Opinion of the National Commission for Data Protection

relating to bill no. 7741 amending

1° the amended law of 18 July 2018 on the Grand Ducal Police;

2° the amended law of 5 July 2016 reorganizing the

State Intelligence Service;

3° of the Penal Code.

Deliberation n°12/AV10/2021 of March 16, 2021

Introduction

1. In accordance with article 8 of the law of 1 August 2018 on the organization of the Commission

national data protection system and the general data protection regime.

data (hereinafter the "Law of 1 August 2018 on the organization of the CNPD"),

transposing Article 46, paragraph 1, letter (e) of Directive (EU) No 2016/680 of 27

April 2016 on the protection of individuals with regard to the processing of

personal data by the competent authorities for prevention purposes

criminal offenses, investigations and prosecutions in this area or the execution of

criminal penalties, and on the free movement of such data, and repealing the framework decision

2008/977/JHA of the Council (hereinafter referred to as the “Directive”), within the framework of the law of

August 1, 2018 on the protection of natural persons with regard to the processing

personal data in criminal matters as well as in security matters

national (hereinafter the “Law of 1 August 2018 relating to the processing of data in

criminal matters”, the National Commission for Data Protection (hereinafter

referred to as the “National Commission” or the “CNPD”) “advises the Chamber of

deputies, the Government and other institutions and bodies regarding the measures

legislative and administrative measures relating to the protection of the rights and freedoms of individuals

with regard to the processing of personal data”.

2. By letter dated December 18, 2020, Minister of Homeland Security

invited the National Commission to advise on draft law no. 7741 amending 1°
the amended law of 18 July 2018 on the Grand Ducal Police; 2° of the amended law of 5
July 2016 reorganizing the State Intelligence Service; and 3° of the Code
penal. As of December 30, 2020, the bill was tabled in the House of
Deputies.

Opinion of the National Commission for Data Protection
relating to Bill 7741.

3. In 2019, the CNPD was asked by the Minister of Internal Security to
issue an opinion on the central file of the Grand Ducal Police with regard to the
data protection legislation1.

4. According to the explanatory memorandum, the bill “aims to regulate the processing of
personal data entered in the files of the Grand Ducal Police, and
more precisely in the central file. It aims to address criticisms of
protection of data that have been raised in relation to Police files, and more
particularly compared to the central file in summer 2019”.

1. Access to files from other administrations

5. The CNPD notes with interest that the bill includes an update of the provision
existing concerning access to the processing of personal data implemented
implemented by other state administrations.

6. Article 1 of the bill proposes to replace article 43 of the amended law of 18 July
2018 on the Grand Ducal Police by the new article 43 taking up a large part of
the existing provision, while updating it on certain points. Article 43 new
regulates direct access, via a computer system, by members of the Grand
ducale to a number of state databases. Compared to Article 43 in
force, the authors of the bill propose to extend direct access to the treatment of

following data:

-

-

-

-

-

the land register;

the register of beneficial owners;

the public register of pleasure craft flying the Luxembourg flag;

the central electronic data retrieval system concerning

payment accounts and bank accounts identified by an IBAN number

and safe deposit boxes held by credit institutions in Luxembourg; and

the register of trusts and trusts.

1 Opinion of the National Commission for Data Protection relating to the central police file

Grand Duchy with regard to data protection legislation, Deliberation No. 45/2019 of 13

September 2019.

7. The CNPD points out that the explanatory memorandum and commentary to the articles remain silent

on the necessity and proportionality of “direct access, via a computer system”,

to such data processing. The CNPD also notes that, in terms of protection

data, there is a significant difference between "direct access, by a system

computing" and the notion of "receive without delay", via deferred access. Both

transmission of data from one data controller to another can be done by

through a computer system. This system can operate by direct access, without

intervention of the data controller, or “on request”, with the intervention of the
responsible for the processing of data to which the computer system allows access.
However, when setting up direct access, the data controller managing the
registry in question no longer intervenes a priori on the accesses carried out by the Grand-Police
ducal and, therefore, he somehow loses the "mastery" over the data for
which he is responsible. Especially for newly integrated treatments
in the list for which the corresponding legislation does not explicitly provide for a
such access, the absence of justification in the explanatory memorandum or in the comments of
articles makes it impossible to assess whether this access is necessary and proportional and whether this
access must be “direct, through a computer system”. The National Commission cannot
therefore not assess whether such access is necessary in a democratic society, under
subject to the principle of proportionality and necessity.

8. The CNPD regrets that the draft Grand-Ducal regulation referred to in Article 43, paragraph
5, as provided for by article 1 of the bill, was not communicated at the same time
that the bill when this regulatory act is already provided for, in terms
identical, in the existing article 43, paragraph 3. In this regard, the CNPD recalls that, in
its opinion on draft law n° 7045 on the reform of the Grand-Ducal Police2 having
led to the said amended law of July 18, 2018, it had already estimated that it “would have been
judicious to attach at the same time a draft Grand-Ducal regulation” and that in
the absence of such a text, the CNPD “is unable to assess the need and the
proportionality of the data accessed”.

9. The databases referred to in Article 43 are created and maintained by other
administrations in application of specific laws and regulations. These

2 Opinion of the National Commission for Data Protection relating to draft law no. 7044 on
reform of the General Inspectorate of Police, of the draft Grand-Ducal regulation relating to the operation
of the General Inspectorate of Police and Bill No. 7045 reforming the Grand Ducal Police,

legislative and regulatory provisions continue to regulate the processing of

personal data and may provide for specific conditions concerning

access by members of the Grand Ducal Police.

10. Thus, it seems obvious that this provision in no way alters the provisions

existing rules governing this data processing, but confers the right to persons

authorized to access it within the limits of the specific access conditions provided for in

the provisions implementing said processing, in particular when said

provisions explicitly regulate access. The provision under consideration aims to ensure that

the Grand-Ducal Police can have direct access, via a computer system, to

this data processing within the limits of the purposes and methods of processing

carried out by the Grand Ducal Police.

11. For example, direct access to the “central electronic search system for

data concerning payment accounts and bank accounts identified by

an IBAN number and safe deposit boxes maintained by credit institutions in

Luxembourg” provided for in Article 43, paragraph 2), number 6°, must be read together with

the provisions of the law of March 25, 2020 establishing a central electronic system for

research of data concerning IBAN accounts and safe deposit boxes. This law

provides, by virtue of Article 1 read together with Article 8 of the said law that:

[…] can, in

“judicial police officers and judicial police officers assigned to the Service

judicial police, as well as the judicial police officers referred to in Article 10 of the

Code of Criminal Procedure and approved by the Director General of the Grand-

ducal

to the extent necessary in

the fulfillment of the obligations incumbent upon them in the fight against

money laundering and against the financing of terrorism, ask the CSSF, according to

the procedure adopted by the CSSF and according to the conditions of paragraph 3, of

receive without delay the data referred to in Article 2, paragraph 1".

12. Consequently, Article 43, paragraph 2, point 6°, allows authorized police officers

Grand Duchy to "ask the CSSF […] to receive without delay the data referred to

[…]".

13. With regard to access to the "register of trusts and trusts" referred to in Article 43,

paragraph 2, number 7°, article 25 of the law of July 10, 2020 establishing a Register of

trusts and trusts, read together with article 1 of this law provides, in paragraph 1,

that "the judicial police officers referred to in Article 10 of the Code of Criminal Procedure and

approved by the Director General of the Grand Ducal Police […] have access to information

referred to in Article 14 registered in the Register of Trusts and Trusts" and specifies in

paragraph 2 that "The implementing arrangements for granting access […]

are fixed by Grand-Ducal regulation". However, this Grand-Ducal regulation does not exist in

actual state. Be that as it may, the aforementioned law does not provide for direct access and the CNPD

wonders whether the terms to be defined in the Grand-Ducal regulation in question can

effectively provide for such direct access without going beyond Article 25 of the aforementioned law.

14. Regarding access to land registers, the Grand-Ducal Regulation of 10 August 2018

laying down the conditions and procedures for consulting and issuing the

cadastral, topographical, cartographic and geodetic documentation managed by

the administration of the cadastre and topography; and fixing the rate of taxes at

levy for the benefit of the State for office and field work carried out by

the Land Registry and Topography Administration provides in its article 9 that

the Administration of Cadastre and Topography (ACT) “grants access rights

relating to online consultation in the form of pre-established requests from a party or

all of the land registers […] to […] State administrations and services”. It

shows indirect access, granted by the ACT, which is not equivalent to direct access

as referred to in the provision under consideration.

15. Regarding access to the public register of pleasure craft flying the flag

Luxembourg created by the law of 23 September 1997 regulating the

boating and amending certain other legal provisions,

said law does not explicitly provide for the possibility of direct access, but seems to open up the

way to requests for consultation from State administrations.

16. Therefore, the CNPD recommends clarifying the wording of Article 43, adding that

access is made “according to the procedures defined in the provisions governing the

data processing” referred to in said provision. Otherwise, the provision under

consideration may indirectly modify the aforementioned laws even though access

directly by other authorities having access to the data processing concerned has not been

originally intended by the legislator.

17. The authors explain, in the commentary to the articles, that in their opinion, “the GDPR

no longer requires having a specific legal or regulatory basis for access to

data or for the transfer of such data to another administration”. However,

even if these considerations fall outside the strict framework of this bill, the CNPD

stresses that such direct access must, from the point of view of the administration in question, be

in principle provided for by a legal provision with particular regard to Article 6,

paragraphs 3 and 4, and recitals, 41, 45 and 50 of the GDPR3. In the absence of such

legal provision, the CNPD is of the opinion that public administrations cannot

grant direct access to data processing to the Grand Ducal Police. Such

access is to be distinguished from transmission on a case-by-case basis on the basis of the rules

procedures in place, in particular under provisions of the procedural code

criminal.

18. Thus, a distinction should be made between direct access by the Grand Ducal Police to data

held by other administrations of indirect access or manual transmission

of data by an administration to the Grand Ducal Police in the execution of

judicial police or administrative police missions or missions arising from a

special law. In this respect, the CNPD cannot subscribe to the proposed analysis of article

6, paragraph 1, letter e), of the GDPR by the authors in the comments of the articles.

1.1. The aims

19. New Article 43(1) provides that:

“In the exercise of their missions of judicial police and administrative police

or for administrative purposes, the members of the Police having the quality of officer

or judicial police officer or administrative police officer or agent

direct access, via a computer system, to the processing of personal data

following personnel: […]”

20. The new Article 43(2) also provides that direct access may be made

"in the exercise of their missions of judicial police and administrative police or

administrative purposes”. There is no difference in this respect between paragraph 1

and 2 of the provision under examination, if only concerning the list of persons

who can have access which will be the subject of further developments.

3 For the criteria that such a legal provision must meet, see in particular BESCH, Marc, “Treatment of personal data in the public sector”, Standards and legislation in public law Luxembourg, Luxembourg, Promoculture Larcier, 2019, p.470, n°619: “However, as noted by the Conseil of State, in compliance with Article 11, paragraph 3, of the Constitution, which establishes as a matter reserved for the law the exceptions to the state guarantee of the protection of privacy, the conditions under which data may be processed for a purpose other than that for which it was collected must be the subject of a law, at least as regards the essential elements of the matter. ".

21. However, the National Commission notes with regret that, in addition to the access that already exists “in exercise of their judicial police and administrative police missions”4, the authors propose that members of the Grand Ducal Police have access to the same databases “for administrative purposes”, i.e. an additional purpose to accesses on the grounds of administrative police, and not otherwise defined.

22. In the explanatory memorandum, the authors of the bill explain that “[t]he adaptation envisaged aims to adapt the list of files already accessible to the Police and to better supervise their access by the Police". However, the current proposal aims to extend the access rather than controlling them. In the commentary to the articles, the authors explain this extension of direct access for “administrative purposes” by the fact that:

“However, the Police is also in charge of legal missions which do not fall neither in one nor in the other category. This is for example the case with regard to lost property or the Aliens Police. Furthermore, some members of the Police need access to certain databases for purely administrative, for example, in the context of human resources”.

23. The CNPD first notes that access for “administrative purposes” seems broader

that “the performance of assignments for purposes other than those referred to in paragraph 1 and provided for by special laws”, referred to in Article 1, paragraph 2, letter a), of the law of 1 August 2018 relating to data processing in criminal matters and also aims processing that does not fall within the scope of the aforementioned law of 1 August 2018, but which falls within the scope of the GDPR. In particular, the CNPD is not convinced that data processing “within the framework of the resources human beings", obviously not falling within the scope of the missions covered by special laws, can justify direct access to all the databases covered by the provision under consideration. Therefore, the CNPD proposes to delete the mention of access directly for "administrative purposes" to data processing carried out by other administrations at each occurrence in article 43, paragraphs 1 to 4 new.

4 In its aforementioned opinion on bill no. 7045, the CNPD has already asked itself “whether it is justified that the databases to which the Grand-Ducal Police has access in the context of police missions administrative are identical to those to which it has access within the framework of police missions judiciary”.

24. If the legislator were to follow the reasoning of the authors of the bill, other administrations could claim access to the files covered by this provision for "administrative purposes", including the management of "human resources". He seems obvious that, as a general rule, such direct access is disproportionate in the pursuit of the said purposes and to be prohibited.

25. For the other missions of the Grand Ducal Police, provided for in special laws, it is should be analysed, by type of mission, which database should be give access. By way of illustration, using the examples proposed by the authors

in the commentary to the articles, the CNPD questions the need to access, “in

matter of found objects”, to the “file relating to the affiliations of employees,

self-employed and employers managed by the Joint Social Security Center on

basis of article 413 of the Social Security Code” or in the “land register”.

1.2. Access control

26. Article 43(7) provides that

27.

“Notwithstanding the access rights provided for in paragraphs (1) to (4), the data to be

personal character consulted must have a direct link with the reasons for

consultation. Only strictly necessary personal data,

respecting the principle of proportionality, may be consulted. »

It appears that the reference to "compliance with the principle of proportionality" is confusing

whereas, in the context of the passage under consideration, one should understand the

limitation of access to personal data to authorized persons only

having a legitimate interest in knowing them for the purposes of this processing operation (principle

defined in English as “need to know/need to do”). However, in a way

general, this principle is also known as the principle of minimization of

data, i.e. the personal data must be adequate,

relevant and limited to what is necessary in relation to the purposes for which they

are processed.

28. On the one hand, the terminology used in the said paragraph should be changed

to remove this confusion, and on the other hand, it is up to the data controller to

define accesses so that access to information can only be granted when

the user has the specific need to know it and/or to make modifications.

29. The CNPD notes with interest that the authors propose to split the list of these databases data in two groups, making it possible to define different accesses per group of data base.

30. The access of the first group, following the formulation of article 43, paragraphs 1, can be attributed to “members of the Police having the status of police officer or agent judiciary or administrative police officer or agent”. Access to the second group, according to the wording of Article 43, paragraph 2, can be attributed to “members of the Police having the status of judicial police officer or officer administrative police […] if they are part of a police entity whose missions justify this access or appear on a list approved by the Director General of the Police after consulting the Data Protection Officer of the Police”.

Article 43(4) further provides that

“Members of the Police with the status of judicial police officer or police officer administrative police appointed by name by the Director General of Police Grand Duchy, after consulting the Data Protection Officer of the Police, may have access to the files provided for in paragraphs (2)”.

The authors of the bill justify the insertion of paragraph 4 to "be able to attribute the same access to judicial police officers”. First, it follows implicitly that access to the first group is granted, without distinction of their attributions or tasks concrete, to all members of the Police referred to in paragraph 1. Thus, the authors of bill explain that "all officers and agents of the judicial police in operational functions need to be able to access for the performance of their ordinary tasks”. By combining paragraph 2 and paragraph 4, it does not appear clear distinction between granting access to the second group to officers and police officers, in particular when the access is not linked to the missions of the entity to

which the member of the Police is assigned. Thus, the CNPD wonders if it would not be appropriate to clarify paragraph 4 by specifying the conditions of allocation.

31. Article 43, paragraph 3 makes it possible to extend access to the first and second groups to “members of the civilian police force, named by the Minister […] on proposal of the Director General of the Grand Ducal Police […] according to their specific support powers of an officer or agent of the judicial police or of a administrative police officer or agent or for administrative purposes”. Subject to

of the comments below concerning the profiles and methods of access as well as its opposition to the reference to “administrative purposes”, the CNPD can accommodate the extension of access to members of the civil framework as proposed in this paragraph.

32. The CNPD regrets, however, that the provision under examination is silent on the criteria determining profiles and access procedures. As developed above,
In the opinion of the CNPD, access to the data processing referred to in Article 43 is subject compliance with specific laws and regulations. It would therefore be appropriate to include the access limitations provided for in the said provisions in the criteria for determining profiles and access procedures.

33. In the example given above concerning the central electronic system of research of data concerning payment accounts and bank accounts identified by an IBAN number and safe deposit boxes maintained by credit institutions in Luxembourg, only “judicial police officers and judicial police officers assigned to the Judicial Police Service, as well as the judicial police officers referred to in Article 10 of the Code of Criminal Procedure and approved by the Director General of Police

grand-ducal” are authorized to benefit from such direct access, subject to the considerations set out above relating to the terms of access provided for in the legislation relating to the various treatments.

34. Article 43, paragraphs 6 and 7 reproduce the text of Article 43 existing in the broad outlines. The provision does not provide details on what the direct link between the reasons for the consultation and the data consulted means, nor of how the character “strictly necessary” and proportional is checked.

35. The National Commission proposes that the profiles and methods of access be defined in based on article 43-1, paragraph 3.

36. The new Article 43, paragraph 8, is a provision inherited from the operation of the “article 17” authority established by the amended law of 2 August 2002 relating to the protection of persons with regard to the processing of personal data, repealed from. This provision requires that the CNPD "monitor and monitor compliance with the conditions of access” as defined in the new article 43. However, two observations are formulate in this regard. First, the law of August 1, 2018 on the organization of the CNPD provides that the National Commission “supervises the application of the provisions and implementing measures and ensures compliance” with the law of 1 August 2018 relating to

data processing in criminal matters. These general missions and powers include monitoring and controlling access to all data processing referred to in criminal matters, including those referred to in the provision under consideration. Next, the law of 1 August 2018 on data processing in criminal matters constitutes a paradigm shift in the accountability of those responsible for processing, in particular referred to in Article 3, paragraph 4, and Article 18 of the said law.

Thus, in application in particular of article 24 of the said law, it is up to the person responsible for processing to define the profiles and methods of access and to carry out checks regular logs for the purposes, in particular, of “self-monitoring [and] guaranteeing the integrity and security of personal data”. In this regard, the CNPD emphasizes the importance of proactively carrying out internal checks, in particular by link with the measures and procedures to be put in place to test, analyze and evaluate regularly the effectiveness of the technical and organizational measures to ensure the security of processing in accordance with Article 28 of said law. Thus, the CNPD wonders on the added value of paragraph 8 under examination, while this type of control and supervision is included in its general missions and falls primarily to the responsible for processing, and wonders whether it would not be appropriate to delete this arrangement.

2. The legal basis of the files of the Grand Ducal Police

37. The National Commission notes that the Grand Ducal Police is called upon to collect and structurally and systematically exploit a large amount of data to personal character. There is no doubt that this data processing is inherent to its repressive missions and are inevitable for a public authority responsible for the exercise of public power in criminal matters and in matters of national security.

38. However, the CNPD recalls that the data processing carried out by the Grand-Ducal Police in the exercise of its administrative police and judicial police missions constitute interference with the right to respect for private life and the right to protection of data. The same observation can be made, in principle, for data processing carried out in the exercise of missions arising from special laws. It is constant that any interference with fundamental freedoms must be provided for by a provision legal, accessible and predictable. In view of the potential impact on the lives of people concerned, it is justified that the provisions governing the processing of personal data

of the Policy are both detailed and binding. It is about strengthening the rule of law
and the functioning of our democratic society by providing better security
legal system and increased confidence in the functioning of law enforcement authorities.

39. Acts, reports and minutes drawn up by officers of the Grand Ducal Police
are part of the implementation of the Criminal Code, the Code of Criminal Procedure and the
provisions conferring missions on the Grand-Ducal Police resulting from special laws,
including the amended law of 18 July 2018 on the Grand Ducal Police, which constitute a
sufficient legal basis for the collection of personal data in the execution
of these essential missions of the Grand Ducal Police.

40. Nevertheless, the linking of personal data collected in procedures
distinct criminal cases or in application of different police missions and their
exploitation in transverse files generally constitutes processing of
separate data. Most of these subsequent data processing constitute
therefore an interference in the privacy of citizens additional to the interference provided for
the aforementioned provisions framing and defining the missions of the Police.

41. In the explanatory memorandum, the authors explain that the provisions on
particular files contained in this bill “are partially inspired by
Belgian legislation, and in particular the law of 5 August 1992 on the police function”. Gold,
the National Commission notes that Belgian legislation expressly provides for a certain
number of regularly used databases and make a clearer distinction
between administrative police and judicial police missions. The CNPD notes
also that Belgian legislation provides, at a minimum, for the adoption and publication of
“binding guidelines” and “general and binding guidelines” by the

the supervising ministers. The CNPD also notes that the creation of "files

individuals" within the meaning of Belgian law is subject to the existence of "circumstances

specific" and "special needs" limitedly defined.

42. The National Commission also points out that in France, since 2018, all of the

files "made available to the security forces" is framed each time by a

specific legal or regulatory provision5.

5 French National Assembly, Information Report filed pursuant to Rule 145 of the Rules,

by the Commission for Constitutional Laws, Legislation and General Administration of the

Republic, at the conclusion of the work of a fact-finding mission on the files made available to

security forces, n° 1335, 17 October 2018.

See: https://www.assemblee-nationale.fr/dyn/15/dossiers/alt/fichiers_disposition_forces_securite_rap-info

43. However, the CNPD also understands that the functioning of the Grand Police

ducale and its relationship with the judicial authorities are not in all respects identical

and are not always comparable to its French and Belgian counterparts in their

orders

penal provisions

Luxembourg authorities are sometimes inspired by one, sometimes by the other legal order.

respective legal systems, even if, of course,

44. Therefore, even if the Belgian or French legislation can inspire the legislator, it is necessary

to take into account the specificities of the legal framework and Luxembourg institutions.

Thus, it is essential that Luxembourg law meets the requirements specific to

the Luxembourg legal order and the European and international commitments of the

Grand Duchy of Luxembourg.

45. Thus, in order to comply with the requirements of Article 11, paragraph 3, read in the light of Article 32, paragraph 3, of the Constitution, Article 8, paragraph 2, of the Convention European Union of Human Rights, Article 52, paragraphs 1 and 2, of the Charter of fundamental rights of the European Union and the case law relating thereto, these data processing requires in principle a separate legislative framework. The CNPD recalls that an interference in the right to respect for private life or in the right to data protection can be justified provided that it:

- is provided for by a law accessible to the persons concerned and foreseeable as to its repercussions, i.e. formulated with sufficient precision;
- is necessary in a democratic society, subject to the principle of
-
-

proportionality;
respects the essential content of the right to data protection;
effectively meets objectives of general interest or the need for protection of the rights and freedoms of others.

46. However, there is a consensus that a large part of the existing files of the Grand-Police ducale, and above all the central file, do not benefit, to date, from provisions its own laws or regulations but is governed only by the single framework law, the law of 1 August 2018 in criminal matters and in matters of national security.

47. The central file is an essential working tool which makes it possible to bring together, in a single application, all processing of data relating to acts, reports and minutes established in the execution of the missions of judicial police, police administrative and "any other mission entrusted to the Police".

48. In this respect, the National Commission welcomes the fact that the bill provides for the provision of the file of the Grand Ducal Police with a specific legal basis. She notes that the draft law provides for provisions concerning the operation of the files used by the Grand-ducal police, through the new article 43-2, which defines the terms of the data processing underlying this file.

49. The National Commission also notes with interest that the new Article 43-1 creates a common framework applicable to “all Police files within the framework of missions with which it is invested", as the authors of the bill specify in the commentary on articles, unless specific legal provisions provide other rules. However, neither the explanatory memorandum nor the commentary on the articles contain a exhaustive list of existing files that may be affected by the new provisions.

The government has provided guidance on such processing in responses to parliamentary questions concerning the files implemented by the Police. By example, the response dated August 2, 2019 from the Minister having Homeland Security in his attributions to a parliamentary question mentions 53 data processing operations distinct, some of which are governed by a specific legislative provision6. the said response also refers to data processing based on international and European legal instruments. By way of illustration, among the processing of data potentially targeted by the provision under examination include the “VISUPOL”7 video surveillance processing, fingerprint management, the “PIC application”8 and the “amazing file”9. For the sake of accessibility and predictability of the law, the National Commission therefore recommends identifying the data processing implemented by the Police likely to be covered by the provision under examination, in particular the processing of data implemented pursuant to specific legal provisions and, as detailed below, to regulate where applicable

particular files by the appropriate legal instruments.

6 See parliamentary question no. 906 of July 17, 2019 from the Honorable Deputies Laurent MOSAR and Gilles ROTH relating to the central file.

7 On this subject, see bill no. 7498 amending the amended law of 18 July 2018 on the Police Grand-Ducale, as well as the opinions relating thereto.

8 Processing of images and personal data, see in particular question parliamentary n° 1189 of the honorable Deputies Laurent MOSAR and Gilles ROTH relating to the image file with the Grand Ducal Police.

9 See parliamentary question no. 1190 of September 10, 2019 from the Honorable Deputies Laurent MOSAR and Gilles ROTH relating to the narcotics file with the Grand Ducal Police.

50. According to Article 43-1, paragraph 1, the provision applies to all files managed by the Police, “without prejudice to specific legal provisions”. Without tending towards completeness, the CNPD has identified at least the specific legal provisions following:

- Amended Grand-Ducal Regulation of 21 December 2004 authorizing the creation of a file of people who have suffered a tax warning in terms of road traffic ("AT File");
- Grand-Ducal Regulation of 6 May 2005 setting the terms of installation and operation of alarm systems connected to the National Intervention Center of the Police ;
- Amended law of 25 August 2006 relating to identification procedures by criminal DNA fingerprints (“DNA File”);
- Amended law of 24 June 2008 having as its object the control of travelers in

accommodation establishments and the Grand-Ducal Regulation of 5 August 2015 relating

the forms to be kept by landlords operating a tourist accommodation service;

- Amended Grand-Ducal regulation of 7 August 2015 authorizing the creation of a file

and the processing of personal data within the framework of the system of

automated monitoring and sanction (“CSA Processing”);

- Central file, as referred to by this bill through article 43-2

new ;

- “VISUPOL” video surveillance systems, when bill no. 7498

amending the amended law of 18 July 2018 on the Grand Ducal Police

will have been adopted by the Chamber of Deputies.

51. The National Commission also notes that the Code of Criminal Procedure (CPP)

contains a number of specific provisions concerning certain processing

of data carried out by the Police, such as the "special measures of

surveillance”10 or the provisions aimed at the collection of fingerprints and

photographs11.

10 These measures can be ordered by the investigating judge and aim at the use of technical means

monitoring and controlling all forms of communication, by means of (1) monitoring

and control of telecommunications as well as postal correspondence (2) sound system and

the fixing of images of certain places or vehicles and (3) the capture of computer data. See the

articles 88-1 to 88-4 CPP.

11 See in particular articles 33, paragraph 9, and 51-2 CPP.

52. In application of European legislation and international commitments, the Police

Grand Duchy has access to and contributes to cross-border data processing, for

example to the second generation Schengen Information System (SIS II), to the
data processing implemented by Europol and Interpol12 as well as the processing
data operated by the Center for Police and Customs Cooperation13.

53. The draft law does not provide for legislative or regulatory provisions for the
creation of files other than the central file. However, the National Commission notes with
regret that the project contains neither procedural rules for the creation of files
"individuals" or requirements to resort to a legal or regulatory provision. Thereby,
Article 43-1 provides a framework relating to specific files, but does not specify on
what basis or what decision such "special" files can be put in place.
It is thus left to the discretion of the Grand Ducal Police to proceed with the creation
of such a file. The CNPD does not consider that this solution meets the requirements
legal as described above.

54. The CNPD proposes to distinguish between two categories of special files:

- Special files that exist to overcome the technical limitations of a
existing file based on a legal provision, such as the central file or a
other particular file implemented by the Police. This particular file type
would thus be part of the data processing methods of the file
"main" and would not require any legal or regulatory provision
specific. In effect,
files
"technical" constitute an extension of the central file when the
data covered by these files cannot appear, for reasons
techniques, in the central file. This, moreover, is the logic adopted in article
43-2, paragraph 18, paragraph 2, for the conservation, after the expiry of the
planned retention period for the active part of the central file,
it could be considered that some

12 See also, by way of illustration, the Europol Information System,

EIS) and the Europol secure information exchange network application (Secure Information

Exchange Network Application, SIENA), the databases shared at the level of

the International Criminal Police Organization (Interpol).

13 Agreement between the Government of the Grand Duchy of Luxembourg, the Government of the Kingdom of

Belgium, the Government of the Federal Republic of Germany and the Government of the Republic

French, concerning the establishment and operation of a joint center for police cooperation and

customs in the common border area, signed in Luxembourg on 24 October 2008 and entered into force

on December 1, 2014.

“personal information and data […] in a format that does not

cannot be managed by the central file”. Indeed, the paragraph in question provides

the creation of a passive part in the particular file concerned according to the

same provisions relating to retention periods as in the part

passive from the central file;

- Individual files

o who process "sensitive" data,

o which are designed to perform data processing operations

“intrusive”, such as profiling, comparison and monitoring of

natural persons or

o which require, by the nature of the data stored (such as by

example of evidence and traces), to keep the information for

very long shelf lives.

This particular type of files should be framed by a layout

legal.

55.

It is understood that, if it is necessary to create a particular file in the execution of a

mission resulting from a special law or in the implementation of a legal provision,

this special law or provision may constitute the legal basis and Article 43-1 for

frame these files.

3. Purposes of the central file and specific files

56. Pursuant to Article 3, paragraph 1, letter b), personal data

must be "collected for specific, explicit and legitimate purposes and are not

not processed in a manner incompatible with those purposes". In this regard, beyond, according to

the terms of the authors of the project, of the general function of the central file "to centralize

personal data and information relating to data subjects

processed in the context of the performance of a legal mission" as identified by article

43-2, paragraph 1, the CNPD is delighted that the bill defines the purposes

paragraph 2:

"Personal data and information are processed in the file

center for the following purposes:

1° the verification of the background of a person within the framework of a mission of

judicial police, administrative police or in the context of another mission

Legal Police;

judicial by

2° support for investigations

operational at the request of a judicial authority;

3° support for the definition and implementation of the internal security policy by

through strategic crime analysis;

4° the use of information for statistical research purposes;

5° the identification of the members of the Police in charge of the file. »

through criminal analyzes

57. The National Commission notes that the purposes mix the purposes linked to the three

58.

mission groups.

It appears from the bill that data can be collected and used for

purposes related to international police cooperation and mutual legal assistance

international, to reports to the judicial authorities concerning minors, for

reports addressed to judicial and administrative authorities. Especially

in terms of administrative police missions and “any other mission for which the Police

is vested by law”, she suggests that the provision under consideration be more

detailed.

59. Article 43-1 does not define purposes for “special” files. The CNPD arises

the question whether these files can pursue purposes different from those of the file

central. It refers to its proposal concerning the distinction to be made between files

individuals. The purposes of the "technical" files would be identical to the purposes of the

"main" file to which these files relate. Legal provisions

specific will have to define the purposes of the other files. For example, a file

individual whose function is to compare new evidence and traces against

to the content of an existing database pursues purposes that go beyond the purposes

defined for the central file and makes it possible to perform data processing operations

semi-automated specific comparison and search data. In the opinion of the

CNPD, it would be preferable that the purposes of this type of file (in particular files

“biometric”, aiming for fingerprints, genetics and recognition

face) are governed by a legal provision.

60. The CNPD can support the two purposes that can justify access to data

contained in the passive part of the central file and the passive part of the files

individuals, reserved for data relating to judicial police missions, such as

defined in Article 43-2, paragraph 19, first paragraph. She notes that these data can

also be the subject of a retransmission in the active part of the file concerned in the

scenarios referred to in Article 43-2, paragraph 16.

61. The National Commission considers that, in the case referred to in Article 43-2, paragraph 18,

paragraph 2, with regard to specific files that do not have a passive part,

that access must be limited in the same way to the purposes referred to above, while

by expressing its reservations as to the absence of such a passive part.

4. The data processed in the individual files and in the central file

62. In accordance with article 5 of the law of 1 August 2018 relating to data processing

in criminal matters, article 43-2, paragraphs 3 and 4, defines the categories of persons

whose data is processed from the perspective of the three categories of missions entrusted to the

Police and defines which categories of persons seized for judicial police purposes

may also be consulted in the exercise of other missions. Thus, under

Article 43-2, paragraph 5, data relating to victims, witnesses or

persons covered by "soft" data cannot be consulted for the purposes

administrative police and other legal missions of the police. In the execution of

administrative police missions, “soft” data is not accessible. The

CNPD welcomes that access to data from certain categories of

persons is limited to judicial police missions and therefore cannot be

consulted for the purposes of administrative police missions or other legal missions

of the Police. The National Commission can generally subscribe to the proposed solution

to the said paragraphs 3 to 5. Nevertheless, the categories of data defined in the

European instruments, in particular with regard to SIS II and Europol, can be taken

into consideration to refine the definitions of these categories at the national level, in

concern for transparency and consistency.

It seems that the particular files can contain the same categories of data

and make the same distinctions in terms of data subjects. However, it would be appropriate

to determine these distinctions in the legal instrument serving as the legal basis for these

files.

4.1. Special categories of data

63.

64. Article 9 of the law of 1 August 2018 on data processing in criminal matters

relating to the processing of special categories of data, provides that:

“The processing of personal data which reveals racial origin or

ethnicity, political opinions, religious or philosophical beliefs, or

trade union membership, and the processing of genetic data, personal data

biometrics for the purpose of uniquely identifying a natural person,

data concerning health or data concerning sex life or

the sexual orientation of a natural person are authorized only in case

of absolute necessity, subject to appropriate safeguards for the rights and

freedoms of the data subject, and only:

(a) where authorized by European Union law or in accordance with

application of this law or another provision of law

Luxembourgish;

b) to protect the vital interests of the data subject or of another

natural person, or

c) when the processing relates to data manifestly rendered

public by the data subject. »

65.

It seems that in particular files intended to contain traces and evidence can

cover additional categories of data, including special categories

of data. The National Commission notes that, with regard to the central file, the

"body signs

the person, including

photographs and, where applicable, fingerprints" referred to in Article 43-2,

paragraph 7, paragraph 2, number 10, may, depending on the processing operations of

data carried out, collect biometric data.

unalterable to identify

66. The CNPD notes with interest that article 43-1, paragraph 2, allows the Police to process

special categories of data and requires that, on the one hand, these data have

"always a connection with other data relating to the data subject" and that

on the other hand, this data is "relevant and essential" to:

1. "using the identification of a person";

2. "to understand the context described in a report or minutes

drawn up by the Police";

3. "to properly assess the facts which may give rise to a

criminal offense or an administrative police measure within the meaning of

section 1 of chapter 2 of this law or under another mission

with which the Police are vested by law".

Opinion of the National Commission for Data Protection

relating to Bill 7741.

20/45

67. The CNPD notes positively that such a legal basis is created within the meaning of Article 9,

letter a), of the aforementioned law of 1 August 2018 and understands that it applies

regardless of individual files and the central file.

68. Nevertheless, she wondered about the possibility, as outlined in the commentary on

articles, to carry out research on this type of data. She suggests planning

additional safeguards to control this type of research. Moreover, she wonders

if it would not be appropriate to provide for the possibility of concealing this type of data, i.e.

say to pseudonymize this data, when researching the data subject at

purposes other than judicial police missions.

69. In the commentary to the articles, the authors consider that "the Police must be in

able to use this type of data for statistical purposes, in which case the data in

question are anonymized. However, once a re-identification of the person

concerned remains possible, it is rather a pseudonymization of data. It would be

preferable to include the compilation of statistics in the definition of the purposes,

specifying that this data processing operation should be based solely on

pseudonymized data.

70. The CNPD would like to point out that three existing files are structurally affected by

this provision, namely the "PIC" file (i.e. including the photos of

persons for identification purposes), the file relating to fingerprints and the file

relating to genetic fingerprinting. The CNPD suggests legislating in this place to

include a solid legal basis with appropriate safeguards for data processing

photos (currently: as fingerprints: Code of Criminal Procedure, article

33, paragraph 9 and article 45) using facial identification techniques, in addition

increasingly widespread and efficient, i.e. to “biometric data for the purposes of

uniquely identify a natural person. Among the appropriate safeguards

governing such use of biometric identification techniques, a limitation

of use for judicial police purposes in the context of misdemeanors and crimes could

be considered.

71. While the processing of genetic data already benefits from a framework

specific legislation through the amended law of 25 August 2006 relating to fingerprints

genetics in criminal matters, the CNPD wonders whether it would not be appropriate to provide

also a general legal basis for fingerprints, the processing of which is

currently already provided for by the provisions of the Code of Criminal Procedure (Article 33,

paragraph 9, article 45), making it possible at the same time to make up for any

weaknesses in the said amended law of 25 August 2006.

72. The CNPD considers that appropriate safeguards should be strengthened, for example

drawing more inspiration from Belgian law, in particular from article 44/2, paragraph 2.

On the one hand, this provision provides a better framework for the purposes for which this type of

data can be processed and on the other hand provides for strict rules with regard to

their use, their access and the additional security rules to be put in place

placed by the controller.

4.2. So-called “soft” data

73. Article 43-2, paragraph 4, point 10°, allows the Grand-Ducal Police to process, in

the central file and for judicial police purposes, so-called "soft" data relating

three categories of people:

- “persons in respect of whom there are serious grounds for believing that they

are about to commit a criminal offence”;

- “the contacts or associates [of the said persons referred to in the preceding indent] who are

suspected of having the intention of participating in these offenses or of having

knowledge " ;

- “persons who can provide information on these criminal offences”.

74. The registration of this type of data in the central file, which the authors define

in the comment of articles as data "which cannot yet be

attached to a sufficiently qualified criminal offense so that article 12 of the Code of

criminal procedure becomes applicable", is particularly framed in the draft

law under consideration.

75. First, the CNPD notes positively that only a limited number of agents can seize

this type of information, in accordance with article 43-2, paragraph 4, subparagraph 2, namely

“the judicial police officers of the Judicial Police Service in matters that

fall within the remit of the section to which they are assigned”.

76. Next, the CNPD notes with interest that registration in the central file is

conditional on "the reliability of the source and the information being assessed according to a

previously defined evaluation code that takes into account the relevance of the source and

information provided in the context of the evolution of crime and

relevant criminal phenomena”. Nevertheless, in this regard, the CNPD regrets that the

bill and the commentary to the articles remain silent on the “evaluation code

previously defined. It would be possible to draw inspiration from the evaluation grid provided for in

Article 29 of Regulation (EU) 2016/794 on the European Union Agency for the
cooperation of law enforcement authorities (Europol)14 on the assessment of the reliability of
source and accuracy of information.

77. Finally, the CNPD can subscribe to the guarantee protecting the interests of minors by
that the registration of soft data relating to minors depends on “the agreement of the
Attorney General of State or the member of his public prosecutor's office designated for this purpose".

78. Regarding access, the rules emerge from article 43-2, paragraph 5, subparagraphs 2 to
4.

79. Under paragraph 3, “officers and judicial police officers of the Police Service
judicial” have access to soft data for research purposes for judicial police purposes
and that such access may be limited to "one or more sections of the Police Service
judiciary".

80. The CNPD can subscribe to the solution adopted in paragraph 2, namely that a search on
a person concerned by an agent not assigned to the Judicial Police Department does not
does not give access to the information, but gives rise to a “warning to the
judicial police officers in charge of information", leaving them to "assess
usefulness of contacting the consulting agent”.

81. Finally, paragraph 4 sets out, for “agents in charge of information”, the
possibility of making soft data relating to “persons with regard to
which there are substantial grounds for believing that they are about to commit
a criminal offence”, following the same rules as applicable to data relating to
to “persons suspected of having participated in a criminal offence”. However, while the
commentary on the articles remains silent on this point, the CNPD is wondering about the criteria

14 Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the Agency for
European Union for Law Enforcement Cooperation (Europol) and replacing and repealing the
Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, Journal

that could justify such access and wonders whether “direct access” includes access for the purposes administrative police or for the purposes of other police missions.

82. The retention periods for soft data have been adapted to their specificity, in limiting the retention period in the active part to one year, which can be renewed an additional year, and at 3 years in the passive part of the central file.

83. Thus, on the whole, the CNPD welcomes the solution proposed for the processing of so-called “soft” data, necessary for the performance of tasks related to the prevention and detection of criminal offences, while taking into account that at at the time the information was collected, no criminal offense has yet been committed by the person concerned. She believes that the balance between the needs operational purposes for judicial police missions and the rights of individuals concerned is satisfactory with regard to the principle of proportionality.

4.3. Data relating to minors

84. Recital 50 of Directive 2016/680 provides that “the measures taken by the controller should understand the recovery and implementation of specific safeguards intended for the processing of personal data relating to to vulnerable natural persons, such as children”. In its opinion on the central file, the National Commission considered that “[t]he processing implemented by the Police through said file must also confer a degree of protection particular with regard to minor natural persons”. In this regard, she is pleased that, as it results from article 43-1, paragraph 3, number 6, access to data relating to minors is part of the criteria for defining access rights and that access to these

data is in principle reserved for “members of the ‘youth protection’ section

within the Judicial Police Service” and, as described by the authors of the project, “the

judicial police officers and agents who are actually in charge of an investigation by

relation to the minor concerned”.

5. Control of access to individual files and to the central file

85. Access to the active part of the central file is framed by four levels of access which

result from article 43-2, paragraph 7:

- Determination if a person appears in the central file;

- Viewing of main information and personal data

(defined in Article 43-2, paragraph 7, subparagraph 2) relating to the person;

- Viewing of a brief summary of the facts in which the person is

involved;

- Access to the minutes and reports of which the person is the subject.

86. This access is granted “[in] compliance with the access rules determined under

article 43-1, paragraph (3)” and according to “the reasons for the consultation”.

88.

87. Article 43-2, paragraph 7, also allows these access rights to be granted to

“members of the civil staff named by the data controller”.

Contrary to the modifications introduced in the new article 43, the CNPD points out that

this provision does not explicitly restrict such access “based on their

specific support powers of an officer or agent of the judicial police or of a

administrative police officer or agent”.

It follows from article 43-2, paragraph 5, of the general limitations concerning the

consultations for a reason, on the one hand, of administrative police and for purposes of other
legal missions, and on the other hand, foreign police. In addition, access to data
"sweets" is also boxed.

It appears from the commentary to the articles relating to article 43-2, paragraph 7, that the
“viewing key personal information and data” is
granted to "field agents". The CNPD takes due note that, according to the
commentary on the articles, "details of the minutes and reports of which the person has
is only accessible according to the access rights and the reasons for the
consultation, which are stricter than those for access to information
principals”.

89.

90. While Article 43-2, paragraph 7, first subparagraph, in fine, only conditions access
to the minutes and reports to the "reasons for the consultation", the Commission
national regrets that the bill and the commentary to the articles remain silent on these
reasons for the consultation.

91. It takes due note that access may be granted to police officers
court of the Customs and Excise Administration "namely designated", to
the Inspector General of Police, the Deputy Inspector General of Police and the
members of the police cadre of the General Police Inspectorate, in accordance with article

43-2, paragraph 6. Article 5 of the bill abolishes the direct access of the Service de
information (SRE) to “the ‘research’ part of the personal data bank of
general police” on the grounds, according to the commentary on the articles, that it is a
"data bank that this bill seeks to remove". The CNPD is

asks if the SRE will have access, by another means, to the data of the central file to created under this Act, and if not, what reasoning was followed to not provide such access.

92. In the absence of specific legal provisions, access to specific files is determined by Article 43-1, paragraph 3. The National Commission is pleased that this detailed provision, for the central file and the specific files, the "profiles and terms of access and processing of personal data" and shows, on the whole, meets these criteria based, according to the articles comment, on “the principles of need to know and need to do” and “assigned according to employment number occupied by the member of the Police”. Access to data relating to minors are subject to special conditions of access. However, it regrets that access to special categories of data is not otherwise framed.

93. In its opinion on the central file, the National Commission noted that “[a]ccording to information from the Police, access to the central file is automatically granted to each new agent or officer of the judicial police, given that he may be required to work with this tool”, which means in practice that “a total of 1840 people had the necessary logical access to be able to use the system to carry out research respectively consult files”. However, she concluded that “permanent access to the central file for almost 2,000 police officers, even in absence of proven cases of abuse, compared to the real need for consultation on the ground, must be considered inadequate. Even without an overhaul of the access mechanism, the CNPD considers that the police could and should have implement measures such as setting up log reviews to detect possible questionable access to mitigate the risk of abuse and ensure the protection of citizen data.

94. Consequently, it will expect the criteria defined in Article 43-1, paragraph 3, to result

in practice in a review of access rights, accompanied by the implementation of

regular log reviews. As already mentioned above, article 24 of the law of the 1st

August 2018 on data processing in criminal matters requires the controller

of processing to define the profiles and methods of access and to carry out checks

regular logs for the purposes, in particular, of “self-monitoring [and] guaranteeing

Opinion of the National Commission for Data Protection

relating to Bill 7741.

26/45

the integrity and security of personal data”. It emerges that the

data controller is supposed to carry out regular log reviews and

proactive, particularly in relation to the measures and procedures to be put in place to

regularly test, analyze and evaluate the effectiveness of technical measures and

organizational measures to ensure the security of the processing in accordance with Article 28 of

the said law.

95. Article 24, paragraph 1, of the law of 1 August 2018 on data processing

in criminal matters provides

“Logs are established at least for the following processing operations

in automated processing systems: the collection, modification,

consultation, communication, including transfers, interconnection and

erasure. Logs of consultation and communication operations

make it possible to establish the reason, the date and the time of these and the identification of the

person who consulted or communicated the personal data, as well as

as the identity of the recipients of this personal data. »

96.

It unquestionably follows from articles 18 and 28 of the law of 1 August 2018 relating to

data processing in criminal matters that the review of logs is also part of

security measures to be put in place by the data controller. It follows

also from article 28 that it is appropriate to adopt “technical and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

in particular with regard to the processing of specific categories of

personal data” and therefore, when relevant, to take into account

the nature of the data, in particular special categories of data, data

relating to minors and “soft” data, in the definition of reviews

regular logs.

97. In the opinion on the central file, the CNPD had also noted that

“Since it is common practice for police officers in the field

do not directly access the file, but rather call on the police at the

level of the RIFO, the identification of the person who ultimately consulted the system

cannot be systematically traced with reasonable efforts. »

98. In this regard, the clarification provided by Article 43-1, paragraph 3, is to be welcomed.

paragraph 2, that "[in] the case of a request for consultation of a file by a person

other than the one who performs it, the logs of the file mention the identity of the

person making the request and the reason for the request. »

99. Article 43-1, paragraph 3, point 4°, provides that the

“Police determines the profiles and methods of access and processing of data

of a personal nature on the basis of […] the reason for access. If the reason for access does not

does not indisputably result from the assignment of the agent within a service or

of a Police unit, the reason for access must indicate the precise reason for the

consultation. The Police determines specific grounds for access depending on the type of

legal mission of the Police in the context of which data processing is

required ".

100. The CNPD understands that the authors of the bill suggest that the reason for a

consultation could result "indisputably from the assignment of the agent within a

service or unit of the police. The commentary on the articles does not elaborate on what

the information of the assignment of an agent could give enough information

context in order to trace the legality of the said consultation. The only identification of

the agent, including with his assignment, would make a log check tedious and

not very effective given that it should include a case-by-case investigation to trace

the context of the consultation. The effectiveness of the ex-post control of logging would be

greatly reduced. Therefore, without further explanation from the authors of the text,

the CNPD cannot subscribe to such a solution. The CNPD considers that the wording

of this passage is contrary to article 24 of the law of 1 August 2018 relating to

data processing in criminal matters.

101. The CNPD considers it necessary to modify the above-mentioned passage, by requiring the indication, for each consultation, a reason for access. At the same time, it welcomes that the provision under consideration provides that the Police shall further determine "specific grounds for access depending on the type of legal mission" as well as, in situations not covered by these reasons for access, a "precise reason for the consultation" must be indicated. However, the authors of the bill have omitted to give indications, at least in the commentary of the articles, on the "specific reasons for access" envisaged. The CNPD stresses that a simple reference to a consultation for judicial police purposes, for police purposes administrative or for the purposes of other legal tasks would clearly not be sufficient.

102. The reason for access could, for example, be based on the identifiers of surveys, police operations and decisions of judicial authorities justifying access. The CNPD recalls that the said reasons for access must make it possible to trace with precision sufficient the reason for accessing the data in order to ensure, in the context of the occasional and periodic checks on the legitimacy of access.

103. Regarding access to the passive part of the central file, the National Commission notes with interest that, on the one hand, ad hoc access can be granted, in application of article 43-2, paragraph 19, subparagraph 2, or access limited in time which can be granted by name to judicial police officers and agents of the police service judiciary or subdivisions of the judicial police service, in paragraph 3.

104. The CNPD welcomes the retention period for logs provided for in the aforementioned Article 24, fixed at five years in Article 43, paragraph 5, except when they are subject to a control procedure.

105. In the opinion relating to the central file, it had noted that "the logging mechanisms do not make it possible to achieve in practice all the purposes as set out in the law. Thus, the verification of the legality of each consultation seems difficult based on the contextual information limited that are included in the diary (i.e. only a generic motivation summary is included in the journal). »

106. The CNPD regrets that the bill does not specify the aforementioned Article 24, by providing for the content of the logs adapted to the files of the Grand Ducal Police, in particular relating on the grounds of consultation.

107. She wondered whether it would not be appropriate to define the access criteria and the criteria cross-functional logging, for access to databases referred to in Article 43, for the specific files referred to in Article 43-1 and for the file

center referred to in Article 43-2.

108. Thus, it would be necessary to harmonize the logging provisions

concerning the files of the Police with the methods of control of the logs arising

of Article 43, paragraphs 6 to 8.

Opinion of the National Commission for Data Protection

relating to Bill 7741.

29/45

6. Storage periods

109. Article 4 of the law of 1 August 2018 on data processing in criminal matters

sets the minimum rules for retention and examination periods:

“(1) The controller shall set appropriate time limits for the erasure

personal data or for the regular verification of the necessity

to retain personal data. The deadlines are to be fixed taking into account

to the purpose of the processing.

(2) The controller shall establish procedural rules in order to ensure

compliance with these deadlines which determine the persons intervening on behalf and for

account of the data controller in this procedure, including the delegate

to data protection, as well as the deadlines within which these persons

must perform their respective tasks. The procedural rules are updated

the disposal of the data subject in accordance with Article 11 and the authority

of competent control at the latter's request. »

110. In its opinion on the central file, the CNPD has already considered that the provision

aforesaid did not correctly reflect Article 5 of the Directive which it is intended to

transpose:

“In its opinion of December 28, 2017 relating to the bill (n° 7168) of

transposition of the directive, the CNPD considered that article 5 of the directive

was not correctly transposed into national law. However, the legislator has not

did not follow the arguments of the CNPD. »

111. It had also noted that “the retention periods or at least the criteria

applicable to determine the retention period as well as the procedures allowing

regular verification of the need for said deadlines should be clarified by the

legislator in order to limit as much as possible the room for maneuver of the person responsible for

processing and guarantee the transparency, accessibility and proportionality of the said deadlines”.

112. The CNPD welcomes the fact that article 43-2, paragraphs 9 to 18, contains provisions

detailed on the retention periods applicable to the data contained in the

active part and the passive part of the central file.

6.1. Data contained in the active part of the central file

113. The data contained in the active part of the central file is defined in article 43-

2, paragraph 7, as well as, by implication, any information contained in the proceedings

minutes and reports saved therein in accordance with paragraph 1, including

including special categories of personal data within the limit of

Article 43-1, paragraph 2. Access to data is differentiated according to the purposes

defined in paragraphs 1 and 2 of Article 43-2, the access rules defined in particular

by paragraphs 5, 9 and 10 of article 43-1 and the profiles and access methods defined

by the Police within the meaning of Article 43-1, paragraph 3.

114. Article 43-2 provides for six sub-categories:

6.1.1. The data introduced under administrative police missions and

any other mission entrusted to the Police by law

115. Firstly, the CNPD wonders about the definition of “any other mission for which the

Police is vested with the law” and wishes to obtain more information concerning the missions which would fall under neither the missions of the administrative police, nor the missions of the judicial police. Moreover, it must be noted that, in the provision under examination and in the commentary to the related articles, different concepts are used, "mission with which the Police is invested by law", of "administrative missions". It is referred to previous developments relating to the new article 43 and the concept of “purposes administrative”.

116. Article 43-2, paragraph 15 provides that “[t]he information and data of a nature personnel […] within the framework of an administrative police mission or within the framework of an administrative mission with which the Police is invested by law, are suppressed at most late after a period of ten years after their registration in the central file […]”.

The CNPD welcomes that the data is in principle deleted after the expiry of said period.

117. However, without knowing the “administrative missions”, it is difficult to decide on the adequacy of this 10-year period. The CNPD recalls that it is not sufficient to invoke “a concern for simplification […] which avoids providing for several exceptions of extension”, as it appears from the commentary of the articles, to justify a unified retention period which is also ten years. Commentary on articles remains silent as to any adjustments provided for within this maximum period and in

understands that the authors envisage in principle the standardized application of this deadline. However, the CNPD questions the proportionality of the 10-year period for missions not not covered by the administrative police. It can nevertheless conceive that, as proposed in the provision under examination, the Police themselves set the durations of

custody for administrative police missions and missions arising from laws

special, within the limits of the maximum period provided for by the provision, indicating in

fine “[t]he Police can set shorter retention periods by type of report

within the meaning of this paragraph, in which case it keeps a record in which the deadlines

specific are indicated. The National Commission also recalls that the

specific legal provisions may provide for different retention periods

agrees to respect, as is the case for example in article 25 the amended law of 22

February 2018 on the exchange of personal data and information in

police matters. In any case, restricting access can reduce the risk

for the people concerned.

6.1.2. Data relating to minors

118. Article 43-2, paragraph 15, subparagraph 2, provides that “information and data to be

personal character contained in the central file relating to minors

runaways are deleted from the central file when the person reaches the age of eighteen

year ". The CNPD can subscribe to the chosen solution.

119. However, it questions the proportionality and the need to apply the durations

storage common to data relating to minors other than that

relating to runaway minors, in particular with regard to the requirements of the

amended law of 10 August 1992 relating to the protection of young people and the reform

engaged in this area.

6.1.3. Data relating to requests for international legal assistance

120. On the basis of article 43-2, paragraph 14, subparagraph 1, the documents drafted within the framework

of its judicial police missions in the context of a request for mutual assistance are

kept for 20 years in the active part.

121. While the retention period in the active part of the central file does not seem

excessive, the CNPD nevertheless suggests accompanying this type of document with access rules

specific.

Opinion of the National Commission for Data Protection

relating to Bill 7741.

32/45

6.1.4. Data relating to international police cooperation or

“reports to the judicial authorities which do not have as their object the observation

of a criminal offence” which “do not relate to an ongoing investigation or

specific offence”

122. Article 43-2, paragraph 14, subparagraph 2, refers to article 43-2, paragraph 15, subparagraph 1

for this type of data. The CNPD refers to the developments above concerning

the adequacy of the maximum retention period of 10 years, emphasizing that it is appropriate

to also take into account

obligations arising from commitments

international standards in terms of international police cooperation in the determination

retention periods for said data15.

6.1.5. Data relating to international police cooperation or "reports

to judicial authorities whose purpose is not to establish an offense

criminal” which relate to an ongoing investigation or a specific offence;

123. Article 43-2, paragraph 14, subparagraph 2, provides that for this type of data, the duration of

conservation is aligned with that applicable to “minutes or reports drawn up

in the context of the investigation to which they relate”. The CNPD can join this

solution.

6.1.6. Data introduced as part of judicial police missions

124. Article 43-2, paragraph 8, provides that “[p]ersonal data and

information provided for in paragraphs (3) and (4) is transmitted to the central file if

the investigation has ended, or if the competent judicial authority has authorized the transmission

in accordance with the amended law of 22 February 2018 relating to the exchange of data to

personal character and information in police matters". In the commentary of

articles, the authors explain that this paragraph "determines when

data can be listed in the central file" and justify that "[with]

the recording of a report or report in the central file, the information and

data becomes accessible to all judicial police officers and agents

15 See for example, article 4, paragraph 4, first paragraph of the agreement between the Government of Duchy of Luxembourg, the Government of the Kingdom of Belgium, the Government of the Republic of Germany and the Government of the French Republic, concerning the establishment and the operation of a common police and customs cooperation center in the common border area, signed in Luxembourg, on October 24, 2008.

of the Police who have a right of access under article 43-1, paragraph 3. However,

this information and data may be covered by the secrecy of the investigation or even the

educational secrecy. ".

125. The CNPD wonders how the data is kept pending the

transmission to the central file. Thus, pending the end of the investigation or the decision of the

judicial authorities, the minutes or report are kept by the author of the said

document, without it being really possible to check the security conditions and

access. In particular, during surveys that last longer, the question arises

the methods of conservation of the said documents, in particular if there is a kind of

"temporary file" at the level of each judicial police officer in charge of a

investigation by the public prosecutor or by an investigating judge.

126. To justify this delay in the transfer of the document to the central file, the authors

of the bill seem to implicitly indicate that access cannot be restricted to

only officers and judicial police officers in charge of the investigation. However, in the same

provision under examination, in accordance with article 43-2, paragraph 5, subparagraphs 2 and 3, it

provision is made for the central file to limit access to “soft” data “to

judicial police officers in charge of information”. Furthermore, article 43-1,

paragraph 3, number 6°, also provides that access to data relating to

minors must be able to be limited to the staff of certain officers or agents of the

Police.

access

by name to certain officers, and the question then arises whether this solution

could not be transposed to data relating to ongoing investigations. Management

access would, in the opinion of the CNPD, respect the secrecy of the investigation and the

educational secrecy. If the system did not allow restricting access

nominatively to certain officers, the data controller would be confronted with

difficulties in implementing the provisions relating to access to “soft” data

and data relating to minors.

the system should make it possible to restrict

It seems like

127. The CNPD notes with interest that article 43-1, paragraphs 9 to 13, contain criteria

which trigger the transfer of data from the active part to the passive part of the

central file and that specific rules have been provided for related data

with fines pursuant to article 43-1, paragraph 17.

128. She welcomes the mention of decisions of conviction, acquittal, dismissal or

filing without further action in the central file, as provided for by article 43-2, paragraph

12. This registration greatly contributes to the accuracy of the data contained in the

relating to Bill 7741.

core file. She suggests also making provision for mention of rehabilitation,

in particular in files relating to several natural persons kept in the

active part.

6.1.6.1. In the absence of a court decision, including in the event of decisions not to

place, of decision of classification without follow-up and of decision of classification "ad

action »

129. The CNPD welcomes the introduction of automated feedback between the database

judicial authorities and the central file through article 43-2, paragraph 11.

Indeed, this is a recommendation contained in its opinion on the central file.

On the one hand, technically, this automated return now seems to work, and

on the other hand, the authors of the bill retained it to trigger the transfer to the

passive part of the central file. According to the authors, “[t]he paragraph 11 is aimed at

dismissal decisions, dismissals, as well as cases in which

the author remained unknown or the prescribed matters which are put 'ad acta' and for

which no decision has been taken. Finally, the CNPD wonders about the

identical treatment of different decisions. However, it considers that, on the one hand, this

question can be solved at the level of the "JUCHA" and that it is also up to the

State prosecutor to take the necessary measures in accordance with article 43-2,

paragraph 13. It can therefore be satisfied with the solution adopted in the provision under

consideration.

130. Thus, in the absence of a court decision, the data is transmitted in the part

passive of the central file when the file is the subject of an "archiving" in the

"treatment, says criminal chain, of the public prosecutor", the "JUCHA". This "archiving"

in the “JUCHA” treatment corresponds to a reduction in the accessibility of the data

relating to the file. Therefore, given that the current deadline for this measure is set at

3 years, this period also applies to the data contained in the central file. The

CNPD notes that reflections are under way to increase this period to 5 years.

131. The CNPD nevertheless wonders about the rules applicable in the event of no return

automated by the judicial authorities. She recommends planning a solution

fallback when automated return is not working.

132. It should also be noted that this measure is reversible once the file is subject to

of “[a] retransmission in the active part of the processing, known as the criminal chain, of the

public prosecutor gives rise to a retransmission in the active part of the central file. »

in accordance with Article 43-2, paragraph 16, second paragraph.

6.1.6.2. In the event of a conviction decision that has the force of res judicata

133. The CNPD can fully subscribe to the solution adopted in article 43-2, paragraph 9,

in the presence of a conviction cast as res judicata, in that, according to the

in the words of the authors of the bill, "the retention period of the information and

data in the central file of the Police is linked to the duration during which the

conviction appears in the record of the person concerned”. Thus, during rehabilitation,

the data is transmitted in the passive part of the central file. The CNPD is

asks what treatment is reserved for decisions aimed at suspending the pronouncement of

sentencing and penal orders.

134. It also understands that, on the basis of Article 43-2, paragraph 9, subparagraph 2,

“when rehabilitation does not concern all convicted persons,

information and data are kept partly active until the rehabilitation of

all persons convicted in a given case" since the data

relate to documents relating to a criminal prosecution. She can be satisfied with
fact that "the person rehabilitated in the case in question can no longer be sought in
the active part" as well as the solution adopted for victims and witnesses in article
43-2, paragraph 9, paragraph 3.

6.1.6.3. In the event of an acquittal decision that has the force of res judicata

135. Article 43-2, paragraph 10, provides for transmission in the passive part of the file
central "as soon as the Police are informed of the decision of acquittal, unless the Prosecutor
of State orders their maintenance". The authors of the bill refer to the legislation
French, in particular article 230-8 of the French Code of Criminal Procedure. However, at the
difference of said article 230-8, the default solution adopted by the authors is not the
deletion of data, but only the transfer in the passive part of the file
central. Similarly, French legislation provides a greater framework for the decision of the ministry
public to maintain data relating to acquitted persons in the files
background information from the judicial police. The CNPD considers it necessary that the rights of
acquitted persons are better taken into account, particularly from a legal point of view.
information and purpose limitation.

136. It may follow the solution adopted in Article 43-2, paragraph 10, subparagraph 2, with regard to
limitation of the search for the acquitted person "[s]if the acquittal does not concern
not all the persons involved in the criminal prosecution" and in paragraph 3 concerning
victims and witnesses.

6.1.6.4. Tickets

137. According to Article 43-2, paragraph 1, subparagraph 3, "The central file does not include the
data relating to persons who have committed an offense if a special law

makes it possible to stop criminal proceedings by paying a taxed warning and that the person concerned has paid the taxed warning within the period provided for by the law ". According to the authors of the bill, this provision targets, for example, “taxed warnings within the meaning of article 15 of the amended law of February 14, 1955 concerning the regulation of traffic on all public roads”. In case of non-payment within the legal deadlines, a report must however be drawn up, which will end up in the central file”.

138. According to article 43-2, paragraph 17, subparagraph 3, “information and data of a personnel contained in the central file, which have their origin in reports or reports for contraventions addressed to the judicial authorities, are deleted five years after the establishment of the minutes or the report”. The CNPD understands that this period is valid both for the active part of the central file and for the passive part of it. ci, in particular when the file has been transmitted to the passive party in application of article 43-2, paragraphs 11 or 13.

139. She could agree with these two passages of the text under consideration for taxed warnings paid on the basis of a special law on the one hand and for the others contraventions on the other hand.

6.1.6.5. So-called “soft” data

140. The CNPD can be satisfied with the durations proposed relating to the data of “persons in respect of which there are substantial grounds for believing that they are about to committing a criminal offence, as well as contacts or associates who are suspected to intend to participate in or to have knowledge of these offenses, as well as the persons who can provide information about these criminal offences” such as defined in Article 43-2, paragraph 4, point 10°. Thus, in accordance with article 43-2, paragraph 14, paragraph 3, the data is “transferred to the passive part one year

relating to Bill 7741.

after their registration in the active part of the central file. This delay can be extended for an additional year on a reasoned decision […]". Likewise, these data "are deleted three years after their transfer to the passive part" in accordance with Article 43-2, paragraph 17, second paragraph.

141. The CNPD nevertheless questions the fate of the data of "persons to whom there is serious grounds for believing that they are about to commit an offense criminal" for which access has been modified in accordance with article 43-2, paragraph 5, paragraph 4.

6.1.6.6. Decisions on restrictions of processing or transfer to the passive part of the central file

142. The National Commission welcomes the insertion of Article 43-2, paragraph 13, which gives possibility to the State prosecutor "ex officio or at the request of the person concerned", to order the transfer of data relating to the mission of the judicial police in the passive part of the central file or to limit the possibilities of searching for the person concerned in the active part. It notes positively that these decisions are notified to the person concerned and may be the subject of a judicial appeal before the President of the competent district court. Implicitly, this provision could be applicable to particular files by reading combined with Article 43-1, paragraph 4 which provides that "[t]he retention period [applicable to particular files] shall in no case be greater than those applicable to the central file" and article 43-2, paragraph 18, which provides that "[a]t later than time of transfer to the passive part of the central information and data file of a personal nature relating to a judicial police mission, the information and personal data in question which are in other files must

be suppressed in these […]". However, for reasons relating to legal certainty, the

National Commission considers that it would be preferable to provide explicitly that the

State prosecutor can order the same measures concerning data

contained in specific files.

6.2. Data contained in the passive part of the central file (judicial police)

143. In the current state, the data in the current central file are kept for a period

60 years from their registration.

Opinion of the National Commission for Data Protection

relating to Bill 7741.

144. Article 43-2, paragraph 17, first subparagraph, establishes a general period of 30 years

conservation "after their transfer to the passive part".

145. Article 43-2, paragraph 17, subparagraph 4, provides for the possibility, for the judicial authorities,

to extend the retention period “due to a pending review request”.

146. In general, the CNPD still questions the proportionality of this time limit

30 years, which is added to the retention period in the active part of the central file.

147. Firstly, it suggests providing for a mechanism for periodic review of the

necessity and proportionality of data retention under the direction of the

judicial authorities in accordance with article 4 of the law of 1 August 2018 relating to

processing of data in criminal matters which provides, on the one hand, that the person responsible for

processing “sets appropriate deadlines for the erasure of personal data

personal or for the regular verification of the need to keep the data at

personal nature” and on the other hand “establishes procedural rules in order to ensure

compliance with these deadlines.

148. Secondly, it proposes that the legislator set retention periods less

long for the passive part of the central file, above all for data relating to

criminal cases resulting in decisions of acquittal and dismissal. In

In this case, it could be left to the discretion of the judicial authorities, for reasons

related to the case in question, to order longer retention periods, as

the written feedback from the judicial authorities in terms of "request for review

In progress ". The CNPD points out that with the widespread implementation of the “e-

justice”, the need to have access to police documents in the matter of

will become less obvious, and it may, at that time, be considered to remove the

data at the police level in shorter delays.

149. In the same logic, it would also be possible to define different deadlines

for others criminal offenses, in particular in connection with the seriousness of the facts and the

possible criminal sanction.

150. Furthermore, for data relating to mutual assistance, the combination of the duration of

retention in the active part of 20 years, with the proposed retention period

for the passive part of 30 years, results in a total shelf life of 50

years before any final archiving within the meaning of the law of 17 August 2018 on archiving.

The retention period should possibly be adapted in the passive part,

while the total duration seems disproportionate.

151. Thus, the CNPD suggests that, following the logic of the procedure set up in Article

43-2, paragraph 13, to also provide for the possibility, for the judicial authorities

authorities, to order the deletion of data from the passive part of the central file.

6.3. The data entered in a particular file

152. With regard to specific files that do not have legal provisions defining

retention periods, the following scenarios should be distinguished:

- Data contained in the active part of the particular file accessible following

the access rules defined in article 43-1, paragraph 3 in application of durations

conservation set by the data controller in accordance with Article

43-1, paragraph 4;

153. The National Commission notes with interest that, pursuant to Article 43-1, paragraph

4, retention periods in the active portion of particular files should only

not exceed the retention periods applicable to the active part of the central file,

except in the event of a legal provision to the contrary providing for longer retention periods

long. It notes that the said provision does not contain criteria for the

determination of the retention period and thus leaves a very wide margin of appreciation.

wide to the Grand-Ducal Police by referring only to a retention period

maximum. Furthermore, it regrets that article 43-1, paragraph 4, as well as the commentary

articles remain silent on the “procedural rules” that the Grand Ducal Police

intends to comply with article 4, paragraph 2, of the law of 1 August 2018

mentioned above and in Article 5 of the directive as regards individual files.

- Data contained in the passive part of the particular file, in the absence of

be able to be transferred to the passive part of the central file, in accordance with

article 43-2, paragraph 18, second paragraph;

- Data relating to “traces taken as part of investigations where the

perpetrators remained unknown” contained in the passive part of the file

individual, in accordance with Article 43-2, paragraph 18, third paragraph;

154. The National Commission can subscribe to the solution adopted in both cases.

It nevertheless suggests explicitly providing for their transfer to the passive part of the

particular file in question and to limit the purposes to those referred to in Article 43-2,

paragraph 19, applicable to the passive part of the central file.

- Data contained in the active part of the particular file that does not have

retention periods,

passive part having reached, in principle,

in accordance with Article 43-2, paragraph 18, second paragraph.

155. Article 43-2, paragraph 18, subparagraph 2 seems to open the way to specific files which

would not have “possibility of archiving”, that is to say, in the understanding of the

CNPD, of a passive part. However, the CNPD questions the definition of access

to data contained in a particular file referred to in the said paragraph which does not have

passive part.

156. From a formal point of view, article 43-2, paragraph 18, subparagraph 2, mentions the “possibility

archiving” and “archiving durations”. However, the CNPD notes that this terminology

may create confusion with the law of 17 August 2018 relating to archiving, while the

passive part of a central file does not constitute a definitive archiving measure at the

meaning of that law. Therefore, it would be better to refer to the transmission of

data in the passive part of the particular file concerned and to the "durations of

conservation ".

157. Concerning the particular files implemented on the basis of an instrument

separate legal framework, reference should be made to the provisions relating to the duration of

conservation defined therein. The National Commission suggests that, following the adoption of the

this bill, the legislator aligns these legal provisions as needed with the principles

released in the provisions under consideration.

158. The law of 17 August 2018 relating to archiving may require the keeping of documents

contained in the central file or the particular files beyond the durations of

preservation discussed in this bill, namely the documents likely to

to be definitively archived and, if necessary, transferred to the archives

national. However, the CNPD recalls that access must in principle be impossible, except

the strict exception for data processing operations carried out for the

purposes referred to in the said law of 17 August 2018, mainly the packaging in

preparation for final archiving.

7. Amendment of article 509-1 of the Penal Code

159. The bill provides for the amendment of article 509-1 of the Penal Code, by inserting therein, in the terms

of the authors of the bill, a penal provision “in terms of violations of the rights

of access, with regard to all state authorities and private entities”, taking into account

account, from what the CNPD understands, of developments in case law in this regard.

It nevertheless recalls that this in no way removes the responsibility of the person responsible for

processing of, in particular, setting up ex ante access control systems,

reviews of logists and the training of its agents.

8. Transitional provisions

160. The CNPD recalls that article 63, paragraph 1, of the law of 1 August 2018 on

processing of data in criminal matters provides for transitional and implementing provisions

compliance :

“(1) On an exceptional basis and where this requires disproportionate effort, the

automated personal data processing systems installed

before May 6, 2016 are brought into compliance with Article 24 no later than May 6

2023.

(2) By way of derogation from paragraph 1, and in exceptional circumstances,

a given automated personal data processing system

referred to in paragraph 1 may be brought into compliance with Article 24 up to a

deadline to be determined by a decision of the Government in Council and located

after 6 May 2023 where, failing this, serious difficulties arise for

the operation of the automated processing system in question. The deadline

cannot be fixed beyond May 6, 2026.

161. Article 7, paragraphs 1 and 2, of the bill under consideration provides that

“Files other than the central Police file established before the entry into

force of this law are brought into conformity with article 43-1 of this

law no later than May 6, 2023.

By way of derogation from the first paragraph, when this requires disproportionate efforts and

the intervention of external resources, files other than the central file

can be brought into compliance with article 43-1 of this law until May 6

2026.”

Opinion of the National Commission for Data Protection

relating to Bill 7741.

42/45

162. The CNPD questions the compatibility between the two transitional provisions when

this draft law should in principle only specify and clarify the implementation

implementation of the obligations arising from the aforementioned law of 1 August 2018. The provision

of the aforementioned law of August 1, 2018 is limited to allowing a period of

compliance with the obligations arising from article 24 of the said law relating to the

journaling for files created before May 6, 2016.

163. The CNPD also questions the absence of procedural requirements provided for in Article 7,

paragraph 2, of the bill in light of the constraints imposed by the law of August 1, 2018

relating to the processing of data in criminal matters.

164. In the commentary to the articles, the authors of the draft law explain, taking

based on the deadlines provided for in the aforementioned article 63, that,

“As programming efforts will therefore have to be made no later than

for these dates, it is appropriate to provide the same deadlines for the other

adaptations to be provided for in the context of this bill, which requires work

considerable from a technical point of view, the recruitment of highly

specialist and the intervention of external resources.

It should also be noted that the Police has certain banks of

specialized data that has been acquired from international suppliers,

such as fingerprint or fingerprint matching software

genetics, or other applications used in particular by the Police Service

judiciary in terms of management and exploitation of traces found on the premises

of the crime. Suppliers must in any case adapt their software as much as possible

late for the year 2026, it is therefore appropriate to set the same date for the implementation

compliance with the provisions of this law, in order to avoid costs

disproportionate or the risk of not being able to carry out the interventions

needed within the set time. »

165. The CNPD considered, in its opinion on the central file, that:

“In view of the information currently available to the CNPD regarding the structure

and the configuration of the central file, it would like to point out that the Grand-Ducal Police

will not be able to refute behind technical constraints to justify a non-

compliance. It is then the responsibility of the data controller to take all

the necessary measures to ensure that it is able to fully respect

the rights of data subjects - even if this requires the redevelopment

of a computer system. »

166. The same observation is valid for any existing files used by the Police grand ducal. In this regard, she wonders how the technical considerations invoked, in particular “the intervention of external resources” constitute “exceptional circumstances” and that an adaptation until May 6, 2023 would pose “serious difficulties […] for the operation of the automated processing system in question ".

167. The CNPD considers that it would be preferable to align the transitional provisions in the bill, in particular by limiting them to files created before May 6, 2016 and by restricting its scope to Article 43-1, paragraph 5 relating to logging at “exceptional title and when it requires disproportionate effort”.

168. The National Commission recalls that technical considerations should not alone justify long transition periods. Like counterparts foreigners, the legal or regulatory framework for data processing must not be considered as a hindrance to the effectiveness of the action of the Grand Ducal Police, but can support and guide the day-to-day work of law enforcement authorities by providing clear and transparent rules to all actors involved and people concerned.

169. In particular for complex files, due to the volumes of data processed, the formats used and the interconnections of these files, the CNPD considers that it is possible to determine already who uses them and for what purposes, what data are stored and for how long, how a priori and a posteriori access control is done. Thus, the CNPD considers that it is possible to regulate, by a legislative text or regulatory, these the effectiveness of the authorities repressive.

files without in any way hindering

170. The authors of the bill consider that the Grand Ducal Police needs flexibility

increased in the creation of files, without resorting to a legal basis. As explained, the

CNPD can follow this reasoning for a series of files as an extension

the central file or specific files with a separate legal basis.

However, for these files, which are more versatile and more easily adaptable, it is difficult

to admit non-compliance for a period ranging from 3 to 6 years, including a

possible non-compliance limited to logging obligations.

171. The CNPD understands that the “new” central file will be operational upon entry into

entry into force of the law resulting from this bill, i.e. six months after the

publication of the said law in the Official Journal of the Grand Duchy of Luxembourg. Article 7,

paragraph 3 of the bill provides that access to the existing central file would be limited to

judicial police officers and agents for one year after the entry into force of the law.

Article 7, paragraphs 4 to 7, of the draft law regulates the migration and the interaction between the file

central existing to date and the "new" central file. These provisions do not call for

for their part, no particular observations from the CNPD.

172. In any case, the CNPD recalls that compliance efforts for

systems in place must move forward, in particular by implementing the

recommendations from the CNPD opinion and the 2019 IGP opinion.

□

173. In conclusion, the CNPD welcomes the bill which provides a detailed framework for the file

central. Although she may agree that there is no need to individually frame

each data processing implemented by the Police in the exercise of its missions

judicial police or administrative police, it reiterates its conviction that, in the

functioning of a democratic society, it would be preferable to supervise by

legal or regulatory provisions the most intrusive data processing,

by the number of people concerned and by the sensitivity of the data processed.

174. Thus decided in Belvaux on March 16, 2021.

175. The National Commission for Data Protection

Tine A. Larsen

Thierry Lallemang

President

Commissioner

Christophe BuschmannMarc Lemmer

Commissioner

Commissioner

Opinion of the National Commission for Data Protection

relating to Bill 7741.