

Complementary opinion of the National Commission for Data Protection

relating to bill no. 7498 amending the amended law of 18 July

2018 on the Grand Ducal Police

Deliberation n°10/2020 of April 17, 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 the processing of personal data

personal character 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 1 August 2018 on

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

on data protection (hereinafter the "Law of 1 August 2018 on the organization of the

National Commission for Data Protection and the general data protection regime

Data"), the National Commission for Data Protection (hereinafter the "Commission

Nationale" or the "CNPDP"), “advises the Chamber of Deputies, 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 data processing

personal”.

On February 28, 2020, the CNPD advised of draft law no. 7498 amending the law

amended on July 18, 2018 on the Grand Ducal Police (hereinafter the "draft law").

On April 6, 2020, the Minister of Homeland Security invited the Commission

national to decide on the government amendment to the bill which was

approved by the Government Council at its meeting of March 20, 2020 (hereafter

the “Government Amendment”).

This additional opinion will be limited to commenting on points 1° and 2° of the amendment

government, point 3° being favorably received by the National Commission.

1. The introduction of a new point 4° in paragraph 2 of article 43bis of the draft

law

Paragraph 2 of article 43bis defines and enumerates criteria for places presenting a risk individual of the commission of crimes or misdemeanors or breaches of the security of persons or goods, without however referring to specific places.

However, the government amendment moves away from this logic because it introduces a new point 4° in paragraph 2 of article 43bis which specifically targets a place: the national stadium of football and rugby located in Kockelscheuer.

The National Commission therefore wonders why this specific place is added whereas points 1°, 2°, 3° and 5° of paragraph 2 of article 43bis, which do not refer to place in particular, remain unchanged.

Indeed, it emerges from the general structure of Article 43bis paragraph (2) that the initial intention of the authors of the bill was to provide for a more general provision, likely to cover all places that fall within the criteria of points 1° to 4°. In this logic he will come back to proposal of the Director of the Grand-Ducal Police and then by the ministerial authorization of precisely designate the places (safety zones) that fall within the scope of application of article 43bis.

An alternative solution would have been to provide in the bill an exhaustive list of places specific sites placed under video surveillance, which, in the eyes of the CNPD, would not have been recommendable from a legal point of view.

However, as previously mentioned, the amendment under consideration deviates from the initial logic of the text.

The CNPD therefore considers that the addition of this new point 4° is superfluous and suggests delete it, insofar as the national football and rugby stadium located in Kockelscheuer is likely to be covered by the criteria provided for the premises referred to in point 3°, or even point 4° of the initial text of article 43bis of the bill.

This hypothesis is moreover expressly referred to by the authors of the bill in their

commentary on paragraph 2 of article 43bis of the bill. In fact, they specify that: "Point 3 concerns infrastructures such as stadiums or conference centers where National and international events are regularly organized. As in the past, video surveillance in these places will not be permanently activated, but only during the event in the context of which harm to persons or property goods are likely to occur. We can cite, by way of example, the surroundings of the stadium Josy BARTHEL during an international football match (...)".

2. The use of the concept of "safety zone" instead of the term "place" in the paragraph 3 of article 43bis of the bill

The purpose of the government amendment is also to replace the term "place" by the notion of "safety zone" in paragraph 3 of article 43bis.

It appears from the commentary to the government amendment that the authors of the bill justify this replacement, in order to "ensure consistency with previous legislation" and further specify that: "The term 'safe area' is also consistent with Article 2 of the this bill which provides that the maintenance of video surveillance in designated places as safety zones before the entry into force of this law shall be authorized in accordance with the provisions of the latter within a maximum period of twelve months following entry into force of this law".

First of all, it should be noted that the notion of "safety zone" introduced in paragraph 3 of article 43bis of the draft law differs from the term "security zone" as used in article 2 of the Bill, insofar as it expressly refers to places designated as security zones under the old legislation. The concept of "safety zone" introduced in paragraph 3 of article 43bis must be understood in the context of this draft of law.

Thus, and although the National Commission understands the desire of the authors of the bill to take up the notion of "safety zone" in order to "ensure consistency with the legislation

earlier”, it considers necessary, for a better understanding of paragraph 3 of

Article 43bis, that this notion be defined in the bill.

Indeed, the introduction of the concept of “safety zone”, in an isolated manner; at the place of paragraph 3 of article 43bis, without having defined it beforehand, compromises the understanding of the said paragraph, all the more so since the term "security zone" is different from the terminology used so far by the authors of the bill in paragraphs 2 and 4 of the aforementioned article.

If the “safety zone” within the meaning of paragraph 3 of article 43bis designates a place at risk¹ which has been delimited beforehand by the Grand-Ducal Police and then communicated to the Minister having the Police in its attributions so that it issues a ministerial authorization for such a place delineated, so it should be clear from the bill.

Therefore, if the authors of the government amendment wish to make a parallelism with the old legislation, it would be necessary to define the concept of “safety zone” or to replace the term “places”, used in various places in article 43bis, by the terms “area of safety”, or delete the terms “safety zone”, in order to standardize accordingly all of the terminology used in the bill.

Thus decided in Esch-sur-Alzette on April 17, 2020.

The National Data Protection Commission

Tine A. Larsen

President

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Commissioner Commissioner

Marc Lemmer

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¹ Within the meaning of paragraph 2 of article 43bis of the bill