

Opinion of the National Commission for Data Protection relating to

the draft Grand-Ducal regulation setting the terms

registration of establishments of operators of the sector

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Deliberation n°27/2020 of December 2, 2020

In accordance with article 57, paragraph 1, letter c) of regulation n° 2016/679 of April 27, 2016

on the protection of individuals with regard to the processing of personal data

personal data and on the free movement of such data, and repealing Directive 95/46/EC (Regulation

general on data protection) (hereinafter referred to as the "GDPR"), to which article

7 of the law of 1 August 2018 on the organization of the National Commission for the protection

data and the general data protection regime, the National Commission for

Data Protection (hereinafter referred to as the "National Commission") "advises,

in accordance with the law of the Member State, the national parliament, 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 processing".

By letter dated August 12, 2020, Madam Minister of Consumer Protection

invited the National Commission to comment on the draft Grand-Ducal regulation setting the

procedures for registering establishments of food business operators (hereinafter referred to as

referred to as the "draft Grand-Ducal regulation").

It appears from the explanatory memorandum that according to European regulations, any operator of the

food sector must register with the competent authorities each of the

establishments for which he is responsible and which intervene in the food chain.

At the national level, article 6 of the law of 28 July 2018 establishing a system of control and

sanction relating to foodstuffs relates to this registration by providing that "(...) any

food business operator notifies the [Government Commissioner for Quality,

Fraud and Food Safety], for registration purposes, each of the establishments in which it

is responsible for and who implement one of the stages of production, processing and food distribution. To this end, the Commissariat is authorized to use a file, and the data entered therein will be transmitted to the authorities responsible for the control of foodstuffs. »

Paragraph 2 of the said article continues that “[a] Grand-Ducal regulation specifies the procedures as well as the procedures for registering the establishments referred to in paragraph 1 of this article. »

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The draft Grand-Ducal regulation is part of the implementation of Article 6 aforesaid, even if, in fact, a computerized notification system has been operational since 2016.

The National Commission will limit its observations to the provisions of the draft grand-ducal without examining in more detail the European and national legislation on the basis of which the draft Grand-Ducal regulation has been adopted.

Article 3 of the draft Grand-Ducal regulation lists the information that the operators of the food sector must notify the government commissioner for quality, fraud and food safety, namely (i) the trade name of the establishment, (ii) the address location where the activities take place, (iii) the contact details and address of the operator, (iv) activities related to the stages of production, processing and distribution of foodstuffs and (v) when the operator is a legal person, the natural person designated as recipient of official control reports and as contact person in the event of incidents related to foodstuffs on behalf of this legal entity.

Based on the information available to it, the National Commission considers that the categories of personal data to be notified are adequate, relevant and limited to what is

necessary in relation to the purposes for which they are processed, namely the control of food business operators<sup>1</sup>, so that the principle of data minimization laid down in Article 5, paragraph 1, letter c) of the GDPR is complied with.

Article 5 of the draft Grand-Ducal regulation provides that the government commissioner for quality, fraud and food safety maintains a register of the establishments in which the data notified in accordance with article 3 and that the data, regularly updated, are kept for a maximum period of 5 years after the end of the activities related to the stages of food production, processing and distribution.

The National Commission considers that, given the fact that the law of 28 July 2018 establishing a system control and penalties relating to foodstuffs provides for correctional penalties prescribed by 5 years, the limitation of the retention of data to a maximum duration of 5 years complies with the principle of limiting the retention of personal data provided for in article 5, paragraph 1, letter e) of the GDPR.

1 Even if the purpose of the processing emerges from reading the various normative texts, it could be useful to refer to Article 1 of the draft Grand-Ducal regulation.

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With regard to the term “register” used in article 5 of the draft Grand-Ducal regulation, the National Commission considers that it would be preferable to use the same term as that already employed in article 6 of the aforementioned law of July 28, 2018, namely “file”. Not only this way to do this would highlight the fact that it is indeed the same file, but this term also has the advantage of being defined by the GDPR<sup>2</sup>.

Finally, the National Commission wonders whether there might not be a possible inconsistency between the law of 28 July 2018 establishing a control and sanction system relating to foodstuffs foodstuffs and the draft Grand-Ducal regulation. Indeed, article 6 of the aforementioned law sets out

that the data entered in the file will be transmitted to the administrations in charge of the control of foodstuffs while the draft Grand-Ducal regulation, while remaining silent on this subject in the body of the text, indicates in its explanatory memorandum that “in order to avoid including duplication and to enhance the effectiveness of official controls, it appears essential to have a centralized register of establishments in the food chain”.

According to the understanding of the CNPD, the aforementioned law of July 28, 2018 does not allow administrations responsible for food control direct access to audit file insofar as the data entered therein is transmitted to them by the police station of the government to quality, fraud and food safety. By evoking a "register centralised", the authors of the draft Grand-Ducal regulation seem however to want to create a file directly accessible to the administrations in charge of food control food.

For all intents and purposes, the National Commission takes the liberty of pointing out that access to files third parties containing personal data and the transmission of such data to third parties constitute an interference with privacy and therefore, under Article 11, paragraph 3, of the Constitution, a matter reserved for formal law. In this case, the main of the normative framework must appear in the law<sup>3</sup>. In the case of direct access, the law should in particular list the administrations that can access the file in question, as well as the purposes of this access.

2 Article 4(6) GDPR

3 See in particular in this sense opinion 6975/5 of the Council of State relating to the draft law amending the law of 24 July 2014 regarding state financial aid for higher education.

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