

Opinion of the National Commission for Data Protection relating to

to the draft law on the recognition of qualifications

professionals in the field of inland navigation and bearing

modification of the amended law of 28 July 1973 creating a

navigation service

Deliberation n°29/2020 of December 17, 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 August 18, 2020, Minister of Mobility and Public Works

invited the National Commission to comment on the preliminary draft law on the

recognition of professional qualifications in the field of inland navigation and

amending the amended law of 28 July 1973 creating a service of the

navigation (hereinafter the "draft law").

The purpose of the draft law is in particular to transpose into national law the directive (EU)

2017/2397 of the European Parliament and of the Council of 12 December 2017 relating to the

recognition of professional qualifications in the field of inland navigation and

repealing Council Directives 91/672/EEC and 96/50/EC (hereinafter the "Directive"). The

directive aims to establish a common framework for the recognition of

minimum professional qualifications in the field of inland navigation.

The Directive is complemented by Commission Delegated Directive (EU) 2020/12 of 2 August 2019 regarding standards for skills and knowledge and corresponding skills, practical tests, approval of simulators and the ability Medical, by Commission Implementing Regulation (EU) 2020/182 of 14 January 2020 on the models relating to professional qualifications in the field of inland navigation and by Commission Delegated Regulation (EU) 2020/473 of 20 January 2020 as regards concerns the standards applicable to the databases relating to certificates of qualification of the Union, service books and logbooks.

Insofar as the draft bill under opinion transposes the directive into national law, the National Commission will limit its observations to the legal provisions concerning the concrete implementation of this directive in Luxembourg.

This Notice will address issues relating to the data protection aspects to be personal character raised by the articles of Chapters 3 and 4 of the draft law.

I.

On the processing of data carried out by the Minister

It appears from reading the draft bill that the minister having transport in his powers (hereinafter the "Minister") will collect and process data (i) when issuing, renewal and suspension, respectively the withdrawal of the certificates of qualification of the Union and specific authorisations¹, (ii) when accessing state files² and (iii) when the keeping of registers as referred to in Article 20 of the draft law.

Before examining in more detail the processing carried out on these occasions (points B to D), the National Commission makes a few general observations (point A below).

A. General Considerations

First of all, it should be noted that Article 19 entitled "Protection of personal data personnel" indicates in particular that the GDPR applies to the processing of personal data

personnel provided for by law³, specifies the purposes for which the data will be processed⁴, refers to the rights of the persons concerned⁵ and specifies that the Minister is responsible treatment⁶.

1. On the reference to the GDPR (Article 19 paragraphs (1) and (3) of the draft law)

Although paragraph (1) of Article 19 is a literal repetition of paragraph (1) of Article 24 of the directive, the CNPD wonders whether it is necessary, or even appropriate, to provide that the GDPR applies to the processing of personal data provided for by the preliminary draft of

1 Articles 8 et seq.

2 Article 19 paragraph (5)

3 Article 19 paragraph (1)

4 Article 19 paragraph (2)

5 Article 19 paragraph (3)

6 Article 19 paragraph (4)

law while the GDPR is, as a European regulation, mandatory in all its elements and directly applicable in Luxembourg.

In addition, paragraph (3) of Article 19 of the draft law reproduces the wording of Article 24 paragraph (4) of the Directive by providing that the persons whose data are processed are previously informed of this processing and that they have the right to access their data personal information and to have a copy of this data, on request, at any time.

The CNPD wonders whether this provision would not be superfluous in relation to the provisions which are already provided for by the GDPR with regard to the right to information of individuals concerned⁷ as well as the right of access of the persons concerned⁸.

For all intents and purposes, the National Commission takes the liberty of drawing the attention of the authors of the preliminary

draft law on the problem linked to the fact of partially or fully reproducing the text

of a European regulation in the internal legal order. Indeed, the Council of State recalls

regularly in its opinions the case law of the Court of Justice of the European Union according to which the Member States must not hinder the direct applicability of the regulations nor hide the European nature⁹.

2. On the purposes of the processing (Article 19 paragraph (2) of the draft law)

The authors of the draft law are to be congratulated on the fact that they have specified the purposes processing of personal data.

However, and although these provisions are a repetition of the wording of Article 24 paragraph (3) of the directive, the National Commission regrets that these are not more detailed, in particular according to the various treatments carried out by the Minister. This is worth everything particularly for access by the Minister to data from files held by other state administrations.

The CNPD will return to this point later.

3. On the designation of the controller

Finally, with regard to Article 19 paragraph (4), which is an addition to the Directive, the CNPD wonders the reason for this provision when it is already apparent

7 Articles 13 and 14 GDPR

8 Article 15 GDPR

9 See par. ex. the opinion of the Council of State of July 17, 2020 on draft law no. 7537 relating to certain methods of application and the

sanction of Regulation (EU) No 2019/1150 of the European Parliament and of the Council of 20 June 2019 promoting fairness and

transparency for companies using online intermediation services

sections 8, 9, 10, 11, 18, 19, 20, 21 and 23 of the draft bill that the Minister has the quality of controller for the processing of personal data arising from of said items.

In addition, the amended law of 2 August 2002 relating to the protection of individuals with regard to

processing of personal data to which reference is made has been repealed by the Law of August 1, 2018 on the organization of the National Commission for the Protection of data and the general data protection regime. It is therefore appropriate to refer to the legislation currently in force, namely Article 4, point 7) of the GDPR.

B. On the processing implemented in the context of the delivery, renewal, suspension and withdrawal of certificates of qualification of the Union and specific authorizations

Pursuant to Articles 8 and following of the draft law, the CNPD understands that the Minister collection of personal data in the context of the issue, renewal, the suspension and withdrawal of Union qualification certificates and authorizations specific.

1. On the condition of good repute (Article 8 paragraph (1) letter d) of the draft law)

Even if article 8 of the draft law constitutes a quasi-faithful reproduction of article 11 of the directive, it should be noted that an additional condition has been provided for in paragraph (1) letter d). Indeed, the draft bill indicates that applicants must provide the Minister with the "supporting documents" satisfactorily establishing that they meet the criteria of good repute.

Thus, the applicant, in order to establish his good repute, will have to provide a "criminal record extract recent or an equivalent document from the place of usual residence that does not provide a criminal conviction cast as res judicata pronouncing a prison sentence at least six months for theft, fraud, breach of trust, willful attack on the integrity of the person, sexual assault or offense against the laws on narcotics or conduct in drunk or under the influence of alcohol. However, this condition is not a required condition. by the directive.

The authors of the draft bill specify that the provision under notice was added "because of the equivalent approach in the Rhine regime and in order to maintain a high level of quality".

However, the Rhine regime applicable to Rhine navigation personnel, to which the

authors of the draft bill refer¹⁰, is a separate regime from the directive and is not

¹⁰ The regulations relating to navigation personnel on the Rhine adopted by the Central Commission for the Navigation of the Rhine

governed by it. Therefore, the CNPD wonders whether it is relevant to provide for this condition

supplement provided by an international organization. By adding such a condition,

wouldn't the draft law under opinion result in an incorrect transposition of the directive?

Furthermore, the National Commission is not in a position to assess, on the basis of the comments

of the authors of the aforementioned draft law, if the collection of such data respects the principle

minimization of data provided for in Article 5 paragraph (1) letter c) of the GDPR. The authors of

the draft bill should, indeed, explain the reasons why they believe that the

collection of such data is adequate, relevant and limited to what is necessary for the

with regard to the purposes for which they are processed.

Furthermore, the authors of the draft law should be aware that in

the Luxembourg legal order, the communication of information relating to decisions of

justice is done by issuing extracts from the criminal record in accordance with the amended law of 29

March 2013 relating to the organization of criminal records (hereinafter the "Law of March 29, 2013"). This

law creates several bulletins with a breakdown of the entries found on the

respective bulletins. The National Commission therefore recommends specifying in the preliminary

bill which bulletin the applicants will have to provide to the Minister¹¹. Furthermore, it would be useful

to specify what is meant by a "recent" extract from the criminal record, providing by

example that the extract must date from less than 1 month.

In the event that bulletin No. 2 is covered by Article 8 paragraph (1) letter d) of the draft law,

it should be noted that this bulletin is not issued to the data subject himself but, under

certain conditions, to the public authorities listed in article 8 of the law of March 29, 2013,

respectively in article 1 of the amended Grand-Ducal regulation of 23 July 2016 establishing the list

administrations and legal persons governed by public law who may request a bulletin N°2 or No. 3 of the criminal record with the written or electronic agreement of the person concerned (hereinafter the “Grand-ducal regulation of 23 July 2016”).

Thus, it follows from Article 1, point 1) of the Grand-Ducal Regulation of 23 July 2016 that the “Minister having Transport in his attributions” can obtain a copy of bulletin N°2 “for the instruction of any request for approval, license or permit addressed to a service of his competence”. The National Commission wonders whether the issue of certificates of Union qualifications could be covered by this provision.

With regard to bulletin N°3, this can be delivered to the data subject himself.

However, article 8-1 of the law of March 29, 2013 also provides for the possibility of issuing this bulletin to third parties, including in particular administrations and legal entities governed by public law

11 In view of the convictions listed in Article 8 paragraph (1) letter d) of the draft law, the CNPD considers that only Bulletins Nos. 2 and 3 are likely to be targeted by the authors of the draft bill.

listed by the Grand-Ducal regulation of 23 July 2016. It should be noted that the Minister having transport in its attributions is not among the public authorities including listed.

In view of the wording of Article 8 paragraph (1) letter d) of the draft law, the Commission national understands that it is the applicant's responsibility to provide the Minister with an extract from the court and that the draft law does not provide for the possibility for the Minister to be issued directly, under the conditions provided for by the law of 29 March 2013 and the Grand-Ducal regulation of July 23, 2016, the bulletin in question.

In view of the foregoing, it would be appropriate for clarifications as to the articulation of the provisions of the law of March 29, 2013 and the Grand-Ducal regulation of July 23, 2016, on the one hand, with Article 8 paragraph (1) letter d) of the draft law, on the other hand, be made by the authors of the draft law.

For all practical purposes, it should be noted that Bill No. 7691, tabled on November 2, 2020,

aims to specify the various procedures of "reputability control" currently

provided for in several pieces of legislation and which come under the jurisdiction of the Minister of Justice¹².

The provisions of the draft law relating to good repute would therefore not be

likely to be targeted by the aforementioned project. However, and if this should not be the case, do not

shouldn't bill no. 7691 be adapted in order to incorporate the provisions relating to

good repute that appear in the draft bill under opinion?

2. On medical fitness (Article 8 paragraph (1) letter c))

It should be recalled that the personal data which would be collected by the Minister in order to

to certify that a candidate has the required medical aptitudes are to be qualified as data

say "sensitive" within the meaning of Article 9 of the GDPR. These are indeed related to the health of

candidates. The processing of such data therefore requires specific protection and is

subject to stricter requirements.

12 Bill amending 1° the Code of Criminal Procedure 2° the New Code of Civil Procedure 3° the law of 7 July

1971 relating to repressive and administrative matters, institution of experts, translators and sworn interpreters and supplementing

the legal provisions relating to the swearing in of experts, translators and interpreters 4° of the amended law of 9 December 1976

relating to the organization of notaries 5° of the amended law of 20 April 1977 on games of chance and sports betting 6° of the amended law

of March 7, 1980 on judicial organization 7° of the amended law of November 7, 1996 on the organization of the courts of the order

administrative 8° of the law of 30 December 1981 on compensation in the event of ineffective preventive detention 9° of the amended law

of March 15, 1983 on arms and ammunition 10° of the amended law of March 2, 1984 relating to the compensation of certain victims of

bodily injury resulting from an offense and the repression of fraudulent insolvency 11° of the amended law of 4 December

1990 on the organization of the service of judicial officers 12° of the law of 31 January 1998 on the approval of adoption services

and definition of the obligations incumbent on them 13° of the law of 6 May 1999 relating to penal mediation and amending various provisions a) of the amended law of 7 March 1980 on judicial organization, b) of the social insurance code 14° of the law of 12 November 2002 relating to private guarding and surveillance activities 15° of the amended law of 7 June 2012 on the court officers

In order to establish that applicants meet the proficiency standards, applicants must issue a medical certificate based on the procedure referred to in Article 18 of the draft law.

Article 18 provides in particular that applicants “demonstrate their medical fitness by submitting to the Minister a valid medical certificate issued by a physician recognized by the Minister, on the basis of an examination confirming medical fitness”. The National Commission therefore understands that the Minister will only be sent a certificate confirming or not the applicant's medical fitness.

In addition, medical fitness standards specifying fitness requirements medical, in particular with regard to the tests that doctors must carry out are detailed in Annex III of the Directive as well as in Annex IV of Delegated Directive (EU) 2020/12 of 2 August 2019 supplementing the directive.

This article is a faithful transposition of article 23 of the directive and does not call for any comments from the CNPD.

3. On the verification of the authenticity and validity of documents

It appears from Articles 8 and 9 of the draft law that the Minister “verifies the authenticity and the validity of the documents provided by the applicants”. Article 23 paragraph (1) of the preliminary draft further provides that “[t]he Minister shall take appropriate measures to prevent fraud and other illegal practices regarding Union certificates, service books, booklets board, the medical certificates and the registers provided for by this law”.

The National Commission understands that such measures aim to prevent fraud and other

illegal practices. Nevertheless, in the absence of precision in the commentary of the articles, it wonders by what means the Minister intends to verify the authenticity and validity of the documents. Is the verification of the authenticity and validity of documents done by means of access to state files, such as those listed in subsection (5) of section 19 of the draft bill? If so, this should be clearly stated in the draft law.

If access to other state files than those listed in the aforementioned article should be provided then this should be clearly determined and framed by the draft law.

4. On Article 21 entitled "Follow-up"

Article 21 of the draft law provides for the creation of a monitoring system, particularly with regard to concerns the "issuing and updating of Union qualification certificates, booklets of service and logbooks". This article is a quasi-literal reworking of article 27 of the guideline.

The National Commission understands that this monitoring system is referred to in Article 11 paragraph (1) of the draft law which provides that "[w]here there are elements suggesting that the requirements relating to qualification certificates or specific authorizations are no longer satisfied, the Minister, when he issued the specific certificate or authorization, carries out all the necessary assessments and, if necessary, withdraws these certificates or this specific authorisation".

Subsection (2) of the aforementioned article further provides that "[t]he Minister may suspend temporarily a Union qualification certificate, as soon as he considers that this suspension is necessary for reasons of security or public order".

Thus, if it emerges from the provisions mentioned above that the Minister seems to be monitoring qualification certificates or specific authorisations, the terms of such monitoring are not however not specified in the draft law.

However, in such a context, the CNPD wonders what information would be forwarded to the Minister, if necessary. In addition, is the minister provided with personal data directly by the Grand Ducal Police or the Public Prosecutor

where a suspension of a Union certificate “is necessary for security or of public order”?

Therefore, it would be appropriate to specify the methods of such monitoring, and more particularly what categories of personal data would be communicated, where appropriate, to the Minister and by which administrations.

C. On access to the files referred to in Article 19 paragraph (5) of the preliminary draft of law

Article 19 paragraph (5) of the draft law provides that the Minister may access:

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national register of legal persons created by the law of March 30, 1979 organizing the digital identification of natural and legal persons (hereinafter the “register of legal persons”);

national register of natural persons created by the law of 19 June 2013 relating to the identification of natural persons (hereinafter the “RNPP”);

file operated by the Minister having the registration and domains in his attributions; and

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register of companies carrying out an activity referred to in the amended law of 2 September 2011 regulating access to the professions of craftsman, merchant, industrialist as well as only to certain liberal professions (hereinafter the “business register”).

It should be noted that the provisions of this paragraph do not transpose an article of the directive and were added by the authors of the draft law in order to “make operational the provisions of the law”. The CNPD is therefore pleased that the latter specify for each of the aforementioned files, what are the categories of data that may be transmitted to the Minister and for what purposes. However, as set out below, certain clarifications deserve to be provided.

In addition, it should be recalled that access to said files should not allow the Minister indirectly obtain personal data from other files state authorities for which he does not have access under the draft law under notice.

If so, such communication of data between ministries or administrations should be specified in the draft bill under notice.

1. On the purposes

As an introductory remark, the CNPD assumes that a clerical error crept in at the start of Article 19 paragraph (5) of the draft law in that it refers to paragraph (1) and not not in subsection (2) of section 19.

The authors of the draft bill specify that the files can be consulted for “the implementation, monitoring of the application and evaluation of this law” and the “exchange of information between the authorities having access to the database referred to in Article 20 and the European Commission ”. However, the purposes are not written with sufficient precision so that the CNPD is not able to assess whether the data transmitted is, in accordance with the principle of data minimization enshrined in Article 5 paragraph (1) letter c) of the GDPR, which are actually necessary for the fulfillment of said purposes.

The National Commission wonders whether this access would not instead allow the Minister to verify the authenticity of the supporting documents provided on the basis of articles 8 and following of draft bill 13. Is access to these files also necessary in order to prevent fraud? or other illegal practices as referred to in Article 23 of the draft law?

Clarifications on this subject should be provided.

13 See the developments above in point I. A. 3. of this opinion

2. On the categories of personal data

First of all, it should be noted that the Minister is provided with personal data

personal as well as data concerning legal persons. As such, it is appropriate to

note that recital 14 of the GDPR states that the GDPR “(...) does not cover the processing

personal data relating to legal persons, and in particular

companies with legal personality, including name, legal form and

contact details of the legal person”. However, information relating to persons

legal entities may, where appropriate, concern natural persons (for example: if they

include the name of the manager of the company) and must therefore be considered as data

of a personal nature.

Thereby,

communicated to the Minister.

the GDPR will only apply to personal data that is

a) On access to the national register of legal persons:

Article 19, paragraph (5) letter a) provides that the Minister may access data from the

national register of legal entities created by the amended law of 30 March 1979 organizing

the digital identification of natural and legal persons in order to obtain the information

identification of river transport companies, including in particular the “identification number

national” and to the “address”

According to the understanding of the CNPD, the national register of legal persons does not contain

principle no personal data so that the GDPR does not apply.

Nevertheless, in order to avoid any confusion, it would be desirable that the authors of the bill

use the terms as they are used by the aforementioned law of March 30, 1979. If the Commission

make no mistake, the correct terminology is “identity number” and “headquarters

social ".

b) On access to the RNPP:

Pursuant to Article 19 paragraph (5) letter b), the Minister has access to the national register of natural persons "in order to obtain the identification information of the crew member of bridge (...)" such as surnames and first names, national identification number, nationality and country of residence.

It should be recalled that access to the RNPP by the Minister should also be made in accordance with the procedure provided for in article 10 of the amended law of 19 June 2013 relating to the identification of natural persons as well as Articles 5 to 7 of the Grand-Ducal Regulation of November 28, 2013 setting the terms of application of the aforementioned law.

c) Access to the file providing information on vessels registered in the Luxembourg

The draft law provides that the minister can access the data from the file used by the minister having the registration and domains in his attributions informing on the boats registered in Luxembourg. Specifically, the Minister can access "data necessary for the identification of the buildings, owner, holder, address, deadlines".

The National Commission considers that the draft law should refer to the law on creation of the file in question. In the absence of this indication, it is not able to decide on access to said file.

d) On access to the business register:

The CNPD understands that this is the register referred to in Article 32 paragraph (1) of the amended law of September 2, 2011 regulating access to the professions of craftsman, merchant, industrialist as well as to certain liberal professions and that the Minister will only be granted access limited to said register. The National Commission is therefore pleased that the authors of the preliminary draft of law only provide for limited access to the register.

However, with regard to information relating to the financial capacity of the company

river transport, which categories of personal data, if any, would be forwarded to the Minister? Clarifications on this subject deserve to be provided by the authors. of the draft law. In addition, and in order to avoid any confusion, it would also be appropriate to specify what is covered by the term “addresses”. Is this the company's head office? river transport or the address of its legal representatives?

D. On the registers kept by the Minister

Article 20 of the draft law transposes Article 25 of the directive and aims in particular provide for the creation of registers to be kept by the Minister. Indeed, subsection (1) said article provides that the Minister maintains registers “for the certificates of qualification of the Union, service books and logbooks issued under its authority (...) and, where appropriate, for documents recognized under Article 7(2) which have been issued, renewed, suspended or withdrawn, which have been declared lost, stolen or destroyed, or which have expired (...)”.

The CNPD understands from reading the aforementioned paragraph that the Minister keeps a register for the Union qualification certificates, another register for service records and a third register for logbooks. The paragraph further lists the categories of data that would be collected by the Minister for each of the registers.

However, the National Commission wonders whether these registers will not constitute a single and even data processing relating to this register, while the authors of the draft law mention in their comments “keeping the national register” and refer in the body of the text several times in the “register referred to in Article 20, paragraph 1”¹⁴. Thus, it is recommended to clarify in the draft law whether it is a single register or, on the other hand, several separate data processing operations or registers maintained by the Minister.

1. On the categories of personal data

Article 20 paragraph (1) of the draft law lists the personal data contained in the registers kept by the Minister. From this point of view, this article, which is a faithful transposition of article 25 paragraph (1) of the directive, does not raise any comments

of the CNPD.

It should however be noted that in addition to the data listed in paragraph (1) of Article 20 aforementioned, the CNPD understands that the data from the files listed in paragraph (5) of article 19 will be kept in these registers. Indeed, Article 19 paragraph (6) provides that “The consultation and reception of data from these databases can be done in a way automatically in the register referred to in Article 20(1).

It should also be noted that the Minister will also be required to collect and process personal data as part of the procedure for issuing certificates of Union qualification and specific authorizations referred to in Articles 8 and 9. The CNPD understands that only the data appearing on the Union qualification certificates will be contained in the registers and not the supporting documents provided by applicants for certificates in support of their application.

In any case, if the registers kept by the Minister were to contain other data than those listed in Article 20 paragraph (1), then this should be clearly reflected in the draft bill.

2. On the security measures governing access to the registers

In accordance with Article 5 paragraph (1) letter f) of the GDPR, personal data must be “processed in such a way as to guarantee appropriate security of the personal data personal data, including protection against unauthorized or unlawful processing and against the loss, destruction or techniques or appropriate organizational (integrity and confidentiality)”. accidental damage, using measurements

14 See in particular Articles 19, paragraph (6) and 20, paragraph (3) of the draft law.

In addition, Article 32 of the GDPR provides that “the controller and the processor

implement the appropriate technical and organizational measures to guarantee a level of security appropriate to the risk". Such measures must be implemented in order to in particular to avoid unauthorized access to data or data leaks.

Thus, the National Commission is pleased that the authors of the preliminary draft law have specified the terms of access to the registers kept by the Minister, even though they have provided for traceability access to said registers.

Furthermore, the last sentence of Article 19 paragraph (4) of the draft law provides that "[o]nly are authorized to have access to the data the people who need it in exercise of their function and their professional tasks". According to the understanding of CNPD, this provision applies to all processing provided for by the draft law, therefore also access to the registers referred to in Article 20 paragraph (1).

3. On the retention period of personal data

According to Article 5 paragraph (1) letter e) of the GDPR, personal data may only be not be kept longer than necessary for the fulfillment of the purposes for which they are collected and processed.

Paragraph 1 of paragraph (3) of Article 20 of the draft law faithfully transposes Article 25 paragraph (3) of the directive. Paragraph 2 of paragraph (3) of Article 20 of the bill is an addition to the directive. This paragraph clarifies the date of deletion of certain categories of data.

Thus, it is provided that "the data relating to a boat are deleted from the register referred to in paragraph 1 when this building is dismantled" and that "the data relating to a service or a certificate of qualification shall be deleted from the register referred to in paragraph 1 when the person concerned is deceased".

The CNPD wonders whether such a retention period for personal data, in particular until the death of the person concerned, is proportionate and necessary. In effect, is it necessary to keep the data concerning him until the death of a person and

appearing on the qualification certificate if it no longer has a qualification certificate or no longer meets the conditions required by the draft law?

In the absence of details from the authors of the draft bill as to the criteria that would justify such a duration, the National Commission is not in a position to assess whether, in this case, the principle of limited data retention period is respected regarding the collection of these data.

In addition, it should be clarified that a retention period should also be determined for each category of personal data that would be collected by the Minister in the framework of the draft law under review. For example, the data collected during the procedure for issuing Union qualification certificates will have to be abolished or anonymized as soon as their conservation is no longer necessary for the achievement of the purposes for which they are collected and processed.

Therefore, even if the retention period does not necessarily have to be defined in the preliminary draft of law, it should at least specify the criteria that would be taken into account in order to determine what is the proportionate retention period for each category of personal data staff that would be collected by the minister.

On the exchange of personal data

II.

Article 23 paragraph (2) provides in particular that “[t]he Minister exchanges information relevant with the competent authorities of the other Member States concerning the certification persons involved in the operation of a building, including information relating to suspension and withdrawal of certificates”.

It should be remembered that personal data can, in principle, circulate freely from the Grand Duchy of Luxembourg within the European Economic Area, as long as the general principles of the GDPR are respected. In particular, care must be taken to respect the principle of purpose limitation, under which data must not be processed

for purposes “incompatible” with the original purposes.

In addition and insofar as the terms of these data exchanges are provided for by the Commission Delegated Regulation (EU) 2020/473 of 20 January 2020 as regards the standards applicable to databases relating to Union qualification certificates, service books and logbooks, this article does not raise any comments from the CNPD.

Thus decided in Belvaux on December 17, 2020.

The National Data Protection Commission

Tine A. Larsen

President

Thierry Lallemand

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Christopher Buschman

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Marc Lemmer

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