

Opinion of the National Commission for Data Protection

relating to bill no. 7526 amending the amended law

of May 30, 2005 relating to the specific provisions for the protection of

the person with regard to the processing of personal data

in the electronic communications sector and relating

modification of articles 88-2 and 88-4 of the Code of Criminal Procedure.

Deliberation n° 11/2020 of April 24, 2020

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 the treatment".

By letter dated March 3, 2020, the Minister of Communications invited the

National Commission to decide on draft law n° 7526 amending the law

of May 30, 2005 relating to the specific provisions for the protection of the person to

with regard to the processing of personal data in the communications sector

electronics and amending Articles 88-2 and 88-4 of the Code of Criminal Procedure.

The bill tends to set up one or more geolocation systems for authors

more precise emergency calls than the current geolocation carried out exclusively at the

through mobile phone network terminals.

It anticipates the transposition of only Article 109 paragraph 6 of Directive (EU) 2018/1972 of European Parliament and of the Council of 11 December 2018 establishing the code of European electronic communications.

The National Commission notes that the proposed new Article 5 paragraph (5bis) does not specify who is to provide the data in question. It can be deduced that this paragraph creates obligations exclusively for service providers or operators mentioned in article 5 paragraph (5) letter (a). If, however, other companies, such as for example companies offering operating systems or software installed on devices or companies offering WIFI access without being service providers or operators, were required to participate – in any way – in the systems of geolocation in question, it should be mentioned in the text.

The CNPD also wonders about the meaning of the terms "... the most appropriate..." used in the sole article of the bill and which are taken literally from article 109 paragraph (6) of the aforementioned Directive (EU) 2018/1972. Indeed, with a view to transposition correctness of the provision of the European directive in question, she wonders whether, in depending on the national situation or organization relating to reception centers

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emergency calls, it is not for the national legislator to designate or define in the text of the law of which center(s) for the reception of emergency calls it is precisely.

Thus decided in Esch-sur-Alzette on April 24, 2020.

The National Data Protection Commission

Tine A. Larsen

President

Christophe BuschmannMarc Lemmer

Commissioner Commissioner

Thierry Lallemand

Commissioner

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