

Opinion of the National Commission for Data Protection relating to the

bill n°7763 1. introducing a works fund; 2.

amending the amended law of May 16, 1975 on the status of co-ownership

buildings constructed and the draft Grand-Ducal regulation amending the

Grand-Ducal regulation prescribing the measures for implementing the law of 16

May 1975 on the status of joint ownership of buildings

Deliberation n°18/AV14/2021 of May 14, 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 March 2, 2021, the Minister of Housing seized the National Commission

a request for an opinion on bill no. 7763 1. introducing a works fund;

2. amending the amended law of 16 May 1975 on the status of the co-ownership of buildings built

(hereinafter the "draft law") and draft Grand-Ducal regulation amending the Grand-Ducal regulation

ducal prescribing the measures for implementing the law of 16 May 1975 on the status of the

co-ownership of buildings (hereinafter the "draft Grand-Ducal regulation").

It appears from the explanatory memorandum that the bill aims to establish a work fund

mandatory for condominiums of buildings built with the aim of promoting renovation,

in general, and more specifically energy renovation. The said works fund should also contribute to raising owners' awareness of the need to build up sufficient cash to meet the costs of maintenance and optimization of the rational use of the resources of their real estate assets, without being limited to the effort granted for the acquisition of an immovable, as well as to prevent, in general, the degradation and insalubrity of the buildings built in joint ownership.

This notice will be limited to matters relating to the data protection aspects of a personal nature raised by article 1 of the bill, the draft grand-ducal not raising questions relating to the protection of personal data personal.

Article 1 of the bill provides for the insertion of a new article 11 bis in the amended law of May 16, 1975 on the status of the co-ownership of built buildings, which establishes an obligation on the part of the co-owners to set up a works fund to meet the cost of the works decided by the general meeting. This fund is financed by an annual contribution compulsory paid by each of the co-owners. The payment of these contributions is attached to the lots and definitively acquired by the syndicate of co-owners. It is apparent from reading the

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commentary on the articles that the contributions paid under the works fund are calculated taking into account the general rules of load distribution.

The new article 11 bis of the bill further provides that in the event of the sale of a lot by one of the co-owners, the buyer interested in acquiring this lot “must be able to consult a extract showing the current balance of the contributions to the works fund acquired by this lot”. The authors of the bill specify on this subject that in practice “the trustee will establish these extracts and will make them available to owners, so that they can meet their obligations consultation and communication vis-à-vis (future) buyers and sellers”.

In the absence of precision on the content of such an extract in the commentary of the articles and in the bill, the CNPD understands, however, that personal data would be likely to appear on such a document, in particular data of a personnel relating to the co-owner putting his lot up for sale.

Therefore, the authors of the bill are to be commended for providing a legal basis in under which the syndic will draw up this extract to make it available to the co-owner in order to that it meets its legal obligation of consultation and communication with regard to the future buyers and sellers.

Finally, the National Commission takes advantage of the opportunity, following its referral, to share a problem it has encountered in the processing of requests of information and complaints, which concern the transparency of information communicated by the trustee to the co-owners. In this respect, it might be useful to specify in the provisions of the Grand-Ducal regulation of 13 June 1975 prescribing the measures implementing the law of May 16, 1975 on the status of co-ownership of buildings, and in particular in its article 5, if and under what conditions the transmission by the trustee of the detailed individual accounting situation of a co-owner to the other co-owners (respectively to the members of the co-ownership council) is possible. In fact, outside of such a legal provision, the National Commission does not see what other condition of lawfulness within the meaning of Article 6 of the GDPR would be intended to legitimize such a transmission of given by the trustee to third parties.

Thus decided in Belvaux on May 14, 2021.

The National Data Protection Commission

Tine A. Larsen

President

Christopher Buschman

Marc Lemmer

Commissioner Commissioner

Thierry Lallemand

Commissioner

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