

Opinion of the National Commission for Data Protection relating to
the preliminary draft Grand-Ducal regulation relating to the composition and
operation of the advisory commission for the evaluation of the
video surveillance

Deliberation n°17/AV13/2021 of May 7, 2021

In accordance with article 46, paragraph 1, letter (c) of directive (EU) n° 2016/680 of 27 April
2016 on the protection of individuals with regard to the processing of personal data
personal character by the competent authorities for the purpose of crime prevention
criminal proceedings, investigation and prosecution thereof or the execution of criminal penalties, and
free movement of such data, and repealing Council Framework Decision 2008/977/JHA (hereinafter
referred to as “the directive”), to which article 8 of the law of 1 August 2018 on
organization of the National Commission for Data Protection and the general regime
on data protection (hereinafter the "Law of 1 August 2018 on the organization of the
National Commission for Data Protection and the general data protection regime
Data"), the National Commission for Data Protection (hereinafter the "Commission
Nationale" or the “CNPD”), “advises the Chamber of Deputies, the Government and other
institutions and bodies on legislative and administrative measures relating to the
protection of the rights and freedoms of natural persons with regard to data processing
personal”.

By letter dated April 23, 2021, the Minister of Internal Security seized the Commission
national authority of a request for an opinion on the preliminary draft Grand-Ducal regulation on the
composition and operation of the advisory committee for the evaluation of the
video surveillance, as provided for in article 43bis paragraph (3) of bill no. 7498 on
modification of the amended law of 18 July 2018 on the Grand Ducal Police (VISUPOL) (hereinafter
the “preliminary draft Grand-Ducal regulation”).

The authors of the preliminary draft Grand-Ducal regulation propose to provide that the said

advisory commission is composed in particular of a representative of the Commission national. The CNPD understands that its planned participation in the said commission consultation would be justified on the basis of its expertise in the matter, which it welcomes. But she questions the issues relating to his independence and the risks of conflicts of interest that could arise.

Indeed, according to Article 27, paragraph (1), of the law of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal matters as well as in matters of national security, the CNPD may be consulted "a) when a impact assessment relating to data protection, as provided for in Article 26, indicates that the processing would present a high risk if the controller did not take measures to mitigate the risk, or b) where the type of processing, in particular, due to

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relating to the preliminary draft Grand-Ducal regulation relating to the composition and operation of the advisory committee for the evaluation of video surveillance

1/2

the use of new mechanisms, technologies or procedures, presents high risks for the freedoms and rights of data subjects".

Thus, what would happen if the National Commission were seized by the Grand Ducal Police prior consultation in the cases referred to in Article 27 of the said law and that it would consider that the treatment would constitute, if necessary, a violation of the law of August 1 2018 aforementioned?

In such cases, questions arise about the independence of the CNPD and possible conflicts interests that could arise a posteriori if the CNPD were to decide, as a member of the advisory committee for the evaluation of video surveillance, on the same treatment of data which it will have previously received on the basis of the aforementioned article 27.

Finally, in the event that the aforementioned advisory commission adopts an opinion for which the

National Commission would have expressed its disagreement during its analysis, as a member of said advisory commission, it should be noted that the CNPD could, subsequently also be required, if necessary, as an independent supervisory authority, to carry out its mission of control, without however being bound by the opinion which would have been rendered by the advisory commission aforementioned.

In view of the above observations, the CNPD would like to refer to the prudence of the government (in the case of a draft Grand-Ducal regulation) and the legislator with regard to the advisability of including the CNPD as a member of the advisory committee in question.

Thus decided in Belvaux on May 7, 2021.

The National Data Protection Commission

Tine A. Larsen

President

Christopher Buschman

Commissioner

Thierry Lallemand

Commissioner

Marc Lemmer

Commissioner

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