

Opinion of the National Commission for Data Protection relating to

to Bill 7652 amending:

1° the amended law of 25 July 2015 establishing the system of

automated control and sanction;

2° the amended law of 14 February 1955 concerning the regulation of

traffic on all public roads

Deliberation n°32/2020 of December 30, 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 "the GDPR"), to which Article 7 of the

Law of August 1, 2018 on the organization of the National Commission for the Protection of

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

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 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 July 21, 2020, Minister of Mobility and Public Works

informed the National Commission of the preparation of a preliminary draft law in order to adapt the framework

of the amended law of July 25, 2015 creating the control and sanction system

(hereinafter referred to as "the amended law of July 25, 2015") with a view to setting up

of "red light cameras". Dated August 20, 2020, bill 7652 amending 1° the law

amended of July 25, 2015 creating the automated control and sanction system and

2° the amended law of 14 February 1955 concerning the regulation of traffic on all

public roads, was tabled in the Chamber of Deputies.

Not having been directly seized by the Minister, neither at the preliminary draft stage, nor at the

stage of the bill, the CNPD nevertheless wishes to comment on bill 7652, and as to the interactions of the latter with the legal framework relating to the protection of data at personal character. This self-request is explained by the fact that the National Commission had already pronounced on the draft law establishing the system of control and

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the automated control and sanction system; 2° the amended law of 14 February 1955 concerning traffic regulations on all public roads

1/8

automated sanction and amending the amended law of February 14, 1955 concerning the traffic regulations on all public roads¹.

The bill under review is part of the "road safety" action plan (2019-2023) adopted by the Government including various measures to be implemented by 2023 in order to combat against road accidents and improve road safety. In this regard, the explanatory memorandum of the bill explains that "measure 14 of this action plan provides for the strengthening of respect red lights, in particular through the installation of "red light radars". These radars are designed to detect non-compliance with a red light signal systematically and automatique ".

In addition to speeding, as is already the case, and failure to observe a red light, as explained above, the purpose of the CSA system, in the longer term, is also to note two other types of traffic violations, namely failure to respect the safety distances between vehicles, and driving in lanes reserved for other road users.

In this context, it is proposed to adapt the legal framework for speed cameras set by the amended law of 25 July 2015 with a view to setting up radars intended to detect these types offences.

In this regard, the CNPD would like to share its observations on certain provisions

of the bill presenting aspects relating to the protection of personal data personnel, in particular with regard to the installation of "red light" radars.

I.

General comments on the legal framework

As a preliminary point, the CNPD notes that the bill proposes to modify article 3 paragraph 2 paragraph 1 of the amended law of July 25, 2015 by providing for an extension of coverage account of violations of the Highway Code by speed cameras. If these note for the time being that non-compliance with speed limits, they will also be brought to be measured: "1. The speed of approaching or departing vehicles, 2. The speed average number of vehicles between two points, 3. Failure to observe a red light signal, 4. The distance from the vehicle in front corresponding to a travel time of at least two seconds, 5. Driving on an emergency lane, part of the roadway reserved for other users or a closed lane. ".

The CNPD welcomes the government's choice to provide a legal basis for the installation of speed cameras machines with all of these features. She finds that such an approach has

1 Opinion of the Commission of the National Commission for Data Protection of 25 February 2015 (document Parliament 6714/05).

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the automated control and sanction system; 2° the amended law of 14 February 1955 concerning traffic regulations on all public roads

2/8

also took place in many European countries. For example, in recent years, France² and Belgium³ have installed red light cameras near their roads and developed a legal framework in this regard. The purposes of installing red light cameras in these countries are common to those of Luxembourg since they also tend to

reduce the driver's feeling of impunity and improve road safety. Light radars red are generally installed in dense urban environments in order to ensure the protection users in places frequented by pedestrians, in cases where the action of crossing the road is particularly dangerous but also and above all in very busy roads.

II.

As for the images taken by the red light radars

The CNPD observes that when observing the non-observance of a red light signal, in depending on where it is installed and the angle of the camera, a radar would be likely not only to capture the license plate of the vehicle, the photo of the driver, the passenger, but also those of natural persons traveling on public roads, such as only pedestrians crossing the road at this location. Depending on the configuration of the premises and the degree of frequentation of the public space, a radar could therefore capture the images of faces other than those of the people present in the vehicle.

It is true that article 11, paragraph (3) of the amended law of July 25, 2015 provides that "when of the exercise of the right of access, anyone other than the driver is masked in the photo exhibited, unless the photo relates to a vehicle used at the time of the offense in the part of the apprenticeship or the practical examination with a view to obtaining the driving license conduct ". However, this article does not mention the presence of third parties on the images taken by radars, such as possible pedestrians.

The CNPD therefore considers it necessary to automatically mask the images of pedestrians and of anyone other than the driver who has no connection with the offence. In addition, the CNPD reiterates its questions, already expressed in its opinion on the draft law on creation of the automated control and sanction system and modification of the amended law of the February 14, 1955 concerning the regulation of traffic on all public roads⁴, as to the relevance of limiting ourselves to the masking of third parties to the infringement

² In this sense, see the Order of October 13, 2004 creating the automated control system. As of July 1, 2017

701 red light cameras were already deployed. These figures can be found on page

<https://www.securite-routiere.gouv.fr/radars/differents-types-de-radars/radars-fixes/radars-de-franchissement>,
last accessed 11/18/2020.

3 In this sense, see the Royal Decree of 12 October 2010 relating to the approval, verification and installation of measuring instruments. Belgium, the 6th state reform in relation to safety-related road equipment has provided the regions with competences relating to the crossing of red lights and to equip them with speed cameras. Thus in Flanders, the Decree of the Flemish government of July 10, 2015 and in Wallonia, the Decree of Walloon Government of June 21, 2018 modify the Royal Decree of October 12, 2010 previously mentioned.

4 Opinion of the Commission of the National Commission for Data Protection of 25 February 2015 (document 6714/05), p. 4.

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the automated control and sanction system; 2° the amended law of 14 February 1955 concerning traffic regulations on all public roads

3/8

only when exercising the right of access to the images of the driver or the person presumed financially responsible.

It also considers it necessary to consider automatic masking of people physical areas around the roads that are taken during image capture, and masking temporarily of the passengers of the vehicle so that the latter can again be returned visible during any legal proceedings. Such a mechanism would indeed seem more in line with the data minimization principle provided for in Article 5 paragraph (1) letter (c) of the GDPR, which provides that personal data must be “(...) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (...)”.

III.

As for informing the public of the existence of red light cameras

The National Commission notes that the draft law does not mention public information of the existence of these red light cameras. The CNPD recalls that Article 12 paragraph 1 of the law of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal matters as well as in matters of internal security provides for a minimum of information to be provided to data subjects. This article provides that "The controller shall make available to the data subject at the minus the following information:

- a) The identity and contact details of the controller;
- b) The contact details of the data protection officer;
- c) The purposes of the processing for which the personal data are intended;
- d) The right to lodge a complaint with one of the two supervisory authorities referred to in Articles 39 and 40 and the contact details of the said authority;
- e) The existence of the right to request from the data controller the personal data relating to a data subject".

Paragraph (3) of the same article, however, provides that "the controller may delay or limit the provision of information to the data subject pursuant to the paragraph 2, or not to provide this information, since and for as long as a measure of this nature constitutes a necessary and proportionate measure in a democratic society, having regard to the purpose of the processing concerned, and taking due account of the rights fundamental interests and legitimate interests of the natural person concerned, for:

- (a) avoid interfering with official or legal inquiries, research or proceedings;
- (b) avoid prejudicing the prevention or detection of criminal offences, the investigation or prosecution in the matter or the execution of penal sanctions;
- c) protect public safety;

(d) protect national security and national defence; Where

(e) protect the rights and freedoms of others”.

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the automated control and sanction system; 2° the amended law of 14 February 1955 concerning traffic regulations on all public roads

4/8

Given that the installation of automatic speed cameras at red lights concerns a public much wider just beyond the drivers and passengers on board of vehicles, the CNPD intends to draw the attention of the authors of the bill to the obligation of information of all persons concerned of the existence of these radars and of the processing of data concerning them (e.g. signs informing drivers and passengers of vehicles as well as pedestrians at the locations of speed cameras installed at red lights). If it is considered to limit or delay this information, the Grand Ducal Police would have to be able to justify this limitation or delay of the right to information by one of the hypotheses referred to in Article 12 paragraph (3) cited above, or even specify it in the text of the bill under consideration.

IV.

As for the test phase of the installation of red light cameras

The National Commission understands that a first red light radar is installed in a very frequented by Luxembourg City, Place de l'Etoile for a test phase⁵. The Minister of Mobility and Public Works also announces the effective installation of said radar towards December 2020/January 2021 as well as the additional installation of 2 red light cameras at Hollerich and at the Schlammestee during the year 2021⁶. In this context, the Commission national considers that it is appropriate to take advantage of the test phase in order to observe whether the installation of these red light cameras raises questions in terms of data protection (as mentioned above: do pedestrians appear in the images? are the persons concerned

correctly informed of the presence of such radars, as developed in section 4 below
above ? have any of them been required to exercise their right of access (including
to obtain a copy of the image taken by the radar)? with what result? etc.). This return
experiences can be particularly beneficial and provide some answers to the
issues raised in this review.

v.

With regard to the exercise of the right of access to the data of the CSA system by the
persons concerned

With regard to the right of access to data from the CSA system, the CNPD notes that the
legislator did not take into account its position expressed in its opinion previously
mentioned⁷. Indeed, article 11 paragraph 1 of the amended law of 25 July 2015 provides: “[...]”
5 RTL, 5 minutes, “The country’s first red light radar is being installed”, article from 07/10/2020
available at the page, <https://5minutes.rtl.lu/actu/luxembourg/a/1591684.html>, last consulted on
09/12/2020.

⁶ Luxembourg government press release of 08/06/2020, “Commissioning into service of the
first radar-section in the context of the fight against road insecurity”, press release available on the page
https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2020/06-juin/08-bausch-radar.html,
last accessed on 09/12/2020.

⁷ Opinion of the Commission of the National Commission for Data Protection of 25 February 2015 (document
6714/05), p. 4.

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the
automated control and sanction system; 2° the amended law of 14 February 1955
concerning traffic regulations on all public roads

5/8

the right to consult the photo concerning the offending vehicle and the personal data

personnel relating to it processed within the framework of the operation of the CSA system". Section 11 paragraph 2 provides that: "This consultation is done at the Center and under the control of the Police grand-ducal". In this regard, the National Commission is once again wondering whether the obligation for the financially liable person or the person designated as the driver of the vehicle at the time of the offense to move to the Center located in Bertrange, does not constitute an unjustified impediment to that person's right of access?

However, this problem arises all the more following the entry into application of the law of 1 August 2018 on the protection of natural persons with regard to the processing of personal data of a personal character in criminal matters as well as in matters of national security, including Article 11 provides in its paragraphs (1) and (2) that:

"(1) The controller shall take reasonable steps to provide any information referred to in Article 12 and carry out any communication relating to the processing relating to Article 10, Articles 13 to 17 and Article 30 to the data subject in a concise manner, understandable and easily accessible, in clear and simple terms. The information is provided by any appropriate means, including electronically. In general, the controller provides the information in the same form as the request

(2) The controller facilitates the exercise of the rights granted to the data subject by section 10 and sections 13 to 17."

Article 13 of the aforementioned law provides that:

"Subject to Article 14, the data subject has the right to obtain from the data controller processing the confirmation that personal data concerning him are or are not not processed and, when they are, access to said data as well as the following information:

has)

b)

the purposes of the processing as well as its legal basis;

the categories of personal data concerned;

vs)

the recipients or categories of recipients to whom the personal data

personnel have been communicated, in particular recipients who are established in countries

third parties or international organisations;

where possible, the retention period of the personal data

d)

envisaged or, when this is not possible, the criteria used to determine this duration;

e)

the existence of the right to request from the controller the rectification or

erasure of personal data, or limitation of data processing to

personal character relating to the data subject;

the right to lodge a complaint with one of the two supervisory authorities

f)

authorities referred to in Articles 39 and 40 and the contact details of the said authority;

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the

automated control and sanction system; 2° the amended law of 14 February 1955

concerning traffic regulations on all public roads

6/8

the communication of personal data being processed, as well as

g)

any information available as to their source".

In this context, since the entry into force of the amended law of July 25, 2015, the

National Commission received numerous requests for information and complaints,

of citizens wondering about the need to have to travel to the Center in Bertrange in order to

view the photo of the offending vehicle, and thus exercise their right of access, which

effectively raises the question of the compatibility of Article 11 of this law with the aforementioned law of August 1, 2018.

In this regard, public petition no. 1216 "to obtain/send a copy of the photo taken during an automated traffic control (Radar)", even if it is true that this petition has not obtained the number of signatures required to be the subject of public debate.

Consequently, the National Commission reiterates its position expressed in the opinion on the project law establishing the automated control and sanction system and amending the law amended on February 14, 1955 concerning traffic regulations on all roads public. Therefore, it considers it necessary to amend Article 11 paragraph 2 of the amended law of July 25, 2015 with the aim of allowing "[...] the person financially liable or the person designated as the driver of the vehicle at the time of the offense to consult the photo concerning his vehicle, according to his choice, on site at the Center, or to receive communication of the photo via a prior written request addressed to the Centre".

VI.

As for the retention period of the photos

The National Commission wonders whether, on the occasion of the introduction of Bill 7652, it does not would not be useful to clarify the issue of the retention period of photos from speed cameras, which it had already raised in its opinion of February 25, 2015⁸?

The retention periods for recorded data are currently provided for in Article 4 of the Grand-Ducal regulation of 7 August 2015 authorizing the creation of a file and the processing of personal data within the framework of the automated control and sanction system⁹.

Furthermore, article 2 of this same Grand-Ducal regulation indicates that the file contains only the data "by violation observed and recorded". Should we understand a contrario that if there is no violation found, the photos are not saved and automatically destroyed?

8 Opinion of the Commission of the National Commission for Data Protection of 25 February 2015 (document 6714/05), p. 7.

9 Note that this Grand-Ducal regulation still refers to the repealed law of 2 August 2002, having been adopted before the legislative change introduced by the aforementioned law of August 1, 2018.

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the automated control and sanction system; 2° the amended law of 14 February 1955 concerning traffic regulations on all public roads

7/8

Otherwise, it would be essential to provide in the Grand-Ducal law or regulation what happens to the images from the radars, whereas in the eyes of the CNPD, these should be immediately destroyed in the event that no infringement is noted, in order to comply with the principle of the limited retention period of the data, provided for in Article 3 paragraph (1) letter e) of the aforementioned law of 1 August 2018.

Thus decided in Belvaux on December 30, 2020.

The National Data Protection Commission

Tine A. Larsen

President

Thierry Lallemand

Commissioner

Christopher Buschman

Commissioner

Marc Lemmer

Commissioner

Opinion of the National Commission for Data Protection

Relating to the bill amending 1° the amended law of 25 July 2015 creating the

automated control and sanction system; 2° the amended law of 14 February 1955

concerning traffic regulations on all public roads

8/8