

Opinion of the National Commission for Data Protection relating to
to government amendments to bill no. 7683 amending 1)
the amended law of July 17, 2020 introducing a series of
measures to combat the Covid-19 pandemic and amending: 1° the law
of November 25, 1975 concerning the issuance to the public of
medications ; 2° the amended law of 11 April 1983 regulating
the marketing and advertising of medicinal products; 2) the law of
September 23, 2020 on measures concerning the holding of meetings
in companies and in other legal persons.

Deliberation n°23/2020 of October 27, 2020

In accordance with article 57, paragraph 1, letter (c) of regulation 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 1 August 2018 on the organization of the National Commission for the
data protection and the general data protection regime, the Commission
National Commission for Data Protection (hereinafter referred to as "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 organizations regarding legislative measures and
administrative procedures relating to the protection of the rights and freedoms of natural persons
with regard to treatment".

On October 26, 2020, the Minister of Health seized the National Commission
to decide on the government amendments to bill n° 7683 amending 1)
the amended law of July 17, 2020 introducing a series of measures to combat corruption
Covid-19 pandemic and amending: 1° the amended law of 25 November 1975 concerning the
dispensing drugs to the public; 2° the amended law of 11 April 1983 on

regulation of the marketing and advertising of medicinal products; 2) the law of 23 September 2020 on measures concerning the holding of meetings in companies and in other legal persons (hereinafter: "Bill n°7683"). the said government amendments to bill no. 7683 have been approved by the Council of government in its session of October 26, 2020.

Amendment 5 of bill n°7683 aims to modify the new article 6 (former article 5) in meaning that infected persons must provide information on their state of health and on the identity of the people with whom they have had contact likely to generate a high risk of infection, to the director of health or his delegate, to civil servants and employees designated for this purpose by the Director of Health, and henceforth also to employees made available to the Ministry of Health pursuant to Article L. 132-1 of the Labor Code relating to the temporary loan of labour.

It appears from the commentary to the aforementioned amendment 5 of bill no. 7683 that its purpose is "to be able to have recourse, in addition to civil servants and employees, to employees made available from the Ministry of Health as part of a labor loan in application of the provisions of the Labor Code relating thereto, in order to collect information on the state of health of infected persons and on the identity of the persons with whom they have been in touch. »

Opinion of the National Commission for Data Protection relating to Government Amendments to Bill No. 7683 Amending the Amended Law of 17 July 2020 introducing a series of measures to combat the Covid-19 pandemic.

1/2

The CNPD fully understands that due to the vigorous increase in news infections in recent days and correlatively of the workload of the tracing team

contacts of the health department, it is necessary to increase in parallel the number of employees of the said team. Nevertheless, it notes that Article 10 paragraph (3) bill n°7683, providing who is authorized in the context of contact tracing to access the data of persons infected or at high risk of being infected contained in the information system set up for this purpose, has not been modified in order to add the aforementioned employees.

Thus, the CNPD recommends to the authors of bill n°7683 to insert in article 10 paragraph (3) of the said draft after “Only doctors and health professionals as well as civil servants and employees” the words “and employees made available to the Ministry of health pursuant to Article L. 132-1 of the Labor Code”. Article 10 paragraph (3) of the Bill No. 7683 would then read as follows:

“Only doctors and health professionals as well as civil servants and employees and employees made available to the Ministry of Health pursuant to Article L. 132-1 of the Labor Code, named by the Director of Health, are authorized to access data relating to the health of people who are infected or at high risk of being infected. They access health-related data strictly to the extent that access is necessary for the performance of the legal or contractual missions entrusted to them for prevent and combat the Covid-19 pandemic and are bound by professional secrecy in the conditions and subject to the penalties provided for in article 458 of the Penal Code. »

This addition would also have the consequence that said employees would also be subject in this context to the penal sanctions provided for in article 458 of the penal code in the event of non-respect for professional secrecy. Under these restrictive conditions, the CNPD considers that the additional access to the information system appear legitimate.

Thus decided in Esch-sur-Alzette on October 27, 2020.

The National Data Protection Commission

Tine A. Larsen

President

Thierry Lallemand

Commissioner

Christopher Buschman

Commissioner

Marc Lemmer

Commissioner

Opinion of the National Commission for Data Protection relating to
Government Amendments to Bill No. 7683 Amending the Amended Law
of 17 July 2020 introducing a series of measures to combat the
Covid-19 pandemic.