

Opinion of the National Commission for Data Protection relating to

to bill n° 7977 1° relating to the right to education and

compulsory education; 2° amending the amended law of 18

March 2013 relating to the processing of personal data;

and 3° repealing the amended law of 6 February 2009 relating to

compulsory education.

Deliberation n°34/AV17/2022 of August 5, 2022

In accordance with article 57, paragraph 1, letter (c) of regulation (EU) n°2016/679 of 27 April

2016 on the protection of natural persons with regard to the processing of personal data

personal character and on the free movement of such data, and repealing Directive 95/46/EC

(General Data Protection Regulation) (hereinafter the "GDPR"), to which refers

article 7 of the law of August 1, 2018 on the organization of the National Commission for the

data protection and the general data protection regime, the Commission

national body for data protection (hereinafter the "National Commission" or the "CNPD")

"advises, in accordance with the law of the Member State, the national parliament, the government and

other institutions and bodies on legislative and administrative measures relating

the protection of the rights and freedoms of natural persons with regard to processing".

By letter dated February 24, 2022, the Minister of National Education,

Childhood and Youth has invited the National Commission to give its opinion on the bill

n°7977 1° relating to the right to education and compulsory schooling; 2° amending

the amended law of 18 March 2013 relating to the processing of personal data; and 3°

repealing the amended law of 6 February 2009 relating to compulsory schooling (hereinafter the

" law Project ").

According to the explanatory memorandum, the bill "aims to establish general standards applicable to

all forms of education. The interest of a law generally applicable to all

forms of education is twofold. It is a question, first of all, of recalling that, whatever the

form of education chosen by parents for their children, the general education of youth, made compulsory by the State, has the primary objective of training citizens and contributing thus to the cohesion of society. It is, secondly, on the strict plan of the articulation of the different standards relating to education, to go beyond the particular fields of application of each of the laws specific to each mode, respectively to each level of education. »

The authors of the bill also point out that over the past decade, four new elements leading to the need to draft a new text have gradually appeared, including the expansion of IT resources used to monitor compliance with

Opinion of the National Commission for Data Protection

relating to draft law n° 7977 1° relating to the right to education and compulsory education; 2° amending the amended law of 18 March 2013 relating to the processing of personal data; and 3° repealing the amended law of February 6, 2009 relating to compulsory education.

1/7

compulsory education. They specify that said control "is carried out only once a year by the cities. Given the size of the current population, it is easy to question the effectiveness of its annual checks. »¹

One of the key points of the reform started in 2021 therefore consisted in taking new measures "in this area in order to strengthen the control of compulsory schooling in a centralized. More specifically, under the bill under notice, the monitoring of compliance with compulsory schooling would no longer be the responsibility of the municipalities, but would be the exclusive responsibility of the

Minister having National Education in his attributions (hereinafter the "Minister") in such a way monthly from the start of compulsory education. Moreover, this control would not concern only Luxembourg public education, but would extend to private education, including including home schooling.²

The CNPD would like to emphasize from the outset that the analysis of chapters 1 and 2 of the bill on the right to education and on the fundamental objectives and values of education, such as the extension of compulsory education and changes to the frequency and authority competent to control compulsory education provided for in Chapter 3 of the said project, do not fall in its field of competence. On the other hand, the concrete methods of the monthly control of compulsory education by the minister as currently provided for in article 16 of the bill raise questions relating to the protection of personal data.

It will therefore limit its observations to preliminary remarks on distance education or in hybrid form, as well as on home education (point I) and in the aforementioned article 16 (Item II).

I. Preliminary remarks

According to article 12 of the draft law, compulsory schooling is satisfied "when the minor follows, in physical presence, remotely, or in hybrid form, the courses, activities and internships obligatory [...]".

Neither the text of the bill nor the commentary to the articles provide any explanation of the concrete modalities of distance education or in hybrid form so that the National Commission cannot comment on the possible consequences in terms of data protection. Already in its opinion on bill n°7784 amending of the amended law of July 17, 2020 on measures to combat the Covid-193 pandemic, the CNPD had considered that, as details on distance education by public and private schools lacked, she "I was] unable to assess the impact on any data protection provisions. »

'See document. speak. 7977/00, statement of reasons, p. 15.

2 See doc. speak. 7977/00, statement of reasons, p. 15.

3 See deliberation no. 10/AV9/2021 of March 8, 2021, doc. speak. 7784/01.

[CNPD

Opinion of the National Commission for Data Protection

relating to draft law n° 7977 1° relating to the right to education and compulsory education;
2° amending the amended law of 18 March 2013 relating to the processing of
personal data; and 3° repealing the amended law of February 6, 2009
relating to compulsory education.

2/7

In the same vein, the text under opinion remains silent as to the concrete procedures to be
to be respected in the case of courses given "in the form of home schooling" as provided
currently by article 12 point 4 of the bill.

The CNPD wonders, however, whether there are plans to use videoconferencing for
distance education or in hybrid form. If the answer is yes, it is important
to emphasize that the treatment of the image of teachers and pupils is a treatment of
personal data subject to the GDPR. In addition, the use of a device going beyond
beyond a live transmission, such as the recording of teachings and the
dissemination of these videos in order to allow deferred viewing, raises questions
additional protection of privacy, in particular with regard to the
proportionality of data processing, and requires the implementation of technical measures
and organizational specifics.

Furthermore, any processing of personal data must be based on lawfulness.
in accordance with Article 6 of the GDPR. The CNPD understands that in circumstances
specific to the specific situation of a pupil, the right to education, or even the teaching
mandatory, on the one hand, and the right to the image and the protection of personal data,
on the other hand, can be balanced so that one could come to the conclusion that the right
education of the absent pupil requires, under certain conditions, recourse to means of
electronic communications to take into account the best interests of the child. In such
cases, the processing of personal data of the various persons involved

(students, parents, teachers, etc.) could be considered necessary for the execution

a task in the public interest in accordance with Article 6, paragraph 1, letter e) of the GDPR.

Without clarification from the authors of the bill, however, it is not clear who is to

to be considered as a controller within the meaning of Article 4 point 7) of the GDPR, i.e.

state who is responsible for compliance with the general rules and principles arising from the GDPR.

Would it be each school individually that would resort to such a solution?

distance education? Or would it rather be the Minister, while the said establishments

act as sub-contractors⁴ of the Minister, where applicable?

In particular, it should be remembered that the processing of personal data

collected and processed in the context of the performance of a mission of public interest or falling within the

the exercise of official authority vested in the controller must be based on a

legal basis according to Article 6(3) of the GDPR, read together with its

paragraph 1, letter e) 5 which provides that: "The basis for the processing referred to in paragraph 1,

points c) and e), is defined by:

⁴ See the definition of processor in Article 4.8 of the GDPR: "the natural or legal person, public authority,

service or other body which processes personal data on behalf of the data controller.

treatment. »

⁵ Article 6, paragraph (1), letter e) provides that: "Processing is lawful only if and insofar as, at least

one of the following conditions is met: (...) e) the processing is necessary for the performance of a mission of interest

public or subject to the exercise of official authority vested in the controller; (...) »

[CNPD

Opinion of the National Commission for Data Protection

relating to draft law n° 7977 1° relating to the right to education and compulsory education;

2° amending the amended law of 18 March 2013 relating to the processing of

personal data; and 3° repealing the amended law of February 6, 2009

relating to compulsory education.

has. Union law; Where

b. the law of the Member State to which the controller is subject.

The purposes of the processing are defined in this legal basis or, with regard to the processing referred to in point (e) of paragraph 1 are necessary for the performance of a task of interest public or subject to the exercise of official authority vested in the controller.

This legal basis may contain specific provisions to adapt the application of the rules of this Regulation, inter alia: the general conditions governing the lawfulness of the processing by the controller; the types of data that are subject to processing; the people concerned; the entities to which the personal data may be transferred communicated and the purposes for which they may be communicated; purpose limitation; them retention periods; and processing operations and procedures, including measures aimed at guaranteeing lawful and fair processing, such as those provided for in other situations special treatment as provided for in Chapter IX. »

It follows from the foregoing that this article provides for a particular constraint linked to the legality of a processing of data necessary for the performance of a task in the public interest or falling within the the exercise of official authority vested in the controller. In this case of figure, the basis and purposes of the data processing must specifically be defined either by European Union law or by the law of the Member State to which the controller is submitted.

In addition, recital (45) of the GDPR specifies that it should "[...] belong to Union law or the right of a Member State to determine the purpose of the processing. Furthermore, this right could specify the general conditions of this Regulation governing the lawfulness of the processing of personal data, establish the specifications aimed at determining the person responsible for the processing, the type of personal data being processed, the persons concerned, the entities to which the personal data may be

communicated, purpose limitations, retention period and other measures aimed at to guarantee lawful and fair processing. [...]"

Under the above provisions, this legal basis should establish specific provisions aiming to determine, among other things, the types of data processed, the persons concerned, the entities to which the data may be communicated and for what purposes, the durations data retention or processing operations and procedures.

Recital (41) of the GDPR further states that "this legal basis or measure legislation should be clear and precise and its application should be predictable for litigants, in accordance with the case law of the Court of Justice of the European Union and the European Court of Human Rights. ".

[CN.P9

Opinion of the National Commission for Data Protection

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4/7

In the event that processing of personal data is carried out in the context of distance learning, in hybrid form or at home, the CNPD therefore recommends that authors of the bill to detail them in the body of the text of the bill for reasons of legal certainty for all the actors involved. Similarly, it goes without saying that measures appropriate technical and organizational measures should be put in place and that the rights of data subjects, as provided for in Chapter III of the GDPR, are respected.

II.

Monthly monitoring of compulsory education by the Minister

According to Article 16, paragraph 1, of the bill under consideration, the "monitoring of compliance with

compulsory education is incumbent on the Minister, who exercises it continuously, and at least once a month. »

Nevertheless, the text remains silent as to the concrete modalities of this control. It's only by reading the explanatory memorandum that the CNPD understands that Article 16, paragraph 1, cited above would authorize the Minister to compare "on a monthly basis the data collected through various student files but also files provided by the education departments private and international with the data appearing in the national register of natural persons or in the file of applicants for international protection. »

The commentary to the articles specifies in this context that the provision in question, that is to say section 16 of the bill, would allow the Minister "systematic, more regular and computerized, by authorizing the comparison of the various student files managed by the Minister with the national register of natural persons; the aim being to centralize the procedure for control of compulsory education. To this end, the Minister uses the means provided for by amended law of March 8, 2013 relating to the processing of personal data. »

Article 22 of the bill specifically provides for amending Articles 3 and 4 of the amended law of March 18, 2013 relating to the processing of personal data concerning students (hereinafter the "amended law of March 18, 2013") in order to allow the Minister in particular to process data relating to "absences and exemptions" of pupils "so that the Minister can accomplish its mission of control conferred by article 16 of this text. » 6

After these legislative amendments, Articles 3, paragraph I, first point and 3, paragraph 3, letter a) of the amended law of 18 March 2013 would indeed grant the Minister the right to deal data relating to absences and exemptions of pupils for the purpose of monitoring compliance compulsory education. Moreover, already at the current stage of the text of the amended law of 18 March 2013, the Minister may access in the pursuit of the purpose of monitoring compliance with the said

6 See doc. speak. 7977/00, commentary to the articles, p. 24.

Opinion of the National Commission for Data Protection

relating to draft law n° 7977 1° relating to the right to education and compulsory education;

2° amending the amended law of 18 March 2013 relating to the processing of

personal data; and 3° repealing the amended law of February 6, 2009

relating to compulsory education.

517

school obligation to the data of the national register of natural persons (hereinafter the

"RNPP") to obtain the identification information of students and their representatives

legal.'

However, the CNPD notes that the possibility of cross-referencing RNPP data with the various

student files managed by the Minister is not explicitly provided for. Furthermore, she

asks what these student files actually are. Are these the files of registered students

in public and private education in Luxembourg? If so, do these files

are regularly updated so that the Minister's monthly control is effective?

For the sake of clarity and legal certainty, the CNPD therefore considers it necessary to specify

in the body of the text of the bill under opinion the possibility for the Minister to cross the

RNPP data with those of the student files and to include a reference to the means provided

by amended law of March 8, 2013.

Furthermore, the CNPD notes that the explanatory memorandum specifies, in the context of monitoring the

respect for compulsory education that a "future law regulating the relationship of the State with schools

schools will have to specify the procedures to be followed by private schools". Nevertheless, she

regrets that the procedures to be followed by the said schools have not been integrated into the project

of law under opinion and it cannot therefore pronounce itself.

Finally, the National Commission observes that under Article 15, paragraph 1, of the draft

of law, "the persons holding parental authority over a person subject to the obligation

school which satisfies it in one of the ways referred to in article 12 points 2, 3 or 5, have the obligation to

submit a registration certificate to the Minister no later than eight days after registration. »

However, as the article in question does not specify what are the obligations of

communication to the Minister by the holders of parental authority over a person subject to

home schooling as provided for in article 12 point 4 of the bill under opinion, the

CNPD wonders how the Minister will plan to verify compliance with compulsory education

in this context.

III. Final remarks

In conclusion, the National Commission recommends that the authors of the bill include in

the body of the text of said draft any processing of personal data carried out

within the framework of distance education, in hybrid form, and at home, on the one hand, as well as

that the concrete methods of the minister to control the respect of the school obligation, that is to say

7 Based on article 4.1 of the amended law of 18 March 2013.

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Opinion of the National Commission for Data Protection

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2° amending the amended law of 18 March 2013 relating to the processing of

personal data; and 3° repealing the amended law of February 6, 2009

relating to compulsory education.

6/7

say the possibility of cross-referencing RNPP data with those of student files on the basis of

means provided for by the amended law of March 8, 2013, on the other hand.

This legislative framework would guarantee the principle of legal certainty for the benefit of all

persons concerned, i.e. pupils, persons holding parental authority and

teachers.

Thus decided in Belvaux on August 5, 2022.

The National Commission for Data Protection

Thierry Lallemand

Commissioner

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Opinion of the National Commission for Data Protection

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2° amending the amended law of 18 March 2013 relating to the processing of

personal data; and 3° repealing the amended law of February 6, 2009

relating to compulsory education.

7/7