

Opinion of the National Commission for Data Protection

with regard to the preliminary draft Grand-Ducal regulation amending

1° of the amended Grand-Ducal decree of 23 November 1955 on

traffic regulations on all public roads, 2° of

amended Grand-Ducal regulation of 26 January 2016 on the control

technique of road vehicles and 3° of the amended Grand-Ducal regulation

of 26 January 2016 relating to the approval and registration of vehicles

road

Deliberation n° 449/2018 of July 16, 2018

In accordance with article 32, paragraph (3), letter (e) of the amended law of 2 August 2002 relating to b

the protection of individuals with regard to the processing of personal data b (hereinafter

“the law of August 2, 2002”), the National Commission for Data Protection (hereinafter “the

CNPD" or "the National Commission") has the particular mission of "being requested in its

opinion on all bills or proposals for the creation of a treatment as well as on

all regulatory or administrative measures issued on the basis of this law”.

By letter dated May 3, 2018, the Minister of Sustainable Development and

Infrastructures has invited the National Commission to comment on the preliminary draft regulations

grand-ducal modifying 1° the modified grand-ducal decree of 23 November 1955

traffic regulations on all public roads, 2° of the amended Grand-Ducal regulation

of 26 January 2016 on the technical inspection of road vehicles and 3° of the Grand-

of 26 January 2016 relating to the approval and registration of road vehicles

(hereinafter: “the preliminary draft Grand-Ducal regulation”).

According to the explanatory memorandum, the preliminary draft Grand-Ducal regulation aims to "simplify the

administrative procedures for the registration of road vehicles and their control

technical by authorizing the use of electronic means to check the validity of documents

mandatory supporting documents through a dedicated computer interface". Such verification

is compulsory to register a vehicle (via the Société Nationale de la Circulation Automobile, hereinafter "the SNCA") and for access to technical inspection by an inspection body technical (currently via the National Society of Technical Control, hereinafter "the SNCT", or through DEKRA). Verifications are currently mainly done by visual inspection paper documents. The preliminary draft Grand-Ducal regulation also aims to provide access to insurance companies to the technical data of a particular vehicle which are necessary to conclude a civil liability insurance contract.

The CNPD limits its observations to questions dealing with aspects relating to the protection of personal data, raised by Articles 2 and 3 of the preliminary draft regulation

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grand-ducal, in that they grant various organizations certain electronic access to personal data.

The CNPD recalls that Regulation No. 2016/679 of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (general regulation on the data protection) (hereinafter "the GDPR") has been applicable since May 25, 2018. It is appropriate therefore to analyze the draft Grand-Ducal regulation in the light of the GDPR.

In general, the CNPD understands the objective of simplifying procedures administrative measures pursued by the preliminary draft Grand-Ducal regulation. She thus understands the need to put in place new mechanisms for verifying supporting documents

mandatory for the purpose of registering a car or presenting it for technical inspection, as soon as that a manual check can pose certain problems in practice, for example in the event of presentation of a false green card (difficult to verify by the inspection body technical) or in case of omission, alteration or loss of the document. Furthermore, the CNPD understands on reading the documents submitted to him by the Minister of Development Sustainability and Infrastructures that the authors of the preliminary draft Grand-Ducal regulation intend to regularize certain personal data exchange practices that take place are established, over the years, between certain players in the field outside of a legal framework or regulatory defined.

Nevertheless, the National Commission notes that the various accesses and exchanges of data put in place by the preliminary draft Grand-Ducal regulation could be clarified. Indeed, here reading the text, it is not always clear which actor has access to which data, since what source and by what means. In addition, the National Commission notes that the preliminary draft of Grand-Ducal regulation and the mutual exchanges of data that it puts in place between actors from the public sector (SNCA, SNCT) and the private sector (DEKRA, insurance companies) present certain risks from a privacy and data protection point of view personal character that should be regulated more strictly. Finally, she regrets that the pre-draft Grand-Ducal regulation does not contain provisions providing a clearer framework some of the personal data processing created. The CNPD therefore wishes develop below the points which deserve to be clarified and developed in the preliminary draft Grand-Ducal regulation, so that the fundamental principles which must be satisfied by all processing of personal data are respected.

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#### 1) Preliminary remarks

The preliminary draft Grand-Ducal regulation sets up the exchange of personal data multi-level staff. First of all, article 2, point 1° of the preliminary draft regulation grand-ducal, which replaces article 5 of the amended grand-ducal regulation of 26 January 2016 on the technical inspection of road vehicles, provides that "for the purpose of verifying compliance with conditions provided for in paragraph 1 [of Article 5], the technical inspection body is authorized electronically access the necessary data through an interface provided by the State Information Technology Center, which transmits the information requested from the insurance company covering the vehicle in question to the technical inspection body". A first access to data is therefore created that of the technical inspection bodies (currently SNCT and DEKRA) to data processed by insurance companies, via a computer interface set up by the CTIE.

Then, radical 3 of the preliminary draft Grand-Ducal regulation, which introduces a new article 12bis in the amended Grand-Ducal regulation of 26 January 2016 relating to the approval and registration of road vehicles, provides that "For the purposes of verifying compliance with the requirements mentioned in article 10, the SNCA is authorized to access the data and to carry out automated queries in real time" and that "Insurance companies are authorized to consult electronically through an interface made available by the Center for State Information Technology road vehicle technical data required for the issue of the insurance certificate referred to in article 12 D. Two other accesses are thus created: that of the SNCA to certain data, certain aspects of which should be specified, Firstly ; and that of insurance companies to "technical data" via an interface

information system put in place by the CTIE, certain aspects of which should also be clarified, on the other hand.

On the very principle of creating access to the database of private sector actors by a public sector actor — and vice versa — the CNPD emphasizes the need to respect the principles of proportionality and necessity, according to which any data processing personal character must be proportionate to the purposes to be achieved, taking into account the risk that the processing poses a threat to the privacy of the persons concerned.

This is in fact to avoid a proliferation of access by an administration to company files private (and vice versa), if such access does not appear proportionate and necessary by to the distinct (public) interests they pursue.

The National Commission understands that the access given to the SNCA and to the technical control could make it possible to achieve the intended purpose, namely the simplification administrative procedures for the registration of road vehicles and their technical control. The objective pursued by the access given to insurance companies to CNPD

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technical data of a particular vehicle is however not clear from reading the pre-draft Grand-Ducal regulation and should therefore be clarified.

In any event, the objective pursued by the various accesses must be weighed against the right of data subjects to protection of their privacy. This last element

constitutes a fundamental right enshrined in particular in Article 11 (3) of the Constitution, by the Articles 7 and 8 of the Charter of Fundamental Rights of the European Union as well as by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is therefore to verify whether this balance of interests leans in favor of the fundamental right to respect of privacy, which protects the interest of citizens, or in favor of the legitimate interest of the administration to the simplification of its procedures, even to the purposes pursued by the insurance companies (which should be clarified), taking into account the criterion of proportionality and necessity.

Moreover, given the risks involved in the creation of such access for the protection of the privacy and personal data, the National Commission would like to remind you the requirement of the Constitutional Court that "in the matters reserved by the Constitution to the law, the essential of the normative framework must result from the law, including the ends, the terms and conditions under which less essential items can be settled by regulations and decrees issued by the Grand Duke.

The Council of State also regularly recalls in its opinions that "(...) Access to files external sources and the communication of computer data to third parties constitute interference in private life and therefore, by virtue of Article 11, paragraph 3, of the Constitution, a matter reserved for formal law. In this case, most of the normative framework must appear in the law.

The law must indicate the databases to which a public authority may have access or of which a public authority may have data communicated to it, as well as the purposes of such access or communication (...)"<sup>2</sup>.

Consequently, the National Commission wonders whether the very principle of creating an access a database of private sector actors by a public sector actor — and vice versa — as well as the (precise) purposes of such access, should not be provided for in a law. the if necessary, certain less essential elements could be integrated into this preliminary draft Grand-Ducal regulation.

Decision 117 of the Constitutional Court of March 20, 2015

2 See for example: Council of State, Opinion no. 6975/5 of June 7, 2016 relating to the draft law amending the law of 24 July 2014 concerning state financial aid for higher education.

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## 2) Determination of the role of the actors concerned

As indicated in the preliminary remarks above, several processing operations

of personal data (more particularly access) are created by articles

2 and 3 of the preliminary draft Grand-Ducal regulation. These processing operations involve

various players, such as the SNCA, the technical inspection bodies (the SNCT,

DEKRA), insurance companies and the CTIE.

According to the GDPR, the various parties involved in the processing of personal data

personnel can have different qualities (for example, an actor can be called a

controller, processor, recipient, etc.) and these qualities determine their

respective responsibilities and obligations. It is the "controller" who sees himself

assign as many responsibilities as possible. Thus, it will, for example, be the guarantor of the principles

prescribed in Article 5 of the GDPR, he will be responsible for the information obligations of Articles 12

and following GDPR, etc. The data controller is "the natural or legal person,

the public authority, service or other body which, alone or jointly with others,

determines the purposes and means of the processing (...)"<sup>3</sup>. 11 should be noted that two or more

controllers can be "joint controllers" when they

jointly determine the purposes and means of processing<sup>4</sup>. The subcontractor, as him, is "the natural or legal person, public authority, service or other body who processes personal data on behalf of the controller". The qualification of an actor as controller, processor, recipient or third party has important implications, mainly in terms of obligations to be respected. It should be noted that the qualification of an actor is to be assessed according to the processing of personal data special staff. Thus, an actor can for example be considered responsible for the processing within the framework of a particular processing and as a subcontractor within the framework of a other treatment.

The preliminary draft Grand-Ducal regulation, as it is currently drafted, does not make it possible to enter clearly the quality, and thus the responsibilities, of the different actors involved in each data processing.

Within the framework of article 4, paragraph 7 of the modified law of February 14, 1955 concerning the traffic regulations on all public roads, the National Commission understands for example that the Minister in charge of transport acts as

3 Article 4, 7) GDPR.

4 Article 26 GDPR.

5 Article 4, 8) GDPR.

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responsible for the processing of personal data processed in particular in the



framework of vehicle registration (the "national road vehicle file"). In

ensuring the management of this data, the SNCA acts as a subcontractor of the said Minister. The

Should the National Commission understand that these actors have similar qualities in

the framework of this preliminary draft Grand-Ducal regulation? Is the CTIE also â

consider as a subcontractor? What about insurers or organizations of

technical control ?

### 3) Determination of processing purposes

In accordance with Article 5.1 (b) of the GDPR, personal data must be

“collected for specified, explicit and legitimate purposes, and not to be processed

subsequently in a manner incompatible with those purposes (...)”.

The National Commission welcomes the fact that the purpose of the processing established by Article 2, point 1°

of the preliminary draft Grand-Ducal Regulation, which amends Article 5 of the Grand-Ducal Regulation

amended of 26 January 2016 on the technical inspection of road vehicles, is indicated. In effect,

according to the said article, the access of the technical inspection bodies to the data of the companies

insurance can only be done “for the purpose of verifying the conditions provided for in the first paragraph”.

The National Commission notes that the purpose of the first processing established by Article 3, point 2°

of the preliminary draft Grand-Ducal regulation (that is to say, the treatment established by the new article

12bis, paragraph 1 of the amended Grand-Ducal regulation of 26 January 2016 relating to the reception and

registration of road vehicles) is also indicated. Thus, "the SNCA is authorized

access data and perform automated queries in real time

only "for the purpose of verifying the fulfillment of the requirements referred to in Article

10” of the amended Grand-Ducal regulation of 26 January 2016 relating to the reception and registration

road vehicles.

On the other hand, the purpose of the second processing established by Article 3, point 2° of the preliminary draft

Grand-Ducal regulation (i.e. the treatment established by the new article 1 2bis, paragraph

2 of the amended Grand-Ducal regulation of 26 January 2016 relating to the approval and registration

road vehicles) is not clearly defined. As mentioned above, the Commission

Nationale recalls that in the absence of further explanations, it does not grasp the real

reasons for granting insurers access to road vehicle technical data

“when a new liability insurance contract is to be concluded D. Indeed, a priori, it

in principle, it is up to the insured to provide the insurer with all the data necessary for the

conclusion of the insurance contract, where applicable, through the

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mechanic/dealer. The National Commission therefore considers it necessary that the purpose

be specified, in order to assess the necessity and proportionality of the data processing.

#### 4) Origin of data and access to data

The National Commission observes that the origin of the data to which the various actors

can access is not always clearly defined and should be clarified.

In the case of the access established by article 2 of the preliminary draft Grand-Ducal regulation, which

amends article 5 of the amended Grand-Ducal regulation of 26 January 2016 on technical inspection

road vehicles, the National Commission understands that the data comes from the

insurance company databases.

On the other hand, in the case of the first processing established by Article 3, point 2° of the preliminary draft

Grand-Ducal regulation (i.e. the treatment established by the new article 12bis, paragraph

1 of the amended Grand-Ducal regulation of 26 January 2016 relating to the approval and registration

road vehicles), the origin of the data is unclear. It does not appear from the text

what data the SNCA has access to and from whom the SNCA obtains this data.

Similarly, with regard to the second processing established by Article 3, point 2° of the preliminary draft Grand-Ducal regulation (i.e. the treatment established by the new article 12bis, paragraph 2 of the amended Grand-Ducal regulation of 26 January 2016 relating to the approval and registration of road vehicles), the origin of the "technical data of road vehicles" is not more indicated.

With regard to the means of access, the National Commission also notes that it is specified, in Articles 2 and 3, point 2°, last paragraph of the preliminary draft Grand-Ducal regulation that the access will take place via an "interface made available by the Center des Technologies de State Information". On the other hand, concerning the access created by Article 3, point 2° second paragraph of the preliminary draft Grand-Ducal regulation (i.e. the treatment established by the new article 12bis, paragraph 1 of the amended Grand-Ducal regulation of 26 January 2016 relating to the receipt and the registration of road vehicles)), it finds that the means of access is not precise&

#### 5) Principle of data minimization

Article 5.1 c) of the GDPR provides that personal data must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimization)".

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It follows from this principle that only the necessary data should be processed.

fulfillment of the purpose of the processing. In other words, it's about not giving access to more data than those necessary, respectively to the SNCA, to the organizations of technical control and to insurers, to accomplish the purpose for which access is granted to them. granted.

The National Commission wishes to emphasize the importance of this principle. The way it is written the preliminary draft Grand-Ducal regulation does not, however, allow it to fully assess whether this principle of data minimization will be respected in this case.

#### 6) Data retention

The National Commission wishes to recall that, according to Article 5.1 (e) of the GDPR, the data personal character must be "kept in a form allowing the identification of data subjects for a period not exceeding that necessary for the purposes for which they are processed (...)".

In the present case, it is apparent from the statement of reasons that the data which can be consulted via the interface computer would not be retained.

Thus decided in Esch-sur-Alzette on July 16, 2018.

The National Data Protection Commission

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Thierry Lallemand (cid:9)

Christopher Buschman

President

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