

Additional opinion of the National Commission for the Protection of data relating to bill no. 7606 introducing a series of measures concerning natural persons in the context of the fight against the SARS-CoV-2 (COVID-19) virus and amending 1. the amended law of November 25, 1975 concerning the delivery to the public of medicines; 2. the amended law of 11 April 1983 regulating the placing on the drug market and advertising.

Deliberation n°14/2020 of June 16, 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".

Following the amendments adopted by the Committee on Health and Sports on 11 June 2020 concerning project n°7606 introducing a series of measures concerning natural persons in the context of the fight against the SARS-CoV-2 virus (COVID-19) and amending 1. the amended law of 25 November 1975 concerning the issuance to the public of medications ; 2. the amended law of 11 April 1983 regulating the placing on the medicine market and advertising (hereinafter the "draft law"), the CNPD intends further formulate, in addition to its initial opinion n°13/2020 of June 8, 2020, the observations which

follow.

By amendment 3 of bill n°7606, the authors have notably inserted a paragraph 2 new in article 5 of the said draft and which concerns passenger transport activities by collective means as part of an organized trip. Thus, in order to follow the evolution of the spread of Covid-19 in the context of an organized trip, the operator of a collective means transport of persons "is required to transmit as far as possible, on request, to the doctor from the Department of Health or to health professionals authorized in the framework of this law by the director of health the surname, first name, telephone number and email addresses of people who have experienced high-risk exposure due to situations referred to in Article 2, point 4°. The commentary to the amendment adds that the data relating to passengers at high risk of being infected and which are sent to the Directorate of Health on request further specify "the means, date and time of transport and, if applicable, the car and seat occupied by the index case. »

It follows, as the authors of the amendment specify, that the operator of a such a means of transport already has passenger identification data as a basis having used the means of transport concerned and in which one or more persons

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medications.

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infected could be located. However, while the initial purpose of this data collection

of a personal nature of passengers is rather the organization of a trip, the CNPD includes that the authors of the amendment aim for another purpose by this obligation to transfer to requests passenger data by the operator of a collective means of transport of people at the Health Department: set up a tracking system to identify the as soon as possible anyone at risk or at high risk of being infected in order to put in implement the necessary precautions (such as quarantine) and thus prevent the dissemination of the infection by these people who are in turn contagious.

The CNPD does not call into question the principle that this processing is necessary in order to pursue the aforementioned purpose and in order to provide the Health Department with the means to contact potentially exposed passengers as soon as possible.

Nevertheless, it wishes to make two remarks in this context:

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The commentary to the article specifies that the terms “operator of a collective means of transport of people” relate to “land transport (long-distance buses) distances, especially during summer holidays, long-distance trains), air and river”. However, the CNPD wonders more particularly what it takes understand by "organised trip". Do individual trips and "no organized" (such as a simple return flight from the airport of Luxembourg or a train journey by TGV from Luxembourg-city station) are not covered by the provision in question and that therefore, even if we are in the presence of an operator of a collective means of passenger transport, this obligation to transmit passenger data to the Health Department on request not apply in this case?

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As mentioned above, in order to be able to proceed with the transfer of the surname, first name, number phone numbers and email addresses of people who have been exposed to high

risk to the Department of Health, the operators of a collective means of transport of people must first already be in possession of said data. the commentary to the amendment in question specifies in this regard that "the passenger concerned by this measure must give his prior consent. »

Nevertheless, the CNPD is of the opinion that it is implicit in the use of the words "is required to transmit" in the body of the text of Article 5 paragraph (2) of the draft law n°7606 as amended, that it is not a simple option for operators in depending on the passenger's agreement to transmit on request to the Health Department the aforementioned data, but that, on the other hand, they are obliged to proceed with said transfer. Moreover, it doubts that the consent of the passengers would respect, in the case where applicable, all the conditions provided for by the GDPR to be lawful, in particular with regard to concerning its free character.

Generally concerning the retention period of personal data personnel, the CNPD refers to its remarks relating thereto made in its aforementioned opinion of 8 June 2020 on bill n°7606. With regard to the specific retention period of personal data of passengers with the operator, the authors specify in the commentary to the amendment that it "shall not be longer than 14 days (duration maximum incubation period, in the event of contamination during the trip, the contaminated passenger will already be ill himself); at the end of this period, they are destroyed . » The CNPD cannot only support this short deletion period which seems to be proportionate to the purpose

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continued by the processing in question, i.e. sending the data relating to the passengers at high risk of being infected to the Directorate of Health to ensure that they self-quarantine in an attempt to break the chain of transmission of the virus. Gold, for reasons of clarity and legal certainty, the CNPD suggests inserting this clarification on the retention period of the data in the body of the text of Article 5 paragraph (2) of the amended bill n°7606.

Thus decided in Esch-sur-Alzette on June 16, 2020.

The National Data Protection Commission

Tine A. Larsen

President

Thierry Lallemand

Commissioner

Christopher Buschman

Commissioner

Marc Lemmer

Commissioner

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