

Second additional opinion of the National Commission for the

data protection relating to bill n° 6961 on 1.

creation of the National Security Authority and 2. amendment 1) of the

amended law of 15 June 2004 relating to the classification of coins and

security clearances; 2) of the Penal Code

Deliberation n°25/2020 of November 18, 2020

In accordance with article 46, paragraph 1, letter (c) of directive (EU) n° 2016/680 of 27

April 2016 on the protection of individuals with regard to data processing

of a personal nature by the competent authorities for the purpose of crime prevention

criminal proceedings, investigation and prosecution thereof or the execution of criminal penalties, and

free movement of such data, and repealing Council Framework Decision 2008/977/JHA

(hereinafter referred to as “the Directive”), to which article 8 of the law of August 1, 2018 refers

on the organization of the National Commission for Data Protection and the regime

general on data protection (hereinafter referred to as the “Law of 1 August 2018 on

organization of the National Commission for Data Protection and the general regime

on Data Protection”), the National Commission for Data Protection (hereafter

after designated “the National Commission” or “the CNPD”), “advises the Chamber of

deputies, the Government and other institutions and bodies regarding the measures

legislative and administrative measures relating to the protection of the rights and freedoms of individuals

with regard to the processing of personal data”.

The purpose of this notice is the amendments to bill no. 6961 on 1. the creation of

the National Security Authority and 2. amendment 1) of the amended law of 15 June 2004 relating

parts classification and security clearances; 2) of the Penal Code, amendments

that the Commission for Institutions and Constitutional Revision (hereinafter “the

Commission”) adopted at its meeting of 12 June 2020.

On July 16, 2018, the CNPD issued an initial opinion on draft law no.

69611. On December 17, 2019, it issued an additional opinion. 2

On July 13, 2016, the CNPD notified a draft Grand-Ducal regulation relating to procedures for the processing of personal data by the National Authority for Safety, regulations to be adopted in execution of the law of 15 June 2004 relating to classification documents and security clearances.³

Already in 2013, the CNPD had also issued an opinion on a draft regulation Grand-Ducal taken in execution of article 23 of the law of 15 June 2004 relating to the classification documents and security clearances.⁴

1 Deliberation no. 444/2018 of July 16, 2018

<https://cnpd.public.lu/fr/decisions-avis/20171/444-pl6961-ANS.html>

2 Deliberation no. 60/2019 of December 17, 2019

<https://cnpd.public.lu/fr/decisions-avis/2019/60-autorite-nationale-securite.html>

3 Deliberation no. 639/2016 of July 13, 2016

<https://cnpd.public.lu/fr/decisions-avis/2016/SRE.html>

4 Deliberation no. 274/2013 of June 28, 2013

<https://cnpd.public.lu/fr/decisions-avis/2013/sre.html>

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Article 28 paragraph (6) draft of the amended law of 15 June 2004 on the classification of parts and security clearances (amendment 9)

Proposed section 28(6) provides as follows:

“(6) The computer system by which any access is operated is arranged so that:

1° the members of the ANS may consult the files to which they have access only by indicating

as to their personal digital identifier, and

2° the information relating to the members of the NSA having carried out the consultation, as well as

the information consulted, the date and time of the consultation are recorded and

kept for a period of five years, so that the reason for the consultation can be

retraced. The personal data consulted must have a direct link with the

facts giving rise to the consultation. »

The CNPD considers positive the fact that the log files will henceforth be settled in

detail by the text in its amended version. It also suggests providing that the reason for the

consultation must be entered into the system at the time of the consultation and kept

also for five years.

Indeed, the information relating to the agents who carried out the consultation, the information

consulted, the date and time of the consultation do not necessarily make it possible to trace the

motive up to five years after the consultation.

Draft article 29 bis of the amended law of 15 June 2004 relating to the classification of

documents and security clearances (amendment 10)

Proposed article 29 bis provides the following:

" Art. 29bis. – Security of processing

(1) Any person who acts under the authority of the controller and who accesses

data may only process it on the instructions of the controller, except under

legal obligations.

(2) The controller must implement all technical and

appropriate organization to ensure the protection of the data it processes against the des-

accidental or unlawful destruction, accidental loss, alteration, distribution or unauthorized access

authorized, in particular when the processing involves the transmission of data in a

network, as well as against any other form of unlawful processing.

(3) Depending on the risk of invasion of privacy, as well as the state of the art and the associated costs when implemented, the measures referred to in subsection (2) must:

(a) prevent any unauthorized person from gaining access to the facilities used for processing data processing (control at the entrance to the facilities);

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(b) prevent data carriers from being read, copied, modified or moved by an unauthorized person (media control);

(c) prevent the unauthorized entry of any data into the information system, as well as that any unauthorized knowledge, modification or deletion of recorded data (memory control);

(d) prevent data processing systems from being used by persons unauthorized ringing using data transmission facilities (monitoring of use) ;

(e) guarantee that, for the use of an automated data processing system, the authorized persons can only access data within their competence (access control);

(f) ensure that the identity of third parties to whom data can be verified and ascertained be transmitted by transmission facilities (transmission control);

(g) guarantee that the identity of persons who have had access to the information system and what data was entered into the system, at what when and by whom (control of entry);

(h) prevent the communication of data and the transport of data carriers from born, the data can be read, copied, modified or erased in an unauthorized way (transport control);

(i) save the data by making backup copies (control of the availability).

(4) Anyone who carries out processing in violation of the rules relating to confidentiality or security referred to in paragraphs (1), (2) and (3) is punished by imprisonment for eight days six months and a fine of 251 to 125,000 euros or one of these penalties only. The court seised may order the cessation of processing contrary to the provisions of the paragraphs (1), (2) and (3) under pain of a penalty payment, the maximum of which is set by said jurisdiction. »

The National Commission notes that the text reproduces the terms of Articles 22 and 23 of the law repealed of August 2, 2002 relating to the protection of individuals with regard to the processing of personal data and will complement the current provisions of Articles 22, 24 and 28 of the law of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal matters as well as in matters of national security.

On the other hand, the texts mentioned above are not fixed by the retention periods. exact log files provided therein. The CNPD suggests specifying in the draft law a retention period of 5 years for the log files relating to the consultation of data in the data processing systems of the ANS. It suits to note that the statute of limitations for offences, (and in particular criminal offenses provided for by 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 security matters national, by the draft article 29 bis paragraph (4) of the amended law of 15 June 2004 relating to

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to the classification of parts and security clearances or by articles 458 as well as

509-1 and following of the Criminal Code,) is 5 years.

Thus decided in Belvaux on November 18, 2020.

The National Data Protection Commission

Tine A. Larsen

President

Christopher Buschman

Commissioner

Thierry Lallemand

Commissioner

Marc Lemmer

Commissioner

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