

Opinion of the National Commission for Data Protection relating to the

bill n°7784 amending the amended law of 17 July

2020 on measures to combat the Covid-19 pandemic.

Deliberation n°10/AV9/2021 of March 8, 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 March 5, 2021, the Minister of Health seized the National Commission

a request for an opinion on bill no. 7784 amending the amended law of 17

July 2020 on the measures to combat the Covid-19 pandemic (hereinafter the "draft law

No. 7784").

It is clear from the explanatory memorandum that this draft law aims to maintain the restrictions

currently in place until April 2, 2021 inclusive, while creating "a legal basis for

the application of temporary measures that may be taken in the context of the fight against

Covid 19 pandemic at the level of national education and with regard to the measures

reorganization and suspension having an impact on childcare facilities. »

The CNPD notes that article 3 of bill no. 7784 provides for the insertion of a new

article 4ter in the amended law of 17 July 2020 on measures to combat the pandemic

Covid-19 listing in its 1st paragraph a whole series of temporary measures which may be taken as part of the fight against the Covid-19 pandemic, in the presence of a local or national resurgence of infections involving health risks for the local or global population with significant chains of infections in structures referred to in paragraph 2 of said Article 4ter. One of these measures<sup>1</sup> is the transition to a distance learning for some or all schools public and private as defined in points 1 and 2 of paragraph 2 of the new article 4ter of the amended law of July 17, 2020 on measures to combat the Covid-19 pandemic.

In general, the CNPD congratulates the authors of bill no. 7784 under examination for having created a legal basis allowing, under certain conditions, the transfer to an education at distance for some or all public and private schools.

However, it regrets that the draft Grand-Ducal regulation provided for in the new article 4ter paragraph (3) of the amended law of 17 July 2020 on measures to combat the pandemic Covid-19, which should determine the “temporary measures taken in application of the conditions provided for in paragraph 1 of this article, the duration of their application, as well as that the structures and activities targeted by the application of the said measures”, is not attached

<sup>1</sup> As provided for by point 2° of paragraph 1 of the new article 4ter of the amended law of 17 July 2020 on measures to combat the Covid-19 pandemic.

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to this bill, so that the CNPD is unable to assess its impact on any data protection provisions.

She also wonders who will actually decide on the implementation of these measures.

Will it be the Minister of Health or, if applicable, the Minister of Education

National, Childhood and Youth?

Finally, the CNPD regrets that the authors of bill n°7784 did not take into account

the comments made in its opinion of February 16, 2021 on draft law no. 7768

amending the amended law of July 17, 2020 on measures to combat

Covid-19.2 pandemic

Thus decided in Belvaux on March 8, 2021.

The National Data Protection Commission

Tine A. Larsen

President

Marc Lemmer

Commissioner Commissioner

Christopher Buschman

Thierry Lallemand

Commissioner

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opinion/2021/Avis-05-AV4-2021-du-16-fevrier-2021-PL7768-modifier-la-loi-Covid.pdf.

February 2021: <https://cnpd.public.lu/content/dam/cnpd/fr/decisions->

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