

Opinion of the National Commission for Data Protection relating to the

bill n°7795 amending the amended law of 17 July

2020 on measures to combat the Covid-19 pandemic.

Deliberation n°14/AV11/2021 of March 29, 2021

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 March 25, 2021, the Minister of Health seized the National Commission

a request for an opinion on bill no. 7795 amending the amended law of 17

July 2020 on the measures to combat the Covid-19 pandemic (hereinafter the "draft law

No. 7795").

It emerges from the explanatory memorandum that this bill aims in particular to allow the

Horeca sector from April 7, 2021 to open its terraces under very strict conditions

such as, among other things, a "new important mandatory formality for contact tracing

in the event of epidemiological contagion, namely the obligation for the establishments concerned

to keep a register of their clients. »

The CNPD observes that article 2 of bill no. 7795 provides for modifying the content

article 2 of the amended law of 17 July 2020 on measures to combat

Covid-19 pandemic (hereinafter: "the amended law of July 17, 2020"), so that its

subsection (4) now provides the following:

"The establishments referred to in paragraph 1, as well as the restaurants and bars of accommodation establishments must keep a register of their customers who contains the following data:

1° the first name(s) and surname of the declaring client;

2° the residence address of the declaring client;

3° a telephone number of the declaring client, and if applicable, an e-mail address.

These data must be collected and recorded by the establishments upon arrival of the customers and kept for a period of three weeks from collection, in order to facilitate any subsequent contact tracing in the event of epidemiological contagion. Access establishments referred to in paragraph 1 and restaurants and bars in establishments accommodation is subject to the communication by the client of the data referred to in paragraph 1st.

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These data are communicated, in accordance with Article 5, paragraph 2, last subparagraph, to the Director of Health or his delegate in the event of a high-risk exposure. They must be deleted after three weeks by the establishments and cannot under any circumstances be used for purposes other than those provided for in the preceding paragraph. »

Under the new paragraph added by the authors of bill n°7795 to article 5 paragraph (2) of the amended law of July 17, 2020, managers of catering establishments and drinking establishments and accommodation establishments that have a restaurant or

of a bar (hereafter: “the establishments”) must transmit “upon request, to the director of Health or its delegate the data provided for in Article 2, paragraph 4, of the persons who have suffered a high-risk exposure due to one of the situations referred to in Article 1, point 5°. »

The commentary of the articles does not give additional details about the news aforementioned provisions.

The National Commission would like to stress on a preliminary basis that the collection and recording the aforementioned data in the register that institutions must keep (hereafter: the register”), whether a register in paper or electronic form, constitutes processing of personal data subject to the rules provided for by the GDPR.

1. As to the purpose limitation principle

Pursuant to Article 5 paragraph (1) letter b) of the GDPR, the purposes of the processing of data must be determined, explicit and legitimate. It appears from the new articles 2 paragraph (4) and 5 paragraph (2) last paragraph of the amended law of July 17, 2020 that the collection by establishments of personal data of customers and the subsequent registration in their registry serves to facilitate any contact tracing later by the Department of Health of persons who have undergone high-risk exposure due to one of the situations referred to in Article 1, point 5° of the said law, such as for example having had contact, without wearing a mask, face-to-face for more than fifteen minutes and at less than two meters with an infected person.

The CNPD does not have the necessary scientific and epidemiological skills to assess the added value of keeping such a register in terms of contact tracing put implemented by the Department of Health. However, to the extent that the conditions the opening hours of the terraces are restrictive¹ and taking into account that people infected are in any case obliged under Article 5 paragraph (1) of the amended law of July 17, 2020 to inform the Department of Health about the identity of people with

which they have had in the last forty-eight hours contacts likely to generate a high risk of infection, she wonders in which specific case the Directorate of Health would ask an establishment to send it personal data listed in its register.

The National Commission congratulates the authors of Bill No. 7795 under consideration for having planned in the body of the text² that the data collected by the establishments cannot in no case be used for purposes other than communication, in accordance with article 5, paragraph 2, last paragraph of the amended law of July 17, 2020, to the Department of Health in high-risk exposure. Any other use, such as for the purposes of

¹ See the new article 2 paragraph (1) of the amended law of July 17, 2020, which provides for example that each table can only accommodate two people (except when the people are part of the same household or cohabit) and that the wearing of a mask is compulsory for the customer when he is not seated at the table.

² In the new article 2 paragraph (4) last paragraph of the amended law of 17 July 2020.

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marketing or prospecting, will therefore be strictly prohibited and the data collected in the context of the pandemic cannot under any circumstances be added to the database customers, if any, already existing in the establishment, nor be provided to other companies.

2. Regarding the principle of data minimization

According to the principle of data minimization (article 5 paragraph (1) letter c) of the GDPR), the personal data collected must be limited to what is necessary for the with regard to the purposes for which they are processed.

In this regard, the CNPD wonders on the one hand whether all the personal data that the establishments are obliged to collect, that is to say the first name, last name, address of residence, a telephone number, and if applicable, an e-mail address of the declaring client, are really necessary for the purpose of contact tracing. Does the collection of surname and first name, as well as a single means of contact (telephone or e-mail address) would not sufficient in this context?

On the other hand, if the purpose of keeping the register and of a possible transmission of the data of a personal nature included therein by the establishments to the Department of Health, is to identify customers, or even staff, who were in direct contact with a person infected, for lack of precision in the comments on the articles, the CNPD is asking itself the question if the indication of the day, the time of arrival of the customer and possibly the table number would be necessary with regard to the purpose of the contact tracing. In addition, the date indicated on which the data was collected is essential in order to be able to determine the date of deletion of data after three weeks by the institution, in accordance with the new article 2 paragraph (4) paragraph 2 of the amended law of 17 July 2020.

The CNPD also wonders whether the obligation to communicate the data referred to in the first paragraph of the new paragraph (2) of article 2 of the amended law of July 17, 2020 applies to each person seated on the same table or only to one person per table.

Finally, the National Commission would like to insist that when collecting data, the establishments cannot carry out an identity check on the person, for example by asking to produce an identity document. On the other hand, she believes that a kind of "Plausibilitätsprüfung"³ would be appropriate, with the aim of checking only whether the data indicated are complete, plausible and not imaginary at first sight (for example if a customer would indicate as an email address mickeymouse@...).

3. As to the principle of limitation of data retention

With regard to the retention period of personal data

in accordance with Article 5 paragraph (1) letter e) of the GDPR, said duration must not exceed that which is necessary with regard to the purposes for which the data are processed.

Paragraph 2 of the new article 2 paragraph (4) of the amended law of July 17, 2020 provides in this context that the data collected and recorded by the establishments upon arrival of the customers must be kept for a period of three weeks from their collection.

3 See “Achtzehnte Corona-Bekämpfungsverordnung Rheinland-Pfalz (18. CoBeLVO) vom 20. März 2021”, paragraph (1), paragraph 8, first sentence.

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The CNPD notes, however, that infected persons are only obliged under Article 5 paragraph (1) of the amended law of July 17, 2020 to inform the Directorate of health on the identity of people with whom they have had contact likely to generate a high risk of infection “in the period which cannot exceed forty-eight hours respectively before the onset of symptoms or before the positive result of a diagnostic test for infection with the SARS-CoV-2 virus. »

As mentioned above, if the purpose of keeping the register and of any transmission personal data contained therein to the Department of Health, is to identify the individuals who were in contact with an infected person, the CNPD wonders why establishments are required to keep their records for three weeks, while contact tracing implemented by the Health Department is limited to two days preceding the onset of symptoms or a positive result of a diagnostic test for the infection to the SARS-CoV-2 virus. In the absence of details in the comments on the articles, the CNPD

cannot assess whether the three-week retention period is proportionate by

in relation to the purpose pursued.

Furthermore, the CNPD notes that the storage period appears both in paragraph 2, as well as

than in paragraph 3 of the new article 2 paragraph (4) paragraph 2 of the amended law of July 17, 2020.

Thus, she suggests striking it out in one of the two places.

4. Regarding the right to information of the persons concerned

In accordance with article 13 of the GDPR, a whole series of information must be provided to the

data subject at the time the personal data is collected from

from her.

This information must therefore be provided to customers when the establishments

collect their data, and this in an easily accessible format (such as for example

an information statement integrated into the paper/electronic form to be completed by the

client or a billboard visible at the entrance of the establishment).

This information notice must also be drafted in precise and simple terms.⁴

Subject to its comments mentioned above, the CNPD is of the opinion that this reference

should at least include the following:

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the identity and contact details of the establishment;

the purpose of the data collection (to facilitate any subsequent contact tracing by case of epidemiological contagion by the Department of Health);

the legal basis of the processing (the amended law of 17 July 2020 on the measures of fight against the Covid-19 pandemic);

the data retention period (three weeks);

the rights available to customers (in particular the right of access and rectification, as well as as the right to lodge a complaint with the CNPD);

the possible recipients (upon request to the Health Department concerning the people who have had a high-risk exposure).

4 As required by GDPR Article 12(1).

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5. Regarding security measures

In accordance with Article 32 paragraph (1) of the GDPR, the controller must put implement the appropriate technical and organizational measures to guarantee a level appropriate to the risk to the rights and freedoms of data subjects.

More concretely, these measures must guarantee that the data will only be accessible only to authorized persons (confidentiality), that they will be available in the event of a request by the Health Department (availability) and that they will not have been modified after their collection (integrity).

If a register is kept in paper format, it would be recommended to make available individual forms that customers can complete and submit directly to the establishment. On the other hand, if the establishment wishes to work with a single form containing all the data of his various customers, he must in principle fill it in himself. same (on the verbal indications of the customers). The completed forms (constituting the register) should be kept in a secure location (e.g. a cupboard or room locked) and in order to guarantee the confidentiality of the data collected, the establishment must prevent customers from being able, where appropriate, to have access to the contact details of other customers present at the same time.

If a register is kept in electronic format, the CNPD recommends securing access to the information system, in particular with a "robust" password and not to store the data collected on non-secure materials (such as keys USB without passwords).

Thus decided in Belvaux on March 29, 2021.

The National Data Protection Commission

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