

Opinion of the National Commission for Data Protection relating to

Bill no. 7805 creating a parking card

for people with disabilities and relating to the draft Grand-

ducal 1° fixing the model and content of the parking card for

persons with disabilities as well as the request and the medical certificate in

for obtaining this card; 2° amending the Grand-Ducal regulation

amended on August 26, 1993 relating to taxed warnings,

consignments for non-resident offenders as well as the measures

Enforcement of Legislative Impoundment of Vehicles

vehicles and in terms of penalty points.

Deliberation n° 55/AV33/2021 of December 10, 2021

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

on the protection of individuals with regard to the processing of personal data

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

General on Data Protection) (hereinafter the “GDPR”), to which Article 7 of the

Law of August 1, 2018 on the organization of the National Commission for the Protection of

data and the general data protection regime, the National Commission for the

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 bodies on legislative and administrative measures relating

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

By letters dated March 24, 2021, Minister of Mobility and Public Works

invited the National Commission to comment on project no. 7805 creating a map

parking lot for people with disabilities (hereinafter the “draft law”) as well as on the draft

Grand-Ducal regulation 1° fixing the model and content of the parking card for

persons with disabilities as well as the application and the medical certificate in order to obtain

this card ; 2° amending the amended Grand-Ducal regulation of 26 August 1993 relating to taxed warnings, consignments for non-resident offenders as well as measures vehicle impoundment and licensing enforcement points (hereinafter the "draft Grand-Ducal regulation").

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It emerges from the explanatory memorandum that “[c]urrently, parking permits for persons with disabilities are regulated by the provisions of the Grand-Ducal regulation of 31 January 2003 concerning the creation and use of a parking card for disabled persons” and that in 2019 “it was planned to replace the said Grand-Ducal regulation of 2003 with a new Grand-Ducal regulation in order to modernize the text and in particular to introduce a new model of the parking card more difficult to falsify”. However, “in its opinion of 22 October 2019 the Council of State pointed out that since the constitutional revision in 2007 the principles relating to the social integration of citizens with disabilities are a matter reserved for the law and that therefore the regulatory power does not have the spontaneous power to regulate this matter.

The authors of the bill specify that “this bill and its implementing regulations are used to replace the amended Grand-Ducal regulation of 31 January 2003”.

Therefore, the bill “aims to create a parking card for persons with disabilities and to set the terms and conditions for obtaining and using this card” and the draft Grand-Ducal regulation intends in particular to set “the model and content the parking card for disabled people and the medical certificate for obtaining this card.

This notice will limit its comments to issues relating to data protection at personal character, raised by articles 2 and 7 of the bill and articles 1 and 2 of the bill of Grand-Ducal regulation.

I.

On the database referred to in Article 7 of the bill

Article 7, paragraph 1 of the bill provides that “[t]he information relating to credit cards parking issued provided for in Articles 1 and 6, the information contained on these maps as well as information concerning the administrative procedures concerning these cards are included in a national parking card database for people with disabilities”.

According to paragraphs 4 and 5 of the said article, the Minister in charge of Transport (hereafter after the "Minister") is the controller within the meaning of Article 4, point 7) of the GDPR, and the State Information Technology Center (hereinafter the “CTIE”) has the status of sub-processing within the meaning of Article 4(8) of the GDPR.

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With regard to the terminology used by the authors of the bill, i.e. the terms “data bank”, the CNPD considers that it would be more appropriate to align it with the terminology retained by the GDPR which uses the terms “file” or “processing” of data.

1.

Preliminary remarks

First of all, the National Commission welcomes the fact that, from the point of view of legal certainty, be provided, in paragraph 1, of article 7 of the bill, the principle of the creation of a “bank of national data relating to parking cards for people with disabilities”, in accordance with Article 6, paragraph (3) of the GDPR¹.

This article provides for a specific constraint related to the lawfulness of data processing necessary for compliance with a legal obligation or for the performance of a task in the public interest or relating to the exercise of official authority vested in the controller. In these two scenarios, the basis and purposes of the data processing must specifically be defined either by the law of the European Union or by the law of the State

member to which the controller is subject.

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,

personal data may be

communicated, purpose limitations, retention period and other measures aimed at

to guarantee lawful and fair processing. [...]”.

the entities to which

1 Article 6, paragraph (3), of the GDPR provides that “The basis of the processing referred to in paragraph 1, points c) and e),

is defined by:

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 database

legal or, with regard to the processing referred to in paragraph 1, point e), 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, among others: the general conditions

governing the lawfulness of 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 communicated and the purposes for which

they can be; purpose limitation; retention periods; and processing operations and procedures, including

measures to ensure lawful and fair processing, such as those provided for in other specific processing situations

as provided for in Chapter IX. ". (...) e) processing is necessary for the performance of a task carried out in the public interest

or falling within the

the exercise of official authority vested in the controller; (...)”.

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 (hereinafter referred to as "Court of Justice") and the European Court of Human Rights. ".

Pursuant to the above provisions, these legal bases should establish provisions aimed at determining, among other things, the types of data processed, the persons concerned, the entities to which the data may be communicated and for which purposes, the data retention periods or the operations and procedures of treatment.

Thus, while the drafters of the bill are to be commended for clarifying the categories of data that would be processed, as well as the purposes for which they would be processed, or the retention period of the data processed, certain elements are not (or not sufficiently) specified in the bill.

The CNPD will come back to this in more detail in the developments below.

2.

On the processing of special categories of data

Under article 7 of the bill, the Minister will collect "the decision of the physician-member of the medical committee. The National Commission understands from the opinion of the Council of State² that the "medical commission" referred to by the bill is that provided for in article 90 of the decree modified grand-ducal of 23 November 1955 laying down traffic regulations on all roads public. It also emerges from Article 2 of the draft Grand-Ducal regulation that the Minister will also collect the medical certificate, as referred to in appendix 2 of the draft grand-ducal.

To the extent that the data contained in these documents is likely to relate to the health of the applicant for a parking card for disabled persons, these

are to be qualified as special categories of data, known as “sensitive data” within the meaning of GDPR Article 9.

2 Opinion n°60593 of July 16, 2021 of the Council of State on the draft law creating a parking card for people disabilities, parliamentary document n°7805/02.

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However, such processing requires specific protection³ and is subject to stricter requirements.

strict. The processing of “sensitive data” is, in fact, prohibited unless one of the conditions referred to in paragraph (2) of Article 9 of the GDPR is fulfilled.

In the present case, the National Commission considers that the data processing referred to in Articles 2 and 7 of the draft law, could be based on Article 9, paragraph (2), letter g), of the GDPR which provides that “the processing is necessary for reasons of important public interest, on the basis of Union law or the law of a Member State which must be proportionate to the objective pursued, respect the essence of the right to data protection and provide for measures appropriate and specific for the safeguard of fundamental rights and the interests of the data subject” or on Article 9, paragraph (2), letter h), of the GDPR which provides that “the treatment is necessary for the purposes of preventive medicine or occupational medicine, the assessment of the worker's capacity for work, of medical diagnoses, of the treatment health or social burden, or the management of health care systems and services or social protection on the basis of Union law, the law of a Member State or pursuant to a contract concluded with a healthcare professional and subject to the conditions and guarantees referred to in paragraph 3”.

Thus, the authors of the bill should pay particular attention to “measures appropriate and specific for safeguarding the rights and freedoms of the data subject. which should be implemented by the data controller in the context of processing of “sensitive data”, as referred to in Article 7 of the draft law and in Article 2 of the draft law. grand-ducal regulation.

3.

On the categories of personal data

If the authors of the bill are to be congratulated for having listed in article 7, paragraph 3 of the bill of law, the categories of data that would be collected by the Minister, the text under opinion omits to specify certain categories of data or remains imprecise with regard to the listing of certain categories of data.

Furthermore, it is suggested to delete the following wording "all necessary data for the following purposes" used in paragraph 2, of article 7, of the bill, whereas the provisions of paragraph 3 of the same article, exhaustively lists the categories of data which would be collected.

3 See the cases rendered by the CJEU of 8 April 1992, C-62/90, point 23 and of 5 October 1994, C-404/92, point 17.

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In any event, such a wording is too vague and would not be likely to respect the principle of minimization of data under which personal data personnel must be adequate, relevant and limited to what is necessary in view of the purposes for which they are processed.

The CNPD thus proposes to reformulate paragraph 2 of article 7 of the bill, as following: "The categories of personal data, referred to in paragraph 3, are collected and processed for the following purposes: (...)".

A. On

the data relating to the establishments to which the map of parking is issued

Article 7, paragraph 3 of the bill provides that "[i]n this database are the following data: (...) name, serial number, vehicle identification number and address of the establishment to which the parking card is issued".

It follows from those provisions that data concerning legal persons would be likely to be collected by the Minister.

In this respect, it should be noted that recital 14 of the GDPR provides that the GDPR “(...) does not does not cover the processing of personal data relating to persons legal entities, and in particular companies with legal personality, including the name, the legal form and contact details of the legal person”.

However, information relating to legal persons may, where appropriate, relate to natural persons (for example: if they include the name of the manager of the company) and must therefore be considered as personal data.

Thereby, communicated as such to the Minister.

Furthermore, there is reason to wonder about what is covered by the term “matricule” referred to in the aforementioned provisions. Is this the registration number of the establishment in the Register of Commerce and Societies?

For greater clarity and better understanding, the authors of the bill should ensure to use the appropriate terminology.

the GDPR will only apply to personal data that is

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B. On the categories of data collected through the forms referred to in appendix 2 of the draft grand-ducal regulation

It should be noted that Article 7, paragraph 3, point 1° of the bill does not fully reflect the categories of data that would be collected by the Minister through the form of “[r]equest for a parking permit for disabled persons at reduced mobility”⁴, and the “medical certificate” form⁵.

However, paragraph 1 of article 7 of the bill specifies that “information concerning the administrative procedures concerning these cards are included in a database

national".

So does this mean that the national identification number that appears on the form

"[r]equest for a parking permit for disabled persons at

reduced mobility" and the data contained in the "medical certificate" would not be brought

to be included in the file?

The same goes for the photocopy of the driver's license, this document must be attached by the

applicant, if the latter has one, on the "medical certificate" form, but Article 7, paragraph

3 of the bill only refers to the driver's license number.

If such data are actually included in the aforementioned file, the text under

notice should expressly reflect this.

In addition, the CNPD wonders whether the data relating to the "identification" of the holder of the

card, referred to in Article 7, paragraph 3, point 1° of the bill, include the surname, first name, number

telephone number and e-mail address of the requesting person, which the latter must communicate to the

Minister when she submits a request for a parking card? If such should not be

the case, the National Commission wonders what data would be covered by the

"identification" of the cardholder, referred to in Article 7, paragraph 3, point 1° of the bill.

In all cases, and for a better understanding of the text under review, it is proposed to

replace the term "descriptive" with an exact list of the data that the person in charge of the

treatment is brought to treat.

4 See appendix 2 of the draft Grand-Ducal regulation

5 See appendix 2 of the draft Grand-Ducal regulation

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Furthermore, it should be noted that the data relating to the date and place of birth do not

not appear as categories of data that would appear in the file. Gold,

these are collected when the application for the parking card is submitted to the Minister. Whether

such data had to be in said file then it should be reflected in the device

under notice.

Finally, in the absence of details in the commentary of the articles on the reasons which would justify the collection of the national identification number (“matricule”) and the photocopy of the driver’s license drive, the CNPD is unable to assess whether the principle of data minimization, under which only the data necessary for the achievement of the purposes must be processed, would be respected. The same applies to the photo of the card applicant. Although Article 7, paragraph 3, point 2° of the draft law under opinion as well as the “[re]quest for obtaining a parking card for disabled persons with reduced mobility”⁶ provides for this collection, it should be noted that the need for the processing of this data of a personnel is not justified by the authors of the bill. The specimen map of parking for natural persons appended to the draft Grand-Ducal regulation contains a location to affix the photo provided and the authors specify that they have used the specimen made available by the European Union. If therefore, the provision of the photograph is based on a constraint arising from European Union law, the authors of the bill should specify it.

In addition, it should be recalled that the use of the national identification number is, in principle, governed by the amended law of 19 June 2013 relating to the identification of natural persons.

C. On the collection of the “decision of the doctor-member of the commission medical »

According to point 5°, paragraph 3, of article 7 of the draft law, the file will also contain the “decision of the doctor-member of the medical commission”.

In the absence of details in the commentary to the articles, the National Commission asks what would be the data that would actually be contained in this decision.

Is it a copy of the entire notice provided for in Article 2, paragraph 1 of the bill, or the copy of the result of the medical examination, which the applicant must possibly undergo under article 2, paragraph 3 of the draft under opinion, or even both?

6 See appendix 2 of the draft Grand-Ducal regulation

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In accordance with the principle of data minimization provided for in Article 5, paragraph 1, letter c), of the GDPR, the CNPD considers, in any case, that only a "negative" or "positive" opinion on the part of the doctor-member of the medical commission, with regard to the issue of the parking card, should be communicated to the Minister. Therefore, this opinion should not contain health data of the parking card applicant.

4.

On access to personal data

accidental damage,

In accordance with Article 5 paragraph (1), letter f) of the GDPR the personal data must be “processed in such a way as to guarantee appropriate security of the personal data personal data, including protection against unauthorized or unlawful processing and against the loss, destruction or using technical measures or appropriate organizational (integrity and confidentiality)”.

In addition, Article 32 of the GDPR provides that "the controller and the processor implement the appropriate technical and organizational measures to guarantee a level of security appropriate to the risk". Such measures must be implemented in order to in particular to avoid unauthorized access to data or data leaks.

Among these security measures, the National Commission considers it important that only people who need it in the performance of their duties and professional tasks are authorized to have access to the necessary data. In this context, it is strongly recommended to define an access management policy, in order to be able to identify from the beginning the persons or the competent department who would have access to the data or the interface computer made available by the CTIE, and to what precise data these persons or

service would have access. This is all the more so insofar as "sensitive data" is to be processed.

The Minister will therefore have to put in place such measures to ensure the confidentiality and security of such data, including in particular a logging system (i.e. a recording in "log files" or "logs") of user activities, anomalies and security-related events. Indeed, the disclosure of sensitive data could cause serious harm to users.

On this last point, the CNPD recommends that the log data be kept for a period of five years from their registration, after which they are erased, except when they are the subject of a control procedure.

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The National Commission also emphasizes the importance of proactively carrying out checks in internal. For this purpose, it is necessary in accordance with Article 32, paragraph (1), letter d) of the GDPR to implement a procedure "aimed at regularly testing, analyzing and evaluating the effectiveness technical and organizational measures to ensure the security of the processing".

Thus, if the authors of the bill are to be congratulated for having provided in article 7, paragraph 6 of the bill of law that "[I]access to data and the possibility of processing them are managed by a system of management of identities and access rights", it is important that the data controller ensures that this identity and access rights management system complies with the considerations formulated above, in the absence of further details as to the terms of this system.

5.

On the retention period of personal data

Pursuant to Article 5, paragraph (1), letter e) of the GDPR, personal data must not be kept longer than necessary for the fulfillment of the purposes for which they are collected and processed (principle of limitation of storage).

If the authors of the bill are to be congratulated for having provided for retention periods for the data processed within the framework of the draft law and the draft Grand-Ducal regulation, clarifications should nevertheless be made.

Thus, article 7, paragraph 7 of the text under opinion as amended by the parliamentary amendments of October 26, 2021 intends to provide for a retention period of three months, from the issue of the parking card, for the photograph and signature of the holder and a duration of ten years for "other data".

Article 7, paragraph 8 of the bill as amended by the parliamentary amendments of 26 October 2021 still provides for a derogation from the 10-year retention period for data holders of permanent parking cards for which the data "may be kept for longer than ten years.

With regard to the derogation provided for in the aforementioned paragraph 8, the authors of the bill specify that "[in] order to avoid people with permanent disabilities having to attach a certificate attesting to the disability when renewing their card, it is necessary to keep these information. For example, a person who has lost a leg should otherwise

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attach a medical certificate attesting to the loss of the leg every 10 years". Insofar as only the data contained in the medical certificate seem to be covered, the text under opinion should expressly reflect this.

With regard to the other retention periods and although these are fixed by said provisions, the authors of the bill in their commentary on the articles do not explain not the criteria retained which would justify such durations. These are limited, in fact, to indicate that the duration of 3 months has been set "in analogy to other databases" and that the 10-year retention period "corresponds to the period of validity of two credit cards parking lot".

However, these explanations are not sufficient to justify why the retention of said data for

such durations would be necessary and justified.

Thus, the National Commission wonders why the authors of the bill intend to set a retention period of 10 years which corresponds to “the period of validity of two credit cards parking”, whereas a parking card is valid for 5 years and after these 5 years, it must be renewed?

There is still reason to wonder about the articulation of the provisions of the bill which provide for a retention period of 10 years for “other data” with the exception of the photograph and signature of the holder of a parking card, with those of article 2 of the draft Grand-Ducal regulation which provides that “[t]he medical certificate is valid for three months from the date of issue by the medical examiner”.

Is it necessary and justified to keep for a period of 10 years, a medical certificate which will only be valid for a period of three months from the date of issue by the medical examiner?

Therefore, in the absence of clarification, from the authors of the bill in the commentary of the aforementioned articles as to the criteria that would justify such durations, the National Commission is unable to assess whether, in this case, the principle of limited retention of data has been respected, and invites the authors of the bill to provide details on this regard.

In addition, it should be noted that the provision on retention periods applies to only data contained in the file. Indeed, the CNPD understands that requests as well as

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that medical certificates and, where applicable, photocopies of driving licenses have been received in hard copy and then transcribed into the file. Thus, it is necessary to ask what retention periods are provided for data provided on paper, in particular concerning special categories of data, known as “sensitive data” within the meaning of article 9 of the RGPD, the national identification number as well as the photo of the applicant.

Finally, it should be recalled that the controller must, under article 5, paragraph (1), letter d) of the GDPR ensure that the data it processes is accurate and kept up to date and take all reasonable measures "so that the personal data which are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay".

II.

On the QR code on the parking card for natural persons

According to the explanatory memorandum to the bill, the new parking card model is "more difficult to falsify". The explanatory memorandum to the draft Grand-Ducal regulation specifies for its turn that "it is taken the opportunity to adapt the models of the parking cards in order to protect them against falsification or counterfeiting" and that "using a QR code reader, this code allows an electronic device to provide information on the nature of the document".

The QR code will therefore be used to check the veracity of the parking cards.

The National Commission regrets that the procedures for such control, in practice, are not specified by the authors of the bill and the draft Grand-Ducal regulation and wonders how such control will take place in practice.

Indeed, there is reason to wonder who will carry out these checks. Will the role of agents be municipalities or the Grand Ducal Police? If there is any doubt about the competence of the Police grand ducal authorities to carry out such checks, it is different for municipal officials.

In addition, the person who will control the nature of the document using an electronic device will it directly remotely access the file provided for in article 7 of the bill?

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In any case, the CNPD considers that these people should only have access to information relating to the validity of the parking card, i.e. whether the card is current validity or not, to the exclusion of other personal data contained in said file. In in any case, the latter should not have access to all the data contained in the

file.

Thus decided in Belvaux on December 10, 2021.

The National Data Protection Commission

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