

Opinion of the National Commission for Data Protection relating to the
bill n° 7634 amending the law of July 17, 2020 introducing
of a series of measures to combat the Covid-19 pandemic and amending:
1° the amended law of 25 November 1975 concerning the delivery to the public
medication ; 2°
amended law of 11 April 1983 on
regulation of the marketing and advertising of
medications.

the

Deliberation n° 18/2020 of July 21, 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 20, 2020, the Minister of Health contacted the National Commission to
to decide on bill n° 7634 amending the law of July 17, 2020 introducing
of a series of measures to combat the Covid-19 pandemic and amending: 1° the amended law
of November 25, 1975 concerning the delivery to the public of medicinal products; 2° the amended law
of 11 April 1983 regulating the marketing and advertising of

drugs (hereinafter the "Bill").

After analyzing the bill, the CNPD finds that the provisions concerning the protection the rights and freedoms of natural persons with regard to the processing of personal data staff, and more specifically Articles 5 and 10 of the said draft, have not changed with respect to the corresponding provisions of the law currently in force of July 17, 2020 on introduction of a series of measures to combat the Covid-19 pandemic.

Nevertheless, the CNPD wishes to make a remark concerning the starting point of the duration retention of personal data contained in the information system set up by the director of health in order to follow the evolution of the spread of the virus SARS-CoV-2.

Initially, 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 provided in its article 9 paragraph (5) that the aforementioned data "are anonymized no later than six months after the law ceases to have effect. »

In its opinion n°13/2020 of June 8, 2020 relating to said bill n°7606, the CNPD had asked what were the health and/or scientific reasons that led the authors of the bill to insert a specific retention period of 6 months after the future

Opinion of the National Commission for Data Protection on the draft

Law No. 7634 amending the Law of July 17, 2020 introducing a series of measures to combat the Covid-19 pandemic and amending: 1° the amended law of 25 November 1975 concerning the supply of medicines to the public; 2° the law amended of April 11, 1983 regulating the placing on the market and the drug advertising.

1/3

law will cease to produce its effects and it had noted that the legislators of neighboring countries

of Luxembourg had opted in this context for much longer retention periods

shorter.

Following the amendments adopted by the Committee on Health and Sports on 11

June 2020, the opinion of the CNPD has been taken into account and the retention period has been reduced

from 6 to 3 months. Thus, article 9 paragraph (5) of bill n°7606 had the following content:

“Without prejudice to the provisions of paragraph 6 of this article, their storage under

a form allowing the identification of persons is limited to the time necessary to

preventing and combating Covid-19 and the data is anonymized no later than three months

after the law ceases to have effect. »

Following the additional opinion of the CNPD of June 16, 2020,¹ amendments

additional ones had been adopted by the Committee on Health and Sport.

On the proposal of the opinion of the Council of State of June 16, 2020, the provision in question has been

modified in the sense that the new article 8 (old article 9) paragraph (5) of the bill

No. 7606 read as follows: "the personal data processed are

anonymized at the end of a period of three months from the end of the state of crisis as

as declared by the amended Grand-Ducal regulation of 18 March 2020 introducing a

series of measures in the context of the fight against Covid-19 and extended by the law of March 24

2020 extending the state of crisis declared by the Grand-Ducal regulation of 18 March

2020 introducing a series of measures as part of the fight against Covid-

19. »

Like the repealed law of June 24, 2020 introducing a series of measures

concerning natural persons in the context of the fight against the Covid-19 pandemic and

of the law currently in force of July 17, 2020 introducing a series of measures

fight against the Covid-19 pandemic, the bill under opinion provides in its article 10

paragraph (5) that “the personal data processed are anonymized after

for a period of three months from the end of the state of crisis as declared by the

amended Grand-Ducal regulation of 18 March 2020 introducing a series of measures as part of the fight against Covid-19 and extended by the law of March 24, 2020 on extension of the state of crisis declared by the Grand-Ducal regulation of 18 March 2020 on introduction of a series of measures as part of the fight against Covid-19. »

The CNPD must admit that in its opinion n°16/2020 of July 8, 2020 concerning the bill No. 7622 which became the aforementioned law of July 17, 2020 introducing a series of measures to fight against the Covid-19 pandemic, it escaped him to raise this point. However, as the law of 24 March 2020 extended the state of crisis declared by the Grand-Ducal regulation of 18 March 2020 introducing a series of measures in the context of the fight against Covid-19 until June 24, 2020, failure to modify this point would result in the personal data mentioned above must be anonymized by September 24 2020, i.e. three months from the end of the state of crisis. This would mean that as Article 18 of the bill under consideration provides that the future law remains applicable until 30 September 2020 inclusive, personal data should be anonymized before the end of the applicability of the law. Furthermore, no more personal data could be processed by the Health Department from September 24, 2020.

1 Deliberation n°14/2020 of June 16, 2020.

Opinion of the National Commission for Data Protection on the draft

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2/3

The CNPD assumes that this situation was not desired by the authors of the bill.

Thus, she suggests planning as a starting point, in terms of the duration after which the data must be anonymized, the date of collection of the data or at the very least the day when the future law will cease to produce its effects.

Thus decided in Esch-sur-Alzette on July 21, 2020.

The National Data Protection Commission

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