

Opinion of the National Commission for Data Protection relating to the

Bill no. 7787 on the implementation of Regulation (EU) 2017/821

of the European Parliament and of the Council of 17 May 2017 laying down obligations

related to supply chain due diligence

for Union importers importing tin, tantalum and

tungsten, their ores and gold from conflict zones or high

risk.

Deliberation n°19/AV15/2021 of May 14, 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 18, 2021, the Minister of Foreign and European Affairs entered

the National Commission for a request for an opinion on draft law no. 7787 relating to the implementation

implementation of Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017

setting out supply chain due diligence obligations

for Union importers importing tin, tantalum and tungsten, their

Minerals and Gold from Conflict-Affected and High-Risk Areas (hereafter the “Bill”).

It appears from the explanatory memorandum that the objective of the bill is to take at national level

the measures necessary for the implementation of the aforementioned Regulation (EU) 2017/821, which aims to stem the trade in tin, tantalum and tungsten, their ores and gold (hereafter “3TG”) from conflict-affected or high-risk areas by imposing on European Union importers a number of obligations. More concretely, the companies falling under the scope of Regulation (EU) 2017/821 are therefore encouraged to do what is necessary to ensure that 3TG imported into Luxembourg does not come from conflict areas.

This notice will be limited to matters relating to the data protection aspects of a personal nature raised by sections 5 to 8 of the bill.

However, it is not clear from these articles what data processing would be carried out, implemented by the Minister in charge of Foreign Affairs (hereinafter “the authority”) and by the Customs and Excise Administration, or what would be the categories of personal data which would, where applicable, be collected by the competent authority and by the Customs and Excise Administration.

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Opinion of the National Commission for Data Protection on the draft

Bill 7787 relating to the implementation of Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down obligations relating to the supply chain due diligence for Union importers who import tin, tantalum and tungsten, their minerals and gold from conflict-affected or high-risk areas.

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Thus, article 5 of the bill lists the “information” that could be provided to the competent authority and the Customs and Excise Administration. However, it is difficult for the National Commission to know whether personal data would be actually contained in this information. Remember that Article 4 number (1) of the

GDPR defines the notion of personal data as “(...) any information relating to an identified or identifiable natural person (hereinafter referred to as "person concerned"); is deemed to be an "identifiable natural person" a natural person which can be identified, directly or indirectly, in particular by reference to a identifier, such as name, identification number, location data, identifier online, or to one or more specific elements specific to its physical identity, physiological, genetic, psychic, economic, cultural or social”. In this context, it understands that "the names of the persons in charge of the supervision of the internal process according to Article 4, letter c), of Regulation (EU) 2017/281", referred to in Article 5, paragraph (2), number 2 of the bill could actually constitute personal data personal within the meaning of the GDPR.

Articles 6 and 7 of the bill relate to the exchange of information, between the Customs and Excise Administration and the competent authority (Article 6), and with the European Commission and the competent authorities of the other Member States (Article 7), without it appearing precisely from these articles whether or not this information would include personal data.

Finally, article 8 of the draft law is limited to indicating that the competent authority and the Administration Customs and Excise have the status of "joint data controllers without, however, specifying the related data processing. Note in this regard that the article 26 GDPR provides that joint data controllers “define their respective obligations in a transparent manner in order to ensure compliance with requirements of the [GDPR], in particular with regard to the exercise of personal rights concerned, and their respective obligations with regard to the communication of the information referred to in Articles 13 and 14, by agreement between them, unless and to the extent that their respective obligations are defined by Union law or by the law of the Member State to which the controllers are subject”. The National Commission allows itself by

elsewhere to point out a small clerical error: the term “du” should be added between “section 26” and “regulation”.

In view of the above developments, the National Commission recalls that the definition of joint controllers in this Article 8 would only be relevant provided that personal data is actually processed.

Thus decided in Belvaux on May 14, 2021.

The National Data Protection Commission

Tine A. Larsen

President

Thierry Lallemand

Commissioner Commissioner

Marc Lemmer

Commissioner

Christopher Buschman

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Bill 7787 relating to the implementation of Regulation (EU) 2017/821 of the

European Parliament and of the Council of 17 May 2017 laying down obligations relating to the supply chain due diligence for

Union importers who import tin, tantalum and tungsten, their minerals and gold from conflict-affected or high-risk areas.