

Additional opinion of the National Commission for the Protection of data relating to bill no. 7872 amending 1° the law amended on December 19, 2008, the purpose of which is to cooperate inter-administrative and judicial and strengthening the means of the Administration of direct contributions, the Administration of Registration and Domains and Customs Administration and excise and amending the amended law of 12 February 1979 regarding value added tax; general tax law ("Abgabenordnung"); the amended law of 17 April 1964 on reorganization of the direct contributions administration; the law amended on March 20, 1970 reorganizing the Administration registration and domains; the amended law of 27 November 1933 concerning the collection of direct contributions and social insurance contributions; 2° the amended law of 27 December 1817 on the collection of inheritance tax; 3° the amended law of August 7, 1920 increasing registration fees, stamp, estate, etc.

Deliberation n°16/AV8/2022 of May 13, 2022.

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 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 4, 2022, the National Commission notified draft law no. 7872 on modification of the amended law of 19 December 2008 having as its object the cooperation inter-administrative and judicial and the strengthening of the means of the Administration of direct contributions, the Registration and Domains Administration and the the Customs and Excise Administration and amending certain other laws (hereafter after the “bill”)¹).

On May 3, 2022, the Minister of Finance invited the CNPD to decide regarding two parliamentary amendments to the bill which were approved by the 1st Deliberation n°2/AV2/2022 of March 4, 2022.

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relating to bill no. 7872 amending 1° the amended law of 19 December 2008 aimed at inter-administrative and judicial cooperation and the strengthening of means of the Administration of direct contributions, the Administration of the registration and Domains and the Customs and Excise Administration and amending certain other laws

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Finance and Budget Committee at its meeting of May 3, 2022 (hereafter the “parliamentary amendments”).

1. Ad amendment 1 concerning the new article 15bis

In its opinion of March 4, 2022 relating to the new article 15bis, as introduced by the draft law, the CNPD had wondered whether access to the “register of companies of the minister having the authorizations of establishment in its attributions”, with a view to verifying the exact

collection of VAT, referred to the business register, as defined in Article 32, paragraph

(1) the amended law of September 2, 2011 regulating access to the professions of craftsman, trader, industrialist as well as certain liberal professions.

The authors of the parliamentary amendments are to be commended for making it clear that it was indeed the business register referred to in Article 32, paragraph (1), of the law amended on September 2, 2011 mentioned above.

Nevertheless, although the register for which access is granted has been specified, it is necessary to regret that the terms of access to such a register are not specified. This all the more whereas article 15bis provides for direct access by the Administration to the registration, domains and VAT to such a register.

Thus, there is reason to wonder whether this access relates to all the data that would be processed in this register, namely the data listed in Article 1, paragraph (2), of the Grand-Ducal Regulation of 28 April 2015 establishing data processing at personal character necessary for the execution of article 32 of the law of September 2, 2011 regulating access to the professions of craftsman, tradesman, industry as well as to certain liberal professions².

In the absence of such details, the National Commission takes the liberty of reiterating its observations made in its aforementioned opinion in that it recalls “that under the principle data minimization, only personal data that is necessary the achievement of the purposes pursued by the controller, namely the verification of the correct collection of VAT, should be consulted”.

² Article 1(2) provides that “[t]he database of persons subject to a business permit or to a prior declaration includes, in accordance with the requirements of Article 32, the following information:

a) the surnames, first names, contact details and, where applicable, the company name of the applicants for and beneficiaries of an authorization establishment;

- b) the surnames, first names and contact details of the technical manager of the legal person requesting or receiving an authorization establishment;
- c) the dates of issue, extension, revocation or cancellation of business permits;
- d) the activities authorized under a business permit;
- e). any other information provided by the citizen or by other administrations, which is required by the law of September 2 2011 for the processing of business permit files”.

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2. Ad amendment 2 concerning the new article 15ter

The authors of the parliamentary amendments are to be commended for clarifying the purposes of the processing envisaged in the new article 15ter, as suggested by the Council of State in its opinion of February 1, 2022 on the bill³ and by the CNPD in its opinion aforementioned.

This amendment further intends to specify the categories of data which would be covered by said provisions following the observations made by the National Commission in its aforementioned opinion.

Thus, a paragraph (3) is introduced in the new article 15ter which provides that “[f]or the purposes of this provision, only the information appearing in the minutes or reports drawn up by the public authorities referred to in paragraphs

1st and 2nd, in particular surname, first names, address, personnel number, date of birth, activity economic and place of exercise of this activity”.

The CNPD therefore understands that the minutes and reports themselves, which would be drawn up by the Agency for the development of employment or by the Administration of registration, domains and VAT would not be transmitted.

For the rest, the National Commission would like to reiterate its observations made in its opinion of March 4, 2022 and more specifically those relating to the provisions of Article 15quater⁴ as well as all of its developments relating to the right to information⁵ and security treatment⁶.

Thus decided in Belvaux on May 13, 2022.

The National Data Protection Commission

Tine A. Larsen

President

Commissioner

Thierry Lallemand

Alain Hermann

Commissioner

³ Parliamentary document n°7872/04.

⁴ Page 9, Point 5., C. entitled “On article 14quater”, Deliberation n°2/AV2/2022 of March 4, 2022.

⁵ Page 11, point 6. entitled “On the right to information”, Deliberation n°2/AV2/2022 of March 4, 2022.

⁶ Page 11, point 7. entitled “On the security of the processing”, Deliberation n°2/AV2/2022 of March 4, 2022.

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