

Opinion of the National Commission for Data Protection relating to the

bill n°7836 amending the amended law of 17 July

2020 on measures to combat the Covid-19 pandemic.

Deliberation n°24/AV19/2021 of June 8, 2021

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

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

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

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

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

data protection and the general data protection regime, the Commission

National Commission for Data Protection (hereinafter referred to as "the National Commission" or

"the CNPD") "advises, in accordance with the law of the Member State, the national parliament, the

government and other institutions and organizations regarding legislative measures and

administrative procedures relating to the protection of the rights and freedoms of natural persons

with regard to treatment".

On June 4, 2021, the Minister of Health seized the National Commission of a

request for an opinion on draft law no. 7836 amending the amended law of 17 July

2020 on measures to combat the Covid-19 pandemic (hereinafter "Bill of Law No.

7836"). Amendments were sent on June 8, 2021.

According to the explanatory memorandum, this bill aims to propose new

relaxations compared to the measures currently applicable under the aegis of the law

amended of July 17, 2020 on the measures to combat the pandemic and which find their

basis in the current epidemiological situation and in the general evolution

favorable evaluation indicators.

Article 3 of bill n°7836 intends to introduce a system of self-diagnostic tests

mandatory tests used for SARS-CoV-2 screening for staff members,

external service providers and visitors over the age of six in the hospitals, as well as in certain structures and services that house or care for the elderly or disabled. According to paragraphs (1) paragraph 3 and (2) paragraph 3 of said article 3, the persons concerned cannot access their workstation, provide services or visit a patient, resident or user if the outcome of the self-diagnostic test is positive or if the persons concerned refuse or are in the impossibility of presenting one of the required certificates.

The commentary to the articles specifies that article 3 of bill n°7836 is inspired by the bill n° 7808 of the honorable deputy Michel Wolter. Thus, the CNPD would like to refer to the comments made in its opinion of May 28, 2021 concerning specifically the bill n°7808 of the Deputy Michel Wolter relating to the strategy of screening for the Covid-19 virus in structures for vulnerable people and in support and care networks.¹

¹ Deliberation no. 20/AV16/2021 of 05/28/2021: <https://cnpd.public.lu/fr/decisions-avis/20201/20-AV16-PL7808-screening-covid19.html>.

Opinion of the National Commission for Data Protection on the draft

Law No. 7836 amending the amended Law of July 17, 2020 on the measures fight against the Covid-19 pandemic.

1/2

The CNPD wondered, among other things, whether the processing of personal data would be carried out by the employer or the operator of one of the structures and services mentioned following the presentation by a visitor, an employee or an external service provider, of the negative or positive result of the rapid antigen test or Covid-19 PCR test, a certificate of vaccination or a serological screening test certificate proving the presence anti-coronavirus antibodies in the blood.

This observation is also part of the “Covid Check regime” defined in Article 1st point 28 of this bill n°7836 in the sense that the CNPD questions whether the establishments welcoming a public or organizing demonstrations or events whose entry is exclusively reserved for people who can claim either one of the certificates as referred to in articles 3bis, 3ter, 3quater of bill no. 7836, or a test self-diagnostic test used to screen for the SARS-CoV-2 virus carried out on site and whose result is negative, process personal data.

Furthermore, although these issues do not fall within the area of the protection of data, the CNPD wondered, in terms of labor law, about the consequences of a refusal by an employee or an external service provider to submit to such obligations.

Thus decided in Belvaux on June 8, 2021.

The National Data Protection Commission

Tine A. Larsen

President

Marc Lemmer

Commissioner Commissioner

Christopher Buschman

Thierry Lallemand

Commissioner

Opinion of the National Commission for Data Protection on the draft

Law No. 7836 amending the amended Law of July 17, 2020 on the measures fight against the Covid-19 pandemic.