Opinion of the National Commission for Data Protection relating to

to bill n°7937 relating to affordable housing and amending 1° the

amended law of 25 February 1979 concerning housing assistance; 2° the law

amended on 19 July 2004 concerning communal development and the

Urban development ; 3° the amended law of 25 March 2020 concerning the

Special Housing Development Support Fund; 4° the law of

July 30, 2021 relating to the Housing Pact 2.0.

Deliberation n°33/AV16/2022 of July 21, 2022.

Pursuant to Article 57, paragraph 1, letter c), of Regulation (EU) 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 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

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

By letter dated February 8, 2022, the Minister for Housing invited the Commission

to decide on the bill relating to affordable housing and amending 1° the law

amended on February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004

concerning communal planning and urban development; 3° the amended law of 25 March

2020 regarding the Special Housing Development Support Fund; 4° the law of 30

July 2021 relating to the Housing Pact 2.0. (hereinafter the "Bill").

According to the explanatory memorandum, the bill aims to lay the foundations for an ambitious development

affordable housing, thereby enhancing equity in society. In fact, the increase

housing prices is increasingly becoming a factor leading to the exclusion of part of the population. The purpose of the bill is to realize the right to housing, as provided for to insert it in the Constitution in draft revision, in particular by promoting the attribution harmonized and equitable housing for affordable rental via a national register affordable housing.

Opinion of the National Commission for Data Protection relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004 concerning communal planning and urban development; 3° the amended law of 25 March 2020 regarding the Special Housing Development Support Fund; 4° the law of July 30, 2021 relating to the Housing Pact 2.0.

The CNPD recognizes the major challenge of tackling the housing shortage affordable for our country. However, it is important to ensure that the proposed measures are in balance with another fundamental right with constitutional value, namely respect for the privacy and the protection of personal data.

I. Preliminary remarks

The bill provides in particular for the creation of a file centralizing the data collected and processed in the context of the allocation of affordable housing, namely the national register of Affordable Housing (abbreviated as “RENLA”). The maintenance of such a file must be based on a legal basis, in accordance with Article 6(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

Recital (41) of the GDPR further states that "[w]here this Regulation refers

to a legal basis or legislative measure, this does not necessarily mean that

1 Article 3(3) of the GDPR provides that "[t]he basis for the processing referred to in paragraph 1(c) and

e), is defined by:

has)

b)

Union law; or

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

paragraph 1(e) are necessary for the performance of a task carried out in the public interest or in the exercise of

the public authority vested in the controller. This legal basis may contain 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; them

persons concerned; the entities to which the personal data may be communicated and the

purposes for which they may be used; purpose limitation; retention periods; and operations and

processing procedures, including measures to ensure lawful and fair processing, such as those provided in other specific processing situations as provided for in Chapter IX. Union law or the law of Member States meets an objective of public interest and is proportionate to the legitimate objective pursued.

the adoption of a legislative act by a parliament is required, without prejudice to the obligations laid down under the constitutional order of the Member State concerned. However, this legal basis or this legislative measure should be clear and precise and its application should be foreseeable for litigants, in accordance with the case law of the Court of Justice of the European Union and of the European Court of Human Rights".

Although the draft law provides a legal basis for processing carried out through the RENLA by specifying a number of elements, such as the identity of those responsible for the treatment, some points are not sufficiently specified in the text of the bill, such as the data subjects whose data are processed or the retention periods. The CNPD will come back to this point later, which is moreover also valid for the processing of personal data carried out within the framework of applications for approval as a social landlord.

II.

On the integrity check carried out in the context of authorization applications

According to article 30 of the bill, the social landlord is the organization that provides rental management affordable rental housing. Given the importance of the role of the lessor

social, it must have approval from the Minister responsible for Housing in its

powers (hereinafter the "Minister").

As part of the applications for approval addressed to it, the Minister is required to collect

and to process personal data. Indeed, Article 36(2) of the draft

law lists the personal data that the application for approval must mention 2. The

paragraph 3 also specifies that the request is accompanied by all information and

documents intended to establish that the conditions required in Article 34, in particular those relating to

to professional qualification, are met.

Even though professional integrity is not one of the conditions for approval of

Article 34 of the bill, it follows from Article 35 that a check of good repute is carried out3:

judicial

“Professional integrity is assessed on the basis of the background

responsible, of the information obtained from the Public Ministry of all the elements provided

by the administrative instruction insofar as they relate to facts dating back no more than

2 Article 36, paragraph 2, of the draft law: “If the applicant is a legal person governed by private law, the application

mentions its name, address and legal form as well as the surnames, first names, professions and addresses of its

managers, administrators or other executive or responsible persons in charge of the missions listed in

section 30.

If the applicant is a legal person governed by public law, the application mentions its name and address as well as the

surnames, first names, addresses and titles of the officials in charge of the mission tasks [sic] listed in article 30.”

3 On the notion of “good repute”, reference is made to the observations made by the CNPD on this subject in its opinion

relating to bill no. 7691 (Deliberation no. 3/AV3/2021 of February 10, 2021; Parl. doc. 7691/03, point I.1, page 3).

March 2020 regarding the Special Housing Development Support Fund; 4° the law

of July 30, 2021 relating to the Housing Pact 2.0.

ten years and all the elements likely to establish a good reputation of the managers and

that they present all the guarantees of an irreproachable activity. »

This article also provides for the production of an extract from bulletin no. 3 of the criminal record.

If the authors of the project are to be congratulated for having established a legal basis providing for the

principle of a good repute investigation, in accordance with Article 6(3) of the GDPR, these

provisions are not, however, sufficiently precise.

Thus, it is not clear from the text who will carry out the integrity check, nor which

person(s) will be subject to the integrity check. Indeed, Article 35, paragraph 1, of the draft

of the law refers to the criminal record of the "responsible" while it results from the paragraphs

of the bill that the "managers" and "members of the personnel of the service"

must produce an extract from the criminal record.

In addition, there is reason to wonder about what the notion of “criminal record” covers. The

CNPD understands that the Minister would not rely solely on registrations

but that he could also obtain “information” from the public prosecutor.

However, this "information" is not detailed by the bill or in the commentary.

articles. Is this information contained in police reports or court records?

Is it information relating to facts that are the subject of ongoing investigations or investigations?

What types of criminal offenses would the information relate to?

Particular attention should be paid to the fact that these are data collected initially

by the public prosecutor for the purposes of prevention and detection of criminal offences, investigations

and prosecution in this regard or the execution of criminal penalties which are subject, as such,

the law of 1 August 2018 on the protection of natural persons with regard to the processing

personal data in criminal matters as well as in matters of national security.

These data would be processed, within the framework of this bill, for administrative purposes.
for different subsequent purposes and therefore subject to the GDPR. The CNPD refers to its
observations made in its opinion on draft law no. 7691, the purpose of which is to specify
the various integrity control procedures currently provided for in several texts
laws under the jurisdiction of the Minister of Justice 4.
Furthermore, the assessment of professional integrity does not seem to be limited to
criminal record when it would also be based on "all the elements provided
by the administrative instruction insofar as they relate to facts dating back no more than
ten years and all the elements likely to establish a good reputation of the managers and
that they present all the guarantees of an irreproachable activity".
However, there is reason to wonder about the categories of personal data that would be
collected as part of the administrative investigation or during the assessment of "the good
4 Deliberation n°3/AV3/2021 of February 10, 2021; Doc. speak. 7691/03, point III.
Opinion of the National Commission for Data Protection
relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of
February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004
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March 2020 regarding the Special Housing Development Support Fund; 4° the law
of July 30, 2021 relating to the Housing Pact 2.0.

reputation of those responsible" or "guarantees of irreproachable activity" of the said
responsible, in the absence of details on this subject in the draft law.
In view of the foregoing, the CNPD considers that the bill does not meet the requirements of
foreseeability and precision that must be met by any legal text providing for interference
in the right to respect for private life or which limits the exercise of the right to data protection
personal5.

Finally, it is regrettable that it is not specified either which criteria or which degree of seriousness background would be taken into account by the Minister in order to assess the good repute professional. For example, the question arises in particular whether any registration in the register judicial automatically leads to a negative assessment in terms of good repute professional or if, on the other hand, the inscriptions must reach a certain level of seriousness. However, in the absence of such details and given that it is not clear from the text of the draft law which personal data would be collected in the context of the control of good repute, the National Commission is unable to assess whether these data are adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed, in accordance with the principle of data minimization provided for in Article 5, paragraph 1, letter c) of the GDPR.

As regards the production of an extract from the criminal record, it follows from Article 35 of the draft of law that the persons concerned must provide an extract from the criminal record of the country whose they have nationality. There is reason to wonder whether it would not be more relevant to draw inspiration from the system foreseen in terms of authorization of establishment which emphasizes the country of residence. Thus, Article 2, paragraph 4, first paragraph, of the Grand-Ducal Regulation of 1 December 2011 determining the terms of the administrative instruction provided for in article 28 of the law of 2 September 2011 regulating access to the professions of craftsman, merchant, industrialist as well as that to certain liberal professions provides that "[w]hen they have not resided in the Grand Duchy of Luxembourg continuously for at least 10 years, the manager referred to in Article 4 of the law as well as the persons referred to in Article 6(2) of the law provide an extract from the criminal record judicial certificate or a certificate of good character issued by the State or States where he resided for the 10 years preceding the date of his application. If the State of residence does not issue a criminal record certificate certificate or certificate of good morals, a document that can be considered equivalent or an affidavit supersedes this document. »

5 In this sense, V. M. Besch, “Personal data processing in the public sector”, Norms and

legalistic in Luxembourg public law, Luxembourg, Promoculture Larcier, 2019, p.469, n°619; V. among others CourEDH, Zakharov e. Russia [GCL n"47413/06], § 228-229, 4 December 2015.

See also Deliberation n°3/AV3/2021 of February 10, 2021; Doc. speak. 7691/03, point II.

Opinion of the National Commission for Data Protection

relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004 concerning communal planning and urban development; 3° the amended law of 25 March 2020 regarding the Special Housing Development Support Fund; 4° the law of July 30, 2021 relating to the Housing Pact 2.0.

III.

On professional secrecy

According to article 39 of the bill, “[t]he managers of the social landlord and their staff are bound by professional secrecy for any information of which they have knowledge in within the framework of their missions.

The commentary to the articles specifies that “[t]he professional secrecy is particularly important in the area of activity of the social landlord. In particular, it processes personal data tenant staff. Even if this provision may be perceived as superfluous in As part of this law, the authors have chosen to insert it to emphasize the importance of secrecy professional in the head of the social landlord. In case of violation, criminal law finds application. »

Despite these explanations, it might be appropriate to refer expressly to Article 458 of the Criminal Code with regard to the penalties incurred in the event of breach of secrecy professional. The authors of the bill could in particular draw inspiration from article 42 of the law of August 1, 2018 on the organization of the National Commission for Data Protection and the general data protection regime under which “[…] all persons

exercising or having exercised an activity for the CNPD are bound by professional secrecy and liable to the penalties provided for in article 458 of the Penal Code in the event of violation of this secrecy. […]".

IV.

On the National Register of Affordable Housing (RENLA)

Among the key measures that the bill intends to introduce to implement the policy affordable housing includes the creation of the National Affordable Housing Registry 6. There are should be commended for the fact that the authors of the bill have provided for specific provisions relating to the protection of personal data. Nevertheless, a number of points require clarification.

1. On the purposes

The notion of "purpose", i.e. the objective pursued by the processing, occupies a central place. paramount within the GDPR. Pursuant to Article 5, paragraph 1, letter b) of the GDPR, the personal data must be collected for specific, explicit purposes and legitimate, and not further processed in a manner incompatible with those purposes. In addition, other principles provided by the GDPR, such as the principles of minimization of data7 or limitation of storage8, are assessed with regard to the purposes for which the data is processed. Therefore, it is important that the purposes of the RENLA are clearly defined in the bill.

6 Chapter 6 of the Bill

7 Article 5, paragraph 1, letter c) of the GDPR

8 Article 5, paragraph 1, letter e) of the GDPR

March 2020 regarding the Special Housing Development Support Fund; 4° the law

of July 30, 2021 relating to the Housing Pact 2.0.

It appears from Article 1, point 4°, of the draft law that this register aims to ensure “the allocation

harmonized and equitable housing intended for affordable rental", in particular through the

allocation procedure detailed in article 60 of the bill. It is regrettable that this purpose

is not expressly included in Article 76, paragraph 3, penultimate subparagraph, of the draft

law which deals more specifically with the purposes of the RENLA. According to this provision, “[t]he data

of a personal nature are processed and controlled for the purposes of instruction, management and monitoring

administration of the files of applicant-tenants, candidate-tenants and tenants,

according to the terms of the law of August 1, 2018 on the organization of the National Commission

for data protection and the general data protection regime”. The CNPD

questions the usefulness of this reference to the law of 1 August 2018 on the organization of the

National Commission for Data Protection and the general data protection regime

data.

In general, Article 76, paragraph 3, penultimate subparagraph, of the bill remains quite

vague as to the aims pursued by the RENLA. Commentary on articles provides

many more details that should be included in the text of Bill 9:

“The National Register of Affordable Housing (RENLA) is an IT platform implemented

made available by the Ministry of Housing and whose missions are:

has. In terms of managing housing requests:

has. the collection and examination of the files of the applicants-tenants;

b. determining the eligibility of a request;

vs. the ranking of applications according to the criteria of priority, objectives and

measurable;

b. In terms of affordable housing management:

has. the collection of data relating to affordable housing for which the

any operating deficits are covered on the basis of an agreement

with the social landlord;

vs. In terms of tenant follow-up:

has. the provision of a rent calculation platform for landlords

through which social landlords will manage rent adjustments

depending on the evolution of the situation of the domestic communities

tenants. »

2. On the people and dwellings likely to appear in the RENLA

In view of the purposes of the RENLA as described in the bill, it seems that only

housing intended for affordable rental is concerned, excluding housing intended for

9 Doc. speak. 7373/00, p. 71

for affordable sale or for sale at moderate cost. However, it would be useful to clarify whether the RENLA

applies only to housing intended for affordable rental within the meaning of section 11 of the bill

or if, on the other hand, housing intended for affordable rental to

applicants for international protection, refugees and persons eligible for

subsidiary protection, and to students within the meaning of Article 12 as well as accommodation intended for

social rental management within the meaning of article 50 of the bill.

However, article 76, paragraph 1, of the draft law defines the RENLA as a “national register

that can list affordable housing, buyers and occupants of such housing,

tenant applicants, prospective tenants, tenants and members of their

domestic community, as well as social landlords […]". Commentary on articles

specifies in this regard that "[t]he register is used to manage both (1) affordable housing,

therefore a "stone" component, (2) buyers and occupants, applicant-tenants,

prospective tenants, tenants and members of their domestic community, therefore of a

"human" or "non-professional client" component, and (3) social landlords, therefore a component

"professional customer". ".

This provision therefore suggests that all affordable housing is included in the RENLA

within the meaning of Article 3, point 7°, of the draft law, namely any accommodation intended:

- affordable sale within the meaning of Article 4;

- sale at moderate cost within the meaning of Article 5;

- affordable rental within the meaning of Article 11;

~

affordable rental for applicants for international protection, refugees and

persons eligible for subsidiary protection, and to students within the meaning of

section 12;

~

social rental management within the meaning of Article 50.

Furthermore, article 76, paragraph 2, of the draft law lists the dwellings which are registered

in the National Affordable Housing Registry. According to the commentary on the articles, "[t]he

main principle is that all dwellings that have benefited from a financial contribution within the meaning

of this law shall be entered in the register".

It therefore seems that there is a certain inconsistency between the different provisions of the draft

of law, an inconsistency which is amplified by the explanations provided by the commentary to the articles.

The bill should indicate in an exhaustive and unequivocal manner the purposes pursued by the

RENLA. Under the principle of minimization, only persons whose processing of

personal data is necessary in relation to the purposes of the RENLA can see

their data collected and processed.

Opinion of the National Commission for Data Protection

relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of

February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004

concerning communal planning and urban development; 3° the amended law of 25

March 2020 regarding the Special Housing Development Support Fund; 4° the law

of July 30, 2021 relating to the Housing Pact 2.0.

3. On the categories of personal data

Article 77 of the bill lists the categories of processed data of applicants-

tenants, prospective tenants, tenants and members of their community

domestic, namely data relating to:

1° their identification;

2° nationality10;

3° any measure of curatorship, guardianship or other protection of adults;

4° their socio-economic situation;

5° their place of work and their employer;

6° their current accommodation;

(7) allocated affordable housing.

It should be noted that this article does not determine the categories of data that would be processed.

for purchasers and occupants of affordable housing, as referred to in Article 76,

paragraph 1 of the bill. However, if the data of these people were to be processed by the

through the RENLA, the draft law should indicate the purposes of the processing as well as the categories

of data processed.

According to the commentary of the articles, the data listed in article 77 of the bill would be necessary to assess the conditions of eligibility and allocation of affordable housing, as well as the calculation of the rent for these dwellings. With regard to data relating to current accommodation, it is specified that this data would include in particular data relating to to the lease contract (termination, eviction, etc.) and sanitation (based on a certificate of competent authority).

It is commendable that the authors of the bill have listed the categories of data processed within the RENLA. However, it should be noted that sections 57 and 58 of the bill mention in more detail the socio-economic criteria as well as the criteria relating to the vacant dwelling according to which the dwellings are allocated through the register 11. It would be preferable that Article 77 lists the categories of data processed with at least the same degree of precision.

Moreover, the enumeration appearing in article 77 of the draft law seems incomplete. It comes out by example of Article 57, paragraph 1, point 6°, of the bill that data relating to a possible disability would be processed within the framework of the RENLA without this category of data

10 The draft law specifies that data relating to nationality may be processed for statistical purposes only.

11 See Point V of this opinion

be mentioned in clause 77 of the bill. In addition, data relating to a disability

are to be qualified as special categories of data called “sensitive data” within the meaning of Article 9 of the GDPR insofar as they concern the health of a natural person. The processing of such data requires specific protection and is subject to stricter requirements.

In the same vein, it is regrettable that clause 77 of the bill does not mention the data to which the Minister will be able to access under section 78 of the bill. According to understanding of the CNPD, these data are also likely to appear in the RENLA.

4. About the data controller(s)

The notion of data controller plays an important role in the application of the GDPR in the extent to which it determines who is responsible for the different rules for the protection data and how data subjects can exercise their rights12.

Article 76, paragraph 3, of the draft law specifies that the minister and the social landlord are the joint controllers for the processing of personal data in the context of the register.

Article 26 of the GDPR provides specific rules for joint controllers of the treatment,. Thus, they must define in a transparent manner their respective obligations for the purposes to ensure compliance with the obligations imposed on them by the GDPR by agreement between them, except if and to the extent that their respective obligations are defined by Union law or by the law of the Member State to which the controllers are subject. The determination of their respective responsibilities must relate in particular to the exercise of the rights of persons concerned and the obligation to inform13.

It should also be noted that the notion of (joint) controller is a notion functional in that it aims to distribute responsibilities according to the actual roles played by the parts. Thus, it is based on a factual rather than a formal analysis. 14 In view of the multitude of processing carried out through the RENLA, the question also arises whether there is no

to differentiate between different treatments. It is conceivable that the minister and the social landlord are jointly responsible for a specific processing operation, whereas only the Minister is controller for further processing. In this case, it is difficult to assess whether the

12 V. in this sense: European Data Protection Board (EDPB), Guidelines 07/2020 regarding the notions of controller and processor in the GDPR, p. 3., available under: https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-072020-concepts-controller-and-processor-gdpr_en

13 Ibid, p.4

14 Ibid., p.3 and 12

qualification retained by the bill corresponds to reality insofar as the bill remains vague on many points. For example, the bill does not clearly specify whether it is the minister or the social landlord who will assess the eligibility criteria through the RENLA.

Article 76, paragraph 3, of the bill further provides that the Minister may delegate, under his liability, all or part of the obligations incumbent upon it under this Act to a agent of his ministry according to the attributions of this agent. The same option is provided for the social landlord. The CNPD wonders about the meaning to be given to this provision. In terms of data protection, it is usually the organization as such, not a person within it, who acts as data controller within the meaning of the GDPR. By designating the Minister as (joint) controller, the CNPD understands that the authors of the

bill do not target the Minister personally but the administrative authority that the
minister represents. Even if, in fact, a particular natural person is designated
to ensure compliance with data protection rules, this person will not be
not the data controller but will act on behalf of the organization15. It follows that
this provision can be omitted from a data protection point of view.

5. On the retention period

According to Article 5, paragraph 1, letter e) of the GDPR, personal data must only be
not be kept longer than necessary for the fulfillment of the purposes for
which they are collected and processed. Beyond that, the data must be deleted or
anonymized.

While Article 76(2) of the draft law determines the period during which the
accommodations are registered in the RENLA, it is regrettable that no similar provision
does not exist with regard to personal data. In the absence of details on this
in the draft law and in the commentary to the articles, the National Commission is not in
able to assess whether, in this case, the principle of retention limitation would be respected.

Even if the retention period does not necessarily have to be defined in the bill, the bill
should at least specify the criteria that would be taken into account to determine what is the
proportionate retention period for the personal data that would be collected
by the minister.

15 European Data Protection Board (EDPB), Guidelines 07/2020 concerning the concepts of
controller and processor in the GDPR, p. 3., available at: https://edpb.europa.eu/our-
work-tools/our-documents/guidelines/guidelines-072020-concepts-controller-and-processor-gdpr_fr, p. 11

March 2020 regarding the Special Housing Development Support Fund; 4° the law

of July 30, 2021 relating to the Housing Pact 2.0.

6. Access by the Minister to data held by other authorities

Section 78 of the bill provides for access by the Minister to the files of several administrations.

The commentary to the articles specifies that this access is designed in the interest of simplification

administrative and in compliance with data protection.

Article 78, paragraph 1, is worded as follows:

“(1) By signing the special declaration contained on the registration form, the applicant-

tenant and any adult and capable person of his domestic community give their

explicit consent to what the minister has access, for each member of the community

domestic, to information from the files and databases of other State authorities, and

that he obtains the transmission of the information and data necessary for the processing of the

application for rental of affordable housing and the reconsideration of this application.

In this case, the Minister may, in order to check whether the conditions for allocating housing

affordable are completed and in order to verify the accuracy and authenticity of the data and documents

provided by applicant-tenants, candidate-tenants and tenants, request, for

each member of their home community:

1° to the Direct Tax Administration the transmission of the following data for a

given fiscal year:

a) surname, first name, national identification number and address;

b) an indication of whether the person concerned is the owner or usufructuary of one or more

housing according to the information recorded by the real estate appraisal service

the Administration of direct contributions;

c) the amounts of net income by category of income listed in Article 10 of the law

of December 4, 1967 concerning income tax, exempt income

incorporated by category of income in a fictitious taxable base according to article 134

the amended law of December 4, 1967 on income tax;

2° to the Administration du cadastre et de la topographie the transmission of the following data:

a) indication whether the person concerned is the owner or usufructuary of one or more

housing, including its provenance;

b) the title deed of the accommodation;

c) the technical data of the accommodation;

3° to the Administration of registration, domains and VAT the transmission of data

following:

a) indication whether the person concerned is the owner or usufructuary of one or more

housing;

b) the title deed of the accommodation;

c) the technical data of the accommodation;

4° to the Joint Social Security Center on the basis of Article 413 of the Security Code

social transmission of the following data:

Opinion of the National Commission for Data Protection

relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of

February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004

concerning communal planning and urban development; 3° the amended law of 25

March 2020 regarding the Special Housing Development Support Fund; 4° the law

of July 30, 2021 relating to the Housing Pact 2.0.

a) surname, first name, national identification number and address;

b) date and duration of membership;

c) weekly working time;

d) the surname, first names [sic] and contact details of the employer;

e) affiliations with previous employers;

5° to the National Solidarity Fund the transmission of the following data:

a) surname, first name, national identification number and address;

b) the beneficiaries of the social inclusion income, and their amount;

c) recipients of income for severely disabled persons, and their amount;

d) the beneficiaries of the increase in social inclusion income, and their amount;

e) recipients of the income supplement for severely disabled persons, and

their amount;

the recipients of a maintenance advance, and their amount;

f)

g) the beneficiaries of the education lump sum, and their amount;

6° to the Fund for the future of children the transmission of the following data: an indication whether the

person concerned is the recipient of a family allowance for the benefit of one or more

children living in the domestic community of the applicant or recipient of assistance, and their

amount ;

7° to the Employment Development Agency the transmission of the following data: the

recipients of unemployment benefits and their amount;

8° to the Minister in charge of Immigration the transmission of the following data:

whether the person concerned is applying for family reunification on the basis of

Article 69, paragraph 3 of the amended law of August 29, 2008 on the free movement of

people and immigration. »

A. On the terminology used

It should be noted that the terms used in section 78 of the bill are not constant from

so that there are uncertainties as to the practical modalities of the Minister's access to the

data held by other authorities.

The title of Article 78, namely “Communication of information from other authorities”, leaves

hear that the Minister does not have access to the files of other authorities but that he sees himself

transmit data. The recurring use of the term "transmission" seems to go in the

Same direction. However, this article provides elsewhere that “the Minister has access […] to the

information from the files and databases of other State authorities”. Article 79 speaks

also of the Minister's "access" to information. Furthermore, the bill speaks

“file and database information” or “information and data”

For greater legal certainty, it would be desirable to use consistent terminology

throughout the bill and to clarify whether the Minister has direct access to the data

Opinion of the National Commission for Data Protection

relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of

February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004

concerning communal planning and urban development; 3° the amended law of 25

March 2020 regarding the Special Housing Development Support Fund; 4° the law

of July 30, 2021 relating to the Housing Pact 2.0.

held by other authorities or if he can only request the transmission from time to time

some data

the

understanding of the CNPD, applicant-tenants, candidate-tenants, tenants

and members of their domestic community. For the remainder of this notice, it is assumed

that is direct access.

relating to the data subjects, i.e., according to

B. On the basis of lawfulness

Article 78, paragraph 1, of the draft law provides that “[w]hen signing the special declaration

contained on the registration form, the applicant-tenant and any adult and

capable of his domestic community give their explicit consent that the Minister

has access, for each member of the domestic community, to the information in the files
and databases of other State authorities, and that it obtains the transmission of the
information and data necessary to process the request for rental of accommodation
affordable and reconsideration of this request. »

According to the commentary on the articles, access by the Minister to the files of certain administrations
“can only be exercised if all adults in the domestic community
of the applicant-tenant have expressly given their consent thereto. »

Consent constitutes one of the six legal bases, as listed in Article 6 of the
GDPR, allowing the processing of personal data. Article 4 point 11 of the GDPR
defines consent as "any expression of will, free, specific, informed and
unequivocal by which the person concerned accepts, by a declaration or by a positive act
clear that personal data relating to him or her are subject to processing". He
It follows from recital (43) of the GDPR that it is unlikely that public authorities
may rely on consent for the processing of personal data, as soon as
whereas in the event that the controller is a public authority, there is
often a manifest imbalance in the balance of power between the controller and the
data subject so that the consent is not voluntary. The GDPR does not exclude
reliance entirely on consent as the legal basis for data processing by
public authorities, but there are often other legal bases that are more suited to the
activities of public authorities 16..

16 V. in this sense: European Data Protection Board (EDPB), Guidelines 5/2020 on consent
within the meaning of Regulation (EU) 2016/679 of the European Data Protection Board, points 16 et seq., available
under: https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-052020-consent-under-regulation-2016679_en

February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004 concerning communal planning and urban development; 3° the amended law of 25 March 2020 regarding the Special Housing Development Support Fund; 4° the law of July 30, 2021 relating to the Housing Pact 2.0.

In this case, Article 78, paragraph 1, of the bill lists the data that the Minister could consult in the files of the respective administrations in the event that the data subjects would have given their consent, this "in order to check whether the conditions for the allocation of affordable housing are met and in order to verify the accuracy and the authenticity of the data and documents provided by the applicants - tenants, candidates - tenants and tenants". As a result, access by the Minister to the data held by other administrations pursues two distinct purposes: on the one hand, the control of the conditions allocation of affordable housing and, on the other hand, the verification of the accuracy and the authenticity of the data and documents provided by the persons concerned.

With regard to the first purpose, namely the control of the conditions for granting17 a affordable housing, it appears that consent is not the proper basis of lawfulness.

In the present case, the persons concerned are often in a financial and difficult personal situation which amplifies the imbalance in the balance of power vis-à-vis the minister. The National Commission therefore considers that the processing in question should rather be based on Article 6, paragraph 1, letter c) of the GDPR insofar as it is necessary for compliance with a legal obligation to which the controller is subject. The Minister could therefore under the conditions set by the bill, access the data strictly necessary for the control of the criteria for the allocation of affordable housing. Thus, applicants-tenants would not need to provide all the required data themselves, which would reduce their administrative burden considerably.

As for the second purpose, namely the verification of the accuracy and authenticity of the data

and documents provided by the persons concerned, the CNPD considers that consent is not, in

any event, not the proper basis of lawfulness. Indeed, in case of refusal of consent,

what would be the alternative means that the minister would implement? This treatment would find

its basis of lawfulness rather in Article 6, paragraph 1, letter c) of the GDPR insofar as it

is necessary for compliance with a legal obligation to which the controller is

submitted Furthermore, the National Commission suggests that the verification of

the accuracy and authenticity of the data would be superfluous if the Minister himself accesses

data held by other state authorities.

C. On the categories of data

Article 78, paragraph 1, of the draft law lists the administrations whose files the

Minister can access as well as, for each administration, the categories of data that can

17 According to the understanding of the CNPD, it is also a question of verifying the eligibility conditions defined in article 55 Bill. It should therefore be specified in the text of the bill.

be consulted. First of all, it should be noted that the bill provides that the Minister

can access the files of a large number of authorities18 and that the data to which it

can access often duplicate. For example, with regard to surname, first name,

the national identification number and the address, the minister can access the data of three

administrations, namely the Direct Tax Administration, the Joint Center for

social security and the National Solidarity Fund, while having the right to consult this data

in the national register of natural persons. The National Commission sees with a critical eye this proliferation of access which does not seem, at first sight, to be justified.

Then, for a number of data, it does not appear either from the text of the bill or from the commentary on the articles why it would be necessary for the minister to access them as part of the control of the conditions for the allocation of affordable housing.

According to the understanding of the CNPD, the control should be carried out with regard to the criteria of eligibility and allocation defined by articles 55 and following of the bill. Arises by example the question why it would be necessary to have access to "technical data" or the "title deed" of the accommodation of which the person concerned would be the owner or usufructuary, given that the mere fact of being the owner or usufructuary of a dwelling is a criterion excluding eligibility. Thus, it should in principle be sufficient to know whether the data subject is owner or usufructuary of a dwelling.

The National Commission recalls the importance of the principle of minimization enshrined in Article 5, paragraph 1, point c), of the GDPR pursuant to which the Minister will only be able to access the data which is strictly necessary for the control of the conditions of eligibility and attribution.

D. Access by the Minister to the national register of natural persons

Article 78, paragraph 2, of the bill provides that “[t]he Minister has the right to communication information from the national register within the meaning of the amended law of 19 June 2013 relating for the identification of natural persons and the general directory within the meaning of the amended law of March 30, 1979 organizing the digital identification of natural and legal persons for check for an Applicant-Tenant, Candidate-Tenant and Tenant or any other member of the domestic community, the following personal data:

1° the surname and first names;

18 Namely 1° the Administration of direct contributions; 2° the Land Registry and Topography Administration; 3° the Administration of Registration, Domains and VAT; 4° the Common Social Security Centre; 5° the National Solidarity Fund; 6° the Fund for the future of children; 7° the Employment Development Agency;

8° the Minister in charge of Immigration. In addition, the Minister is entitled to the communication of information from the national register of natural persons.

Opinion of the National Commission for Data Protection relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004 concerning communal planning and urban development; 3° the amended law of 25 March 2020 regarding the Special Housing Development Support Fund; 4° the law of July 30, 2021 relating to the Housing Pact 2.0.

2° nationality;

3° the national identification number;

4° sex;

5° the date and place of birth;

6° the date of death;

7° civil status;

8° the domicile and habitual residence, mentioning the locality, the street and the building number, where applicable, the order number established pursuant to the amended law of 19 March 1988 on the land registration in terms of co-ownership or any additional details regarding the building in which the accommodation is located, as well as the history concerning the length of residence or the changes of residence in order to check compliance with the conditions relating to the residence main and permanent or the occupation of the accommodation by the tenant. »

As for the reference to the general directory within the meaning of the amended law of March 30, 1979 organizing the digital identification of natural and legal persons, it should be noted that under Article 45 of the amended law of 19 June 2013 relating to the identification of natural persons, the amended law of March 30, 1979 organizing the digital identification of natural persons and corporations no longer applies to natural persons.

With regard to the national register of natural persons, as provided for by the amended law of June 19, 2013 relating to the identification of natural persons, the methods of access and transmission are defined by the aforementioned law of 19 June 2013 as well as by the regulation of 28 November 2013 laying down the terms of application of the law of 19 June 2013 relating to the identification of natural persons. Even though the term "communication" is used19, it is assumed that the Minister will have access to this register, as provided for by the aforementioned texts.

E. On the practical terms of access by the Minister to the data held by other jurisdictions

Article 79, paragraph 1, of the draft law specifies that access “takes the form of an exchange of data on request triggered by the computer system on the initiative of a manager folder ". In this regard, it should be noted that the term "exchange" implies reciprocity. However, the access of the Minister to the data by other authorities is in principle unilateral in the other authorities do not have access to the data contained in the RENLA. He's leaving preferable to adapt the terminology used by using the term “communication”.

Article 79, paragraph 2, of the draft law provides that “[t]he access of agents of a lessor social is limited to the data of applicants-tenants, candidate-tenants and tenants meeting the specific needs covered by its area of intervention and

19 See Point IV.6. A. of this notice

relevant for the allocation of housing to those among whom the choice is made. the social landlord has access to the data of the housing units it manages and to the data of its tenants as part of the exercise of its activity as a social landlord". According to the commentary of the articles, "[T]his implies that the social landlord not only has access to the data of applicants-tenants, prospective tenants and tenants who have chosen it as lessor, but also to those of other social landlords, in order to be able to work usefully".

The commentary to the articles does not provide further explanation of the reasons for which social landlords would need to access data from all of the applicant-tenants, candidate-tenants and tenants. Furthermore, the question arises what would be useful for applicant-tenants to choose the social landlord in charge of their dossier20 if, in the end, all social landlords have access to their data. The fact that social landlords can access the data of data subjects of which they are not not in charge of the file is likely to be contrary to the principle of minimization devoted to Article 5, paragraph 1, letter c) of the GDPR.

According to the terms of article 79, paragraph 3, of the draft law, "[o]nly can be consulted the personal data directly related to the reason for the consultation", which is consistent with the aforementioned principle of minimization. However, it is suggested to use the same terminology as used in Article 79(5) of the draft law, i.e. that any consultation can only take place for a specific reason.

According to article 79, paragraph 4, of the draft law, "[t]he applicant-tenants, candidate-tenants and tenants have access to the data concerning them. » The National Commission understands that this is the right of access as provided for in Article 15 of the GDPR.

Article 79, paragraph 4, of the bill provides that "[i]n acting as applicant-tenant or prospective tenants, as well as the fact that they sign a lease for affordable housing, the applicant-tenants, the candidate-tenants and the tenants agree to this that their data is processed in accordance with the above, of which they are informed at

time of their request and the signing of a lease. The opposition on their part to the
data concerning them being collected or processed automatically entails the withdrawal of their
request or termination of the lease, if this opposition is maintained after special information
consequences of maintaining their opposition. » It is obvious that the collection and processing
of a certain number of personal data are essential in the context of the
bill under opinion and that the opposition of the persons concerned is likely to make
impossible to process their request or maintain the lease. It is however regrettable
that this provision, by referring to the agreement given by the persons concerned, creates a
some confusion as to the basis of lawfulness on which data processing is based
carried out. The CNPD considers that these processing operations should be based on Article 6, paragraph
1, letter c), of the GDPR insofar as the processing is necessary for compliance with a
20 Article 55, paragraph 4, of the draft law
Opinion of the National Commission for Data Protection
relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of
February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004
concerning communal planning and urban development; 3° the amended law of 25
March 2020 regarding the Special Housing Development Support Fund; 4° the law
of July 30, 2021 relating to the Housing Pact 2.0.

legal obligation to which the controller is subject. As explained under point
IV.6.B. of this notice, consent is an appropriate legal basis only if the
consent is really free, which does not seem to be the case here. Section 79,
paragraph 4 of the bill can therefore be omitted.
Article 79, paragraph 5, of the bill provides details as to the functioning of the
computer system with the following:
“The computer system through which access to or processing of personal data

are operated is arranged as follows:

1° access to information is secured through strong authentication;

2° any processing of the data contained in the banks and data files with character

personnel managed by the Minister or information to which the Minister has access, as well as

any consultation of this data can only take place for a specific reason; date and time

of any treatment or consultation, the link to a file in progress as well as the identity of the

the person who made it can be traced in the computer system in place;

the logging data is kept for a period of 3 years from their date of

registration, period after which they are erased. »

The National Commission is pleased that the bill provides for the principle of access control

to data through logging. It nevertheless suggests extending the duration of

retention of log data for five years, which also corresponds to the period of

statute of limitations for offenses such as breach of professional secrecy provided for in article 458 of the Code

penal.

v.

On the allocation of affordable housing through the RENLA

Under the terms of Article 1, point 1°, of the draft law, the RENLA aims to ensure “the allocation

harmonized and equitable housing intended for affordable rental”. Article 31 of the draft

of law, entitled “Assignment of housing”, provides the following:

“(1) The social landlord allocates vacant affordable housing units in its housing stock to

candidate-tenants eligible and ranked in useful rank within the meaning of article 58 in accordance with

allocation criteria referred to in article 59 on the basis of the social survey, except if by virtue of obligations

legal, the social landlord must apply other priority criteria.

(2) The social landlord appoints an advisory committee which gives it an opinion before the allocation

housing or rehousing.

The composition and operation of the commission are determined by by-law

ducal.

(3) The Housing Fund may carry out social surveys on behalf of another lessor

social. »

Article 60 of the bill details the procedure for allocating housing via the register:

Opinion of the National Commission for Data Protection

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"The social landlord wishing to allocate affordable housing makes a request to the register

using the IT tool made available by the State.

The register generates a reduced list of candidate tenants who meet the allocation conditions

provided for in Articles 57 and 58 in an order of priority established on the basis of the information provided to the

register.

The social landlord offers the vacant accommodation to one of the candidate tenants from the reduced list on

based on an assessment by social survey of the criteria set out in Article 59. […]”

Subsequently, article 60 lists the cases in which the social landlord is not obliged

to choose among the candidate-tenants from the reduced list, in order to guarantee a certain

social mix of tenants.

In the explanatory memorandum, the authors of the bill explain that "[...] in order not to weigh down

unnecessary administrative burden on social landlords, easily measurable criteria

are applied initially, for all prospective tenants. These criteria are linked by

example to the current dwelling of the domestic community, in respect of the occupation thereof and

to the socio-economic situation.

In order to take into account a correspondence between the composition of the household of the prospective tenant and potentially vacant housing and geographical preferences, even the living environment current candidate-tenant, this first set of criteria is supplemented by an assessment additional automated candidate in relation to a given accommodation, depending on its typology and its geographical location.

On the basis of a "short-list" of candidate tenants, the social landlord can then choose the tenant whose priority will have been confirmed during a social survey and which he considers to be the best adapted to the dwelling actually vacant. It is during this third phase, which focuses on the members of the domestic community that the evaluation of the human factor is the most pronounced. Therefore, it necessarily involves a social inquiry. ".

1. On profiling and automated decision-making

According to the understanding of the National Commission, the procedure for allocating housing affordable via the RENLA includes profiling of data subjects and, at least in one First, automated decision making. While it is true that profiling and taking automated decision can provide benefits, such as increased efficiency and cost savings of resources, they can also pose significant risks to the rights and freedoms of people who require appropriate safeguards. Indeed, profiling can perpetuate

existing stereotypes and social segregation or lead to a denial of services and property and unjustified discrimination.

Article 4, point 4, of the GDPR defines profiling as “any form of automated processing of personal data consisting of using this personal data to evaluate certain personal aspects relating to a natural person, in particular to analyze or predict things about job performance, economic status, health, personal preferences, interests, reliability, behavior, location or movements of this natural person”.

Thus, profiling is composed of three elements, namely:

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it must be some form of automated processing;

it must be carried out on personal data; and

the aim of profiling must be to assess the personal aspects of a person physical22.

According to the explanatory memorandum, read in conjunction with the commentary to the articles, the criteria easily measurable listed in Article 57 of the project are assessed, first, for any candidate-tenant by the computer tool of the register. Secondly, "this first set of criteria is supplemented by an additional automated assessment of the candidate in relation to a given accommodation, depending on its typology and its geographical location”, that is to say in relation to the award criteria listed in Article 58 of the bill. In third phase, the social landlord will be able to choose, on the basis of a reduced list of candidates-tenants generated by the RENLA, the tenant whose priority will have been confirmed during a social inquiry provided for in article 59 of the bill.

As a result, prospective tenants who are not included in the reduced list and who, therefore, done, will not be allocated affordable housing are subject to an individual decision based exclusively on automated processing. Indeed, it is only during the investigation social that the intervention of a human being is planned. However, Article 22, paragraph 1, of the GDPR provides that "[t]he data subject has the right not to be the subject of a decision based exclusively on automated processing, including profiling, producing effects legal matters concerning it or significantly affecting it in a similar way. » Article 22, paragraph 2 of the GDPR lists the exceptions in which the ban on taking decisions based exclusively on automated processing do not apply. By virtue of

21 Article 29 Data Protection Working Party, Decision-Making Guidelines automated personal data and profiling for the purposes of Regulation (EU) 2016/679 (WP251rev.01), p.6, approved by the European Data Protection Board (EDPB) on 25 May 2018, available at: https://ec.europa.eu/newsroom/article29/items/612053/en

22 Ibid., p.7

Article 22(2)(b) GDPR, the prohibition does not apply “where the decision is authorized by Union law or the law of the Member State to which the controller processing is subject and which also provides for appropriate measures to safeguard the rights and freedoms and legitimate interests of the data subject”. Thus, the legislation of a Member State may authorize automated decision-making, provided that it provides

also appropriate measures to safeguard the rights and freedoms and the interests
legitimate interests of the data subject.
According to recital (71) of the GDPR, “[i]n any case, such processing should
be accompanied by appropriate safeguards, which should include specific information from the
data subject as well as the right to obtain human intervention, to express one's point
of view, to obtain an explanation as to the decision made at the end of this type of evaluation and to
challenge the decision. »
With regard to candidate-tenants appearing on the reduced list, these are not subject to
of an individual decision based exclusively on automated processing, but this does not
the fact remains that it is decision-making based on profiling.
The principle of transparency underlying the GDPR implies that data controllers
must take care to explain clearly and simply to the persons concerned the way in which
profiling and decision-making work. In addition, the National Commission
recommends that the methods of evaluation and weighting of the award criteria as well as the
terms of the award procedure are specified by a Grand-Ducal regulation, this
faculty being provided for by the bill. In this respect, it is regrettable that the draft regulations
grand-ducaux were not communicated at the same time as the bill.
Finally, the attention of the authors of the bill should be drawn to article 35, paragraph 3, letter
a), of the GDPR according to which an impact analysis relating to data protection is in particular
required when it comes to a "systematic and in-depth evaluation of personal aspects
relating to natural persons, which is based on automated processing, including the
profiling, and on the basis of which decisions are taken which produce legal effects for
with respect to a natural person or significantly affecting him in a similar way”.
23 For further details: Article 29 Data Protection Working Party, Guidelines on Data Protection
the data protection impact assessment (DPIA) and how to determine whether the processing is “
likely to create a high risk” for the purposes of Regulation (EU) 2016/679 (WP 248 rev. 01), approved by the

European Committee of

May 25, 2018, available at:

https://ec.europa.eu/newsroom/article29/items/611236/en

data protection

(EDPS)

Opinion of the National Commission for Data Protection

relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of

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of July 30, 2021 relating to the Housing Pact 2.0.

2. On the social survey

According to article 59 of the draft law, “[in the context of an overall analysis and on the basis of

of a social survey, are assessed on the part of the candidate-tenant and the members of his

domestic community of the award criteria grouped into the following categories:

1° the socio-family situation;

2° the socio-economic situation;

3° the financial situation;

4° the state of the current accommodation and the precarious situation relating to the accommodation;

5° where applicable, the specific needs covered by the corporate purpose of the corporate lessor;

(6) where applicable, a particular emergency situation.

A Grand-Ducal regulation may specify the methods of evaluation and weighting of the

categories of criteria listed in the first paragraph. »

It follows from the commentary to the articles that "[t]he competent agents of the social landlord, or in the case

an external service provider, carry out an overall analysis of the situation of the candidates-

tenants, following a detailed anamnesis, a home visit, as well as, if
appropriate, in the opinion of other professionals. They base their analysis on criteria grouped in
four main categories, namely (1) socio-family situation, (2) education and
professional occupation, (3) financial situation, (4) state of current accommodation and situation
housing insecurity. The length of time a prospective tenant is already waiting
the allocation of housing is only taken into account if, moreover, he is in a situation
tied with another prospective tenant. » The CNPD wonders whether the Housing Fund is
covered by the term "external service provider". Indeed, article 31, paragraph 3, of the bill
provides: “The Housing Fund may carry out social surveys on behalf of another
social landlord ". In any event, particular attention should be paid when
implementation of the draft law, to the determination of the data controller(s), and, where
where applicable, subcontractors.

The commentary to the articles continues: "If the social landlord, in accordance with its corporate purpose,
also offers targeted services to its tenants, it still assesses the specific needs
of the prospective tenant. Specific needs can be of various kinds and can be adapted
according to the evolution of society, so that it is impossible to enumerate them
limited by law.

Social landlords who welcome tenants facing an emergency situation
particular, such as an emergency situation caused by a measure of
eviction, also assess these situations. »

It is regrettable that the text of the bill remains very vague as to the content of the investigation
which is likely to constitute a significant invasion of privacy. 24 Thus,

24 See Point I. of this opinion

concerning communal planning and urban development; 3° the amended law of 25
March 2020 regarding the Special Housing Development Support Fund; 4° the law
of July 30, 2021 relating to the Housing Pact 2.0.

Article 59 of the draft uses fairly general terms, such as “socio-family situation” or
“socio-economic situation” without, however, specifying the award criteria that would be
grouped into these categories. It follows from the comments of the articles that the social survey does not
would not be limited to an examination of the information provided by the prospective tenant or
communicated by other authorities under article 78 of the draft law but that the assistants
social services could in particular carry out a home visit and seek the opinion of other
professionals. The bill should clearly define the investigations that could be
carried out as part of a social survey. In this regard, it should be noted that Article 83
of the bill expressly provides that officers under the authority of the minister could
to carry out visits of the residences. However, such a provision is not provided for in
social surveys.

As for the opinion of other professionals, it is referred to Article 458 of the Penal Code under
of which "[t]he physicians, surgeons, health officers, pharmacists, midwives and all
other persons who are custodians, by state or by profession, of the secrets entrusted to them, who, apart from
the case where they are called to testify in court and the case where the law obliges them to do
know these secrets, will have revealed them, will be punished by imprisonment from eight days to six
months and a fine of 500 euros to 5,000 euros". Shouldn't the bill provide for a
provision allowing professionals to waive this secrecy?

VI.

On the transitional and final provisions

Article 93 of the bill relates to the transitional regime for lists of candidate tenants and
tenants of the social landlord by stipulating that “[d]in a period of twelve months from the entry

in force of the law, any social promoter and any social landlord sends to the register the lists of its prospective tenants and its tenants. Lists include all data to be personal character listed in this law. » According to the understanding of the CNPD, is the personal data listed in section 77 of Bill 25. There would be hence instead of specifying it.

Article 95 of the bill, for its part, relates to the transitional regime for the registration of dwellings in the register. This provision appears to contain a clerical error insofar as it refers to “all dwellings referred to in Article 74, paragraph 2”.

Article 96 of the draft law provides as follows: “The consultation of databases administrations, social promoters, social landlords and bodies exercising the social rental management for the purposes of studies or scientific surveys in the field of affordable housing may be authorized by the Minister upon a duly substantiated request, which sets the conditions and limits under which this consultation may be carried out . »

The commentary to the articles specifies in this respect that "[t]o be able to define its priorities and its fields of action, housing policy depends closely on the lessons drawn from studies

25 See Point IV.3 of this opinion

and scientific investigations. These studies and surveys only become more useful if researchers have access to the databases of all actors directly and indirectly involved, namely the various administrations, social promoters, social landlords and

bodies exercising social rental management. It goes without saying that these data are processed at
for scientific purposes and in compliance with the regulations relating to the protection of
data. »

It is surprising to note that the bill intends to confer on the minister the power to authorize
third parties to access databases held by other organizations. He should
be up to the data controller to allow, where appropriate, the consultation of the databases
data it holds, in compliance with the applicable data protection rules.
data. The GDPR as well as the law of August 1, 2018 on the organization of the Commission
National Data Protection Authority and the General Data Protection Regime
regulate the further processing of personal data for scientific purposes. According to the article
5, paragraph 1, letter b) of the GDPR, the personal data must be collected for
specified, explicit and legitimate purposes, and not further processed in a manner
incompatible with these purposes. However, this provision specifies that further processing at
purposes of scientific research is not considered, in accordance with Article 89, paragraph 1,
as incompatible with the initial purposes. Article 89, paragraph 1, of the GDPR relates to
appropriate safeguards that should be put in place to guarantee the rights and freedoms of
data subjects, in particular to ensure compliance with the principle of minimizing
data. Article 65 of the aforementioned law of August 1, 2018, which implements Article 89 of the GDPR,
further specifies the appropriate additional measures that the controller must
enforce.

The National Commission therefore asks the authors of the bill to review Article 96 of the
bill that may violate the GDPR.

Thus decided in Belvaux on July 21, 2022.

The National Data Protection Commission

Tine A. Larsen Thierry Lallemang Marc Lemmer

President Commissioner Commissioner

Opinion of the National Commission for Data Protection

relating to Bill No. 7937 relating to affordable housing and amending 1° the amended law of February 25, 1979 concerning housing assistance; 2° the amended law of 19 July 2004 concerning communal planning and urban development; 3° the amended law of 25 March 2020 regarding the Special Housing Development Support Fund; 4° the law of July 30, 2021 relating to the Housing Pact 2.0.