

Opinion of the National Commission for Data Protection relating to the bill no. 7751 amending 1° the Social Security Code; 2° the Code work ; 3° the amended law of 15 December 1993 determining the framework of staff of the administrations, services and courts of the social Security; and 4° the amended law of 28 July 2000 having as its object the coordination of statutory pension schemes.

Deliberation n° 9/AV8/2021 of March 3, 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 January 21, 2021, the Minister of Social Security referred the matter to the Commission request for an opinion on bill n°7751 amending 1° the Security Code social; 2° the Labor Code; 3° the amended law of 15 December 1993 determining the framework staff of social security administrations, services and courts; and 4° the amended law of 28 July 2000 having as its object the coordination of statutory pension schemes (hereinafter: "Bill of Law No. 7751").

According to the explanatory memorandum, the purpose of bill n°7751 is to make corrections to the Social Security Code for various reasons, including updating cross-references

to other laws, the rectification of material errors or the necessary adaptations following the entry into force of other laws having an impact on social security legislation, such as the law of March 8, 2018 relating to hospital establishments and hospital planning.

Moreover, the authors of the bill specify that "in accordance with the wishes of the National Commission for Data Protection, the provisions concerning the duration of storage of the data processed in the shared care file, which currently appears in a Grand-Ducal regulation, are incorporated into the law in Article 60quater of the Code of social Security. »

The National Commission thus intends to limit its observations to the provisions of the draft Law No. 7751 affecting privacy and data protection of a personal nature, and more particularly its article 1st point 19 which aims precisely to amend the aforementioned Article 60quater of the Social Security Code.

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Ad article 1st point 19 of bill n°7751

Currently, the retention period for data entered into the shared care file is provided for in Article 10 paragraph (5) of the Grand-Ducal Regulation of 6 December 2019 specifying the terms and conditions for setting up the shared care file.

Article 1 point 19 of draft law no. 7751 under opinion "aims to include the principle of retention period of the data processed with the derogations guaranteeing flexibility,

as retained at the time of the development of the Grand-Ducal regulation, in article 60quater of the Social Security Code. »¹

Already in its opinion of 5 April 2018 relating to the draft Grand-Ducal regulation specifying the terms and conditions for setting up the shared care file, the CNPD had considered that in view of the principle of lawfulness of the processing of personal data which must be read in the light of Article 8 paragraph (2) of the European Convention on Human Rights concerning the right to respect for private life, as well as Article 52 paragraphs (1) and (2) of the Charter of Fundamental Rights of the European Union², the provisions concerning the retention period of data at the DSP should be provided for in the law in the strict sense of the term and more specifically by article 60quater of the Social Security Code, and not in a regulatory act.

In general, the CNPD can therefore only support the aforementioned modification to insert a paragraph (6) in Article 60quater of the Social Security Code on the retention period of the data entered in the shared care file. However, it notes that the last two paragraphs of Article 10 paragraph (5) of the Grand- of December 6, 2019 specifying the terms and conditions for setting up the file shared care were not taken up by the authors of bill n°7751. Thus, the CNPD recommends that they complete the new paragraph (6) of article 60quater of the Code of social security by the following two paragraphs:

“The holder’s agreement is dated and recorded in his personal expression space in the shared care record application.

By way of derogation from the first paragraph, information relating to the personal expression of the holder of the shared care file are kept until the latter modify or delete them. »

Finally, in its aforementioned opinion of April 5, 2018, the CNPD had estimated that on the basis of the above-mentioned principles, the provisions regulating the rights of minor holders not

emancipated persons and adult holders protected by law should also be provided for in the law at strict sense of the term and more specifically by article 60quater of the Social Security Code, and not in a regulatory act.

1 See commentary to article 1 point 19 of bill no. 7751.

2 For more details, the CNPD refers to its deliberation no. 242/2018 of 5 April 2018.

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In its additional opinion of 18 October 2019 relating to the draft Grand-Ducal regulation specifying the terms and conditions for setting up the shared care file,³ the National Commission had noted that the authors of the said project had quite simply deleted former article 7 of the draft Grand-Ducal regulation concerning minor holders non-emancipated persons and adult holders protected by law for the following reasons: "The opinions of the Council of State and the National Commission for Data Protection establish that article 7, at least in part, derogates from the rules relating to minors and adults protected by law as provided for in the Civil Code.

Thus, in order to respect the hierarchy of norms, article 7 is deleted, the provisions which introduce specific rights for certain minors which must be included in the particular laws governing their rights. »

However, unless it is mistaken, the CNPD notes that no bill has been submitted to the Chamber of Deputies, with a view to adopting the necessary legislative measures to take

into account the said considerations on the rights of unemancipated minor holders and adult holders protected by law. She therefore wonders why the authors of the project of Law No. 7751 did not take advantage of the bill under consideration to introduce the measures legislation in question.

Thus decided in Belvaux on March 3, 2021.

The National Data Protection Commission

Tine A. Larsen

President

Christopher Buschman

Commissioner

Marc Lemmer

Commissioner

3 Deliberation No. 51/2019 October 18, 2019.

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