used for the recruitment of crew outside the EU/EEA, for example from the Philippines, India and the Ukraine. However, as the crew are engaged by an owner/manager with an establishment in the EU/EEA, the processing of their personal data will also fall within the scope of the Regulation, despite the crew themselves not being EU/EEA nationals.

In addition, where a shipowner/manager is located outside the EU/EEA but engages crewmembers from EU/EEA countries, as they will be processing personal data on EU/EEA individuals, that processing will also fall within the scope of the Regulation.

Shipowners' privacy responsibilities

In respect of crew illness and injury claims, clubs are often the shipowners' employers' liability insurers, and in such cases, it will be necessary for the shipowner / manager to provide crewmembers with notice that their personal data may be shared with its insurers and other third parties.

It is expected that, for the majority of the Club's Members, their crew contracts and collective bargaining agreements (CBAs) will either not contain data protection clauses/notices or they will need updating. Members are therefore asked to ensure that they provide their crew, with the necessary notice.

In addition to any wider privacy notice (also known as an information notice or fair processing notice) a Member may have developed, Members should consider including in the notice the following provisions dealing with injury and illness claims:

- *What information is being processed?* Personal and sensitive data regarding the crewmember's identity, health, illness and injuries. Financial information.
- *Why is it being processed?* To assist with medical treatment and insurance claims.
- *On what legal basis is it being processed?* To protect vital interests of the individual, perform the employment contract and to respond to or defend any claim, to comply with legal or statutory obligations for example, to provide insurance.



- *Who it may be transferred to?* Insurance companies, insurance brokers, health facilities and entities, either in or outside the EU / EEA, involved in the management of a claim and/or the treatment, travel and repatriation of a crewmember.
- *How long will it be kept for?* Consideration should be given to the length of employment, limitation periods and other relevant factors.

This is not an exhaustive list to ensure compliance with GDPR, but should allow Members to provide claims information to the Club. In addition, local and specific legal advice should also be obtained.

For other steps which the Club recommends Members should take, please refer to the “Further impact on Members” section in the previous circular (i.e. [No 09/18](#) of February 23, 2018).

Yours faithfully,

Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

All clubs in the International Group are issuing similar circulars.