

Foreign Direct Investment in Spain

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Agenda

1. New FDI Restrictions

2. Protecting Your IP

3. GDPR: How to Avoid Data Breach Notifications and Penalties

1. New Foreign Direct Investment Restrictions

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Pre-COVID-19: Spanish law on FDI screening

Legal framework since 2003

- Liberalization with Law 19/2003
- Government had possibility to restrict FDIIs that affected (i) public administration, (ii) national security or (iii) security and public order or health.
- For most FDIIs, only *ex post* notification was required for statistical purposes

EU Development

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- **Regulation (EU) 2019/452 (“FDI Screening Regulation”)**
 - **Entered into force April 2019 and applicable since October 11, 2020**
 - **Main changes:**
 1. **Framework for EU screening mechanisms**
 2. **List of factors potentially affecting security or public order**
 3. **Introduction of a cooperation mechanism**
- **Communication from the European Commission (March 25, 2020)**

Post-COVID-19: Spanish law on FDI screening

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- **Law 19/2003 recently amended by Royal Decree 08/2020 (from March 17, 2020) and Royal Decree 11/2020 (from March 31, 2020)**
 - Adding Art. 7 bis to Law 19/2003
 - Suspension of former liberal policy towards FDI in Spain
- **Royal Decree 34/ 2020 (from November 17, 2020)**
 - Including EU-based investors temporarily
 - Government authorized to modify exempt amounts and to narrow down definition of affected industries
- **Prior authorization obligatory for certain FDIs**

Post-COVID-19: Spanish law on FDI screening

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- **Definition of FDI in Spain:**

- Foreign investor (subjective condition); and
- Transaction results in controlling influence over a Spanish company (>10% shares or *de facto* control) (objective condition)

- **Prior authorization obligatory if**

- Directed at certain sectors
- Investor is controlled by third government or subject to investigation for illegal activities

- **Interpretative issues:**

- P: Extensive definition of “foreign investor” may impede free movement of capital in EU
 - P: Greenfield investments
 - P: Extensive applicability
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Spanish law on FDI screening - Mandatory Authorization for Investments in Certain Sectors

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- **Critical infrastructure** (including energy, transport, water, health, communications, media, data processing and storage, aerospace, defense, electoral or financial infrastructure and sensitive installations) as well as buildings and real estate which are of critical importance for the usage of said infrastructures;
- **Critical technologies** and dual-use products, artificial intelligence, robotics, semiconductors, cyber security, aerospace, defense, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies; critical technologies and dual-use items;
- Supply of **essential resources**, in particular energy and food;
- Sectors with access to **sensitive information**, especially **personal data**, or sectors able to control such information; and
- **Media**

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2. Protecting Your IP

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IP protection in Spain and the EU

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- **SPTO registrations**

- > Trademarks and tradenames
- > Industrial inventions (patents and utility models)
- > Industrial designs
- > Topographies of semiconductor products

- **EUIPO registrations**

- > Trademarks and tradenames
- > Industrial designs

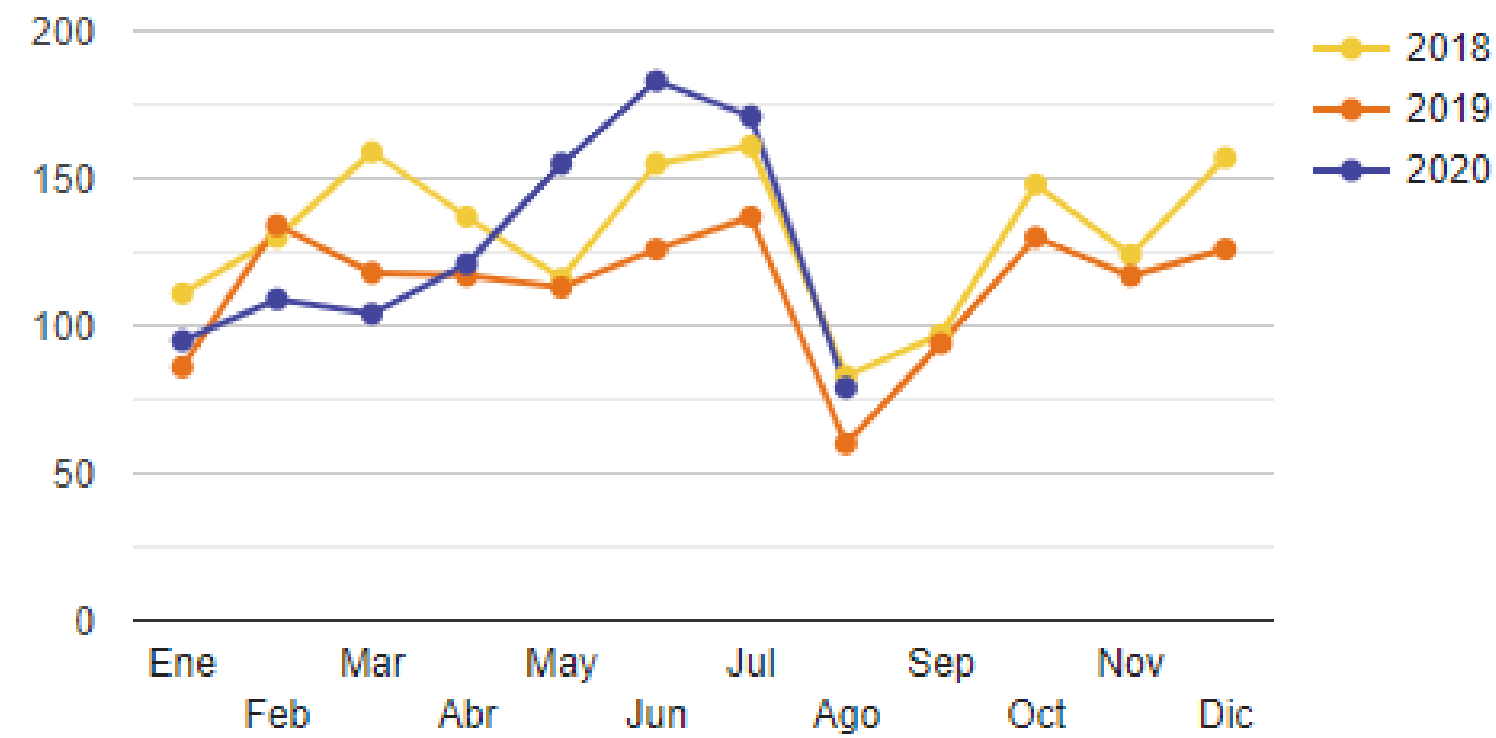
- **EPO registrations**

- > Industrial inventions (patents)

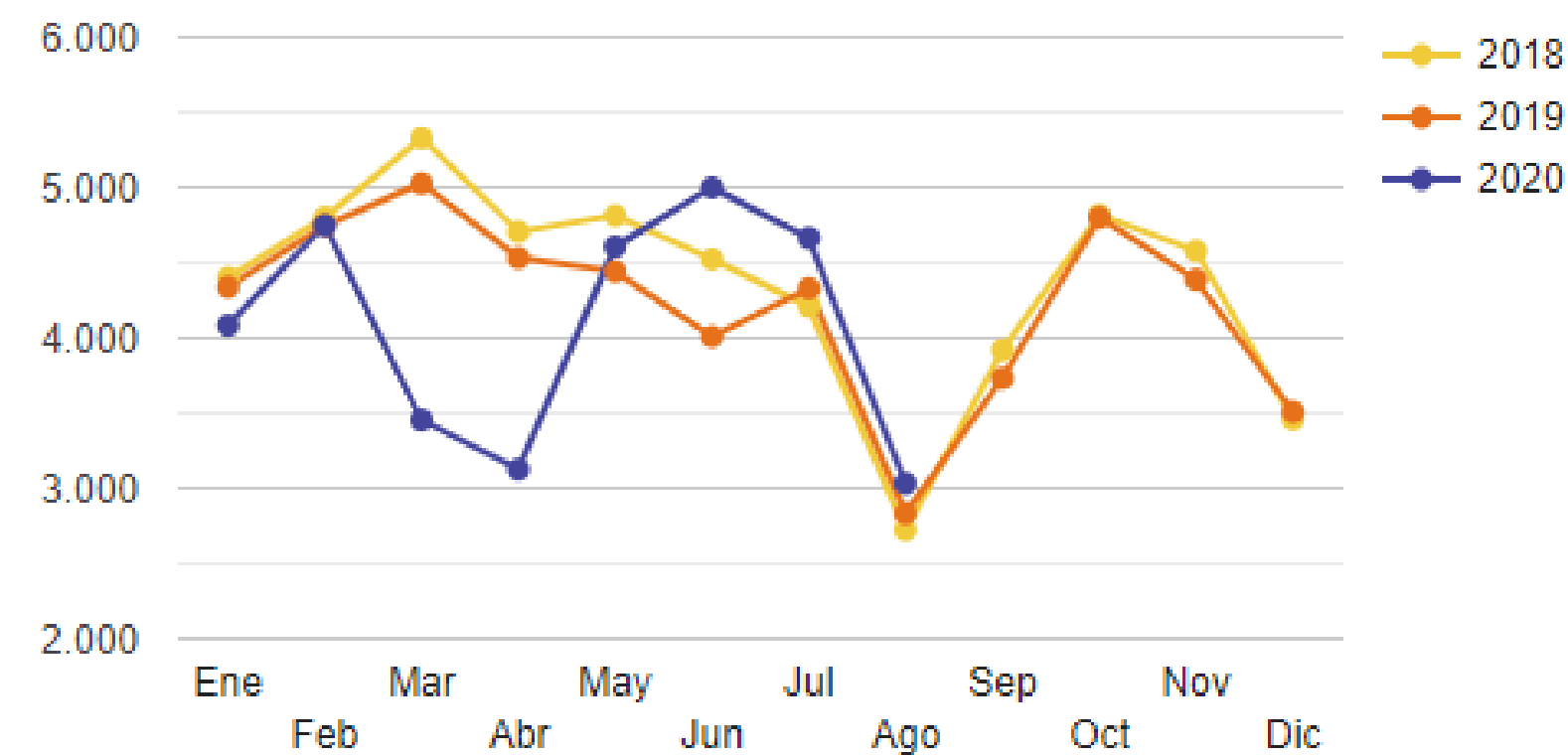
Statistics



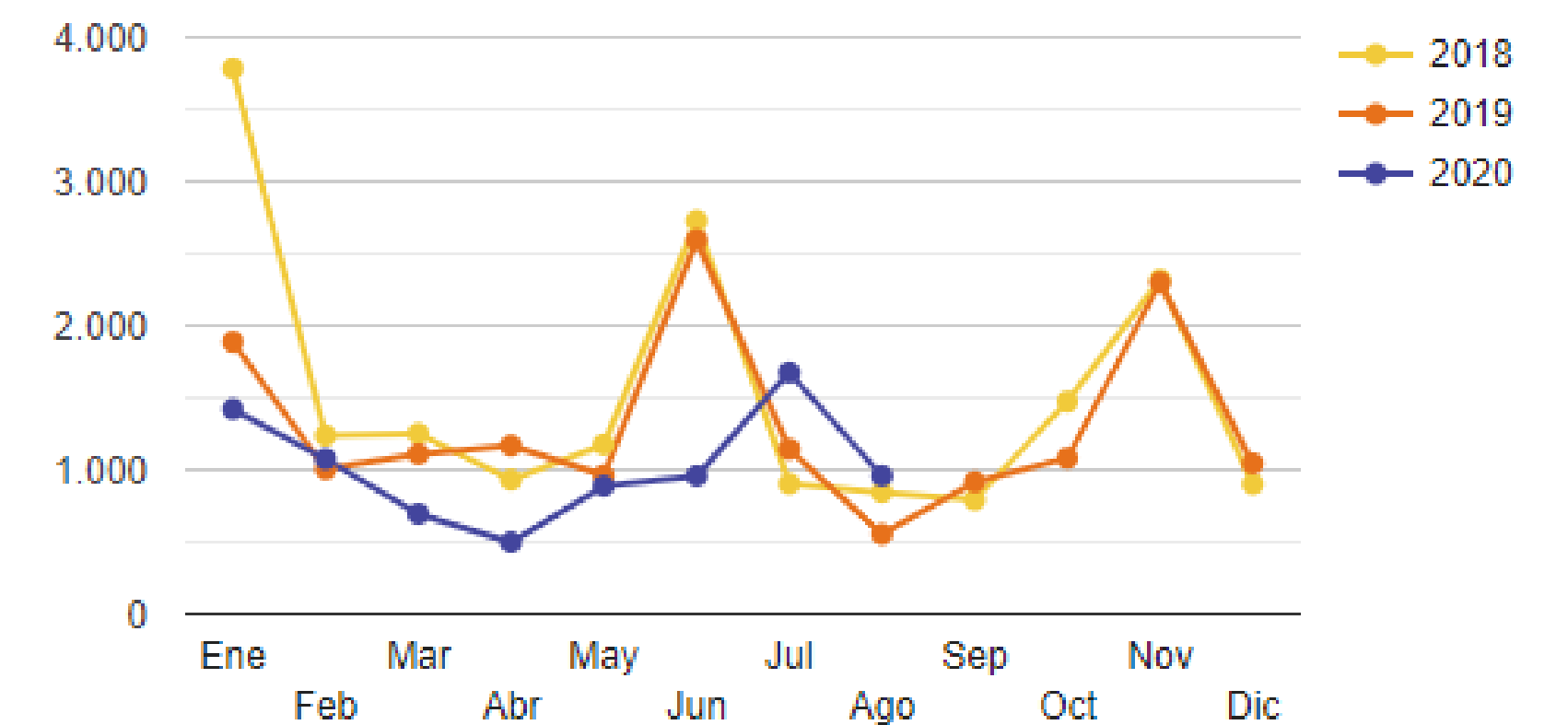
Patentes (n° de solicitudes)



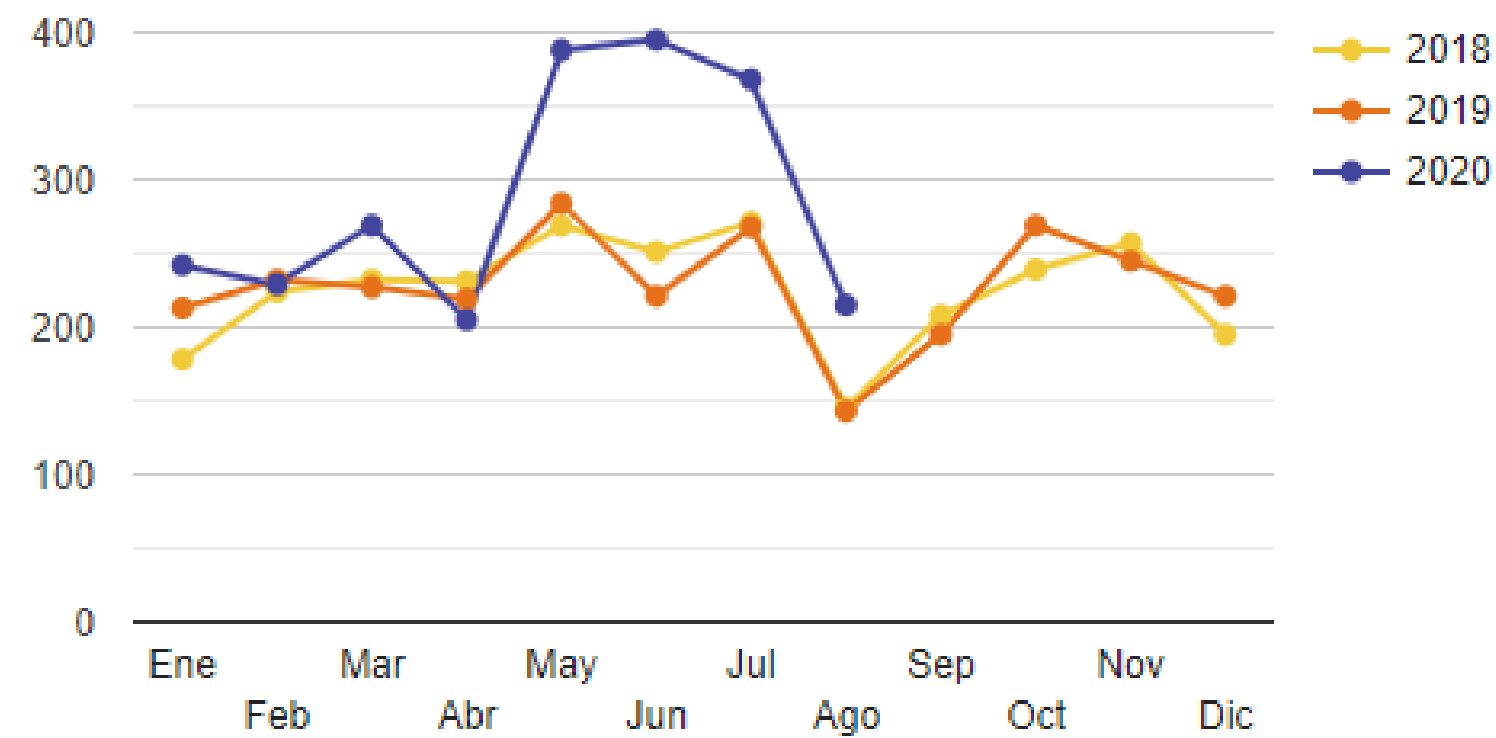
Marcas (n° de solicitudes)



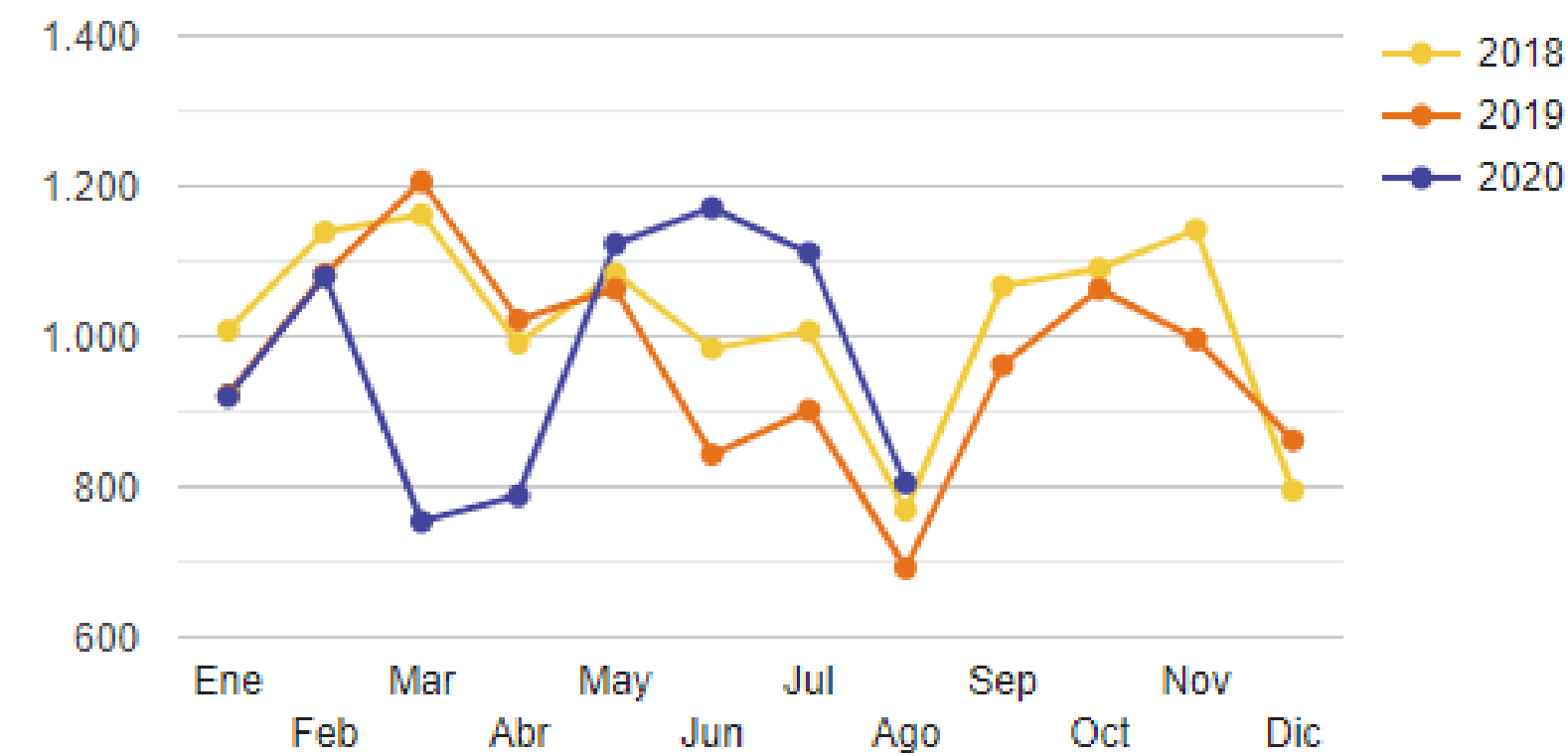
Diseños Industriales (n° de diseños)



Modelos de Utilidad (n° de solicitudes)



Nombres Comerciales (n° de solicitudes)



3. GDPR: How to Avoid Data Breach Notifications and Penalties

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How to Avoid Data Breaches

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- **Understanding responsibilities**
 - > Privacy by design and by default
 - > Risk assessment and impact assessment
- **Implementing and updating data protection policies and procedures**
 - > Security measures:
 - Organizational measures
 - Technical measures
- **Training employees**
- **Constant surveillance**
- **Data processors**
 - > Data processing agreement
 - > Warranties
- **Data processing record**

[illegible]

- **Serious infringement Art. 73 GDPR**

-> Administrative fine: up to EUR 10,000,000 or, in the case of a corporation, up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher

-> Data subjects may:

- **lodge complaints with a supervisory authority**
- **exercise their right to an effective judicial remedy against a supervisory authority or against a controller or processor**
- **exercise their right to compensation and liability**



Notification of Data Breaches



- **Notification to the Spanish DPA**
 - > 72 hours from time of awareness
 - > Only required if rights and freedoms of data subject are compromised
 - > Must include:
 - Description of the breach
 - Description of possible consequences
 - Description of the answering measures
- **Record of breaches**
- **Notification to data subject**
 - > High-risk breaches



Personal Data and COVID-19



- **May employers process the information on whether employees are infected with the virus? May they transfer such information to the rest of the staff?**
- **Can employees and visitors to the company be asked about countries they have previously visited or if they have symptoms related to the virus?**
- **Is it permissible to process employees' health data related to the virus?**
- **In case of preventive quarantine or symptoms, is the employee obliged to inform his/her employer of the circumstance?**
- **Is it possible to monitor the temperature of employees in order to detect the virus?**



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Q&A Session

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