

Opinion of the National Commission for Data Protection relating to the bill n°7622 1° introducing a series of measures to combat against the Covid-19 pandemic; 2° amending 1) the amended law of 25 November 1975 concerning the supply of medicines to the public; 2) the amended law of April 11, 1983 regulating the placing on the drug market and advertising; 3° repealing 1) the law of 24 June 2020 introducing a series of measures concerning sporting activities, cultural activities as well as establishments receiving from the public, as part of the fight against the Covid-19 pandemic; 2) the law of June 24, 2020 introducing a series of measures concerning natural persons in the context of the fight against Covid-19 pandemic and amending the amended law of 11 April 1983 on regulation of the marketing and advertising of medications.

Deliberation n°16/2020 of July 8, 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 treatment".

On July 7, 2020, the Minister of Health contacted the National Commission to decide on bill n°7622 1° introducing a series of measures to combat against the Covid-19 pandemic; 2° amending 1) the amended law of 25 November 1975 concerning the distribution of medicines to the public; 2) the amended law of 11 April 1983 on regulation of the marketing and advertising of medicinal products; 3° repealing 1) the law of June 24, 2020 introducing a series of measures concerning the activities sports, cultural activities as well as establishments open to the public, in the framework of the fight against the Covid-19 pandemic; 2) the law of June 24, 2020 introducing of a series of measures concerning natural persons in the context of the fight against the Covid-19 pandemic and amending the amended law of 11 April 1983 regulating the the marketing and advertising of medicinal products (hereafter: “Bill n°7622”).

It emerges from the explanatory memorandum that in order to facilitate the readability of the measures to combat Covid-19 pandemic, this bill seeks to merge into one piece of legislation, on the one hand the law of June 24, 2020 introducing a series of measures concerning the activities sports, cultural activities as well as establishments open to the public, in the framework of the fight against the Covid-19 pandemic, and on the other hand the law of June 24, 2020 on introduction of a series of measures concerning natural persons within the framework of the combating the Covid-19 pandemic and amending the amended law of 11 April 1983 on regulation of the marketing and advertising of medicinal products (hereafter: “the law of June 24, 2020”).

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The CNPD refers in this context to its opinions n°13/2020 of 8 June 2020 and n°14/2020 of 16

June 2020 relating to bill no. 7606 which became the law of June 24, 2020 introducing a series of measures concerning natural persons in the context of the fight against Covid-19 pandemic and amending the amended law of April 11, 1983 regulating the marketing and advertising of medicines. She welcomes that the majority of her remarks made therein have been taken into account by the authors of bill n°7606.

It notes that the authors of Bill No. 7622 under examination have taken over almost all the data protection provisions provided for by the law of June 24, 2020.

Indeed, article 5 of bill n°7622 largely repeats the provisions of article 4 of the law of 24 June 2020 concerning contact tracing, while article 10 of the said project of law incorporates the provisions of article 8 of the law of 24 June 2020 on the creation of a system information from the health director.

Articles 5 paragraph (1) and 10 paragraph (3) of bill n°7622 are subject to additions in the sense that alongside the director of health or his delegate, civil servants or employees designated for this purpose by the said director are authorized in the context of contact tracing to process the data of people who are infected or at high risk of being infected, respectively to access their data contained in the aforementioned information system.

It appears from the commentary to article 10 of bill n°7622 that due to the increase new infections in recent days and correlatively the workload of health directorate's contact tracing team, as well as the lack of "doctors and healthcare professionals in sufficient numbers to carry out this work, it is proposed to give the health director the possibility of having recourse, for the performance of these tasks, to also to officials or employees designated by him for this purpose. »

It is also specified in article 10 paragraph (3) of the bill under opinion that all those who can access the information system, including civil servants or employees designated for this purpose by the Director of Health, are subject to professional secrecy and that the provisions of article 458 of the penal code are applicable. Under these conditions

restrictive, that therefore the breach of professional secrecy in this context is subject to the criminal sanctions provided for in article 458 of the criminal code, the CNPD considers that access additional to the information system appear legitimate.

Thus decided in Esch-sur-Alzette on July 8, 2020.

The National Data Protection Commission

Tine A. Larsen

President

Thierry Lallemand

Commissioner

Christopher Buschman

Commissioner

Marc Lemmer

Commissioner

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