

Opinion of the National Commission for Data Protection relating to the draft Grand-Ducal regulation relating to the determination and the organization of training for technical and administrative staff for different forms of sports activities.

Deliberation n°6/AV5/2021 of February 24, 2021

In accordance with article 57, paragraph 1, letter c) of regulation n° 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data personal data and on the free movement of such data, and repealing Directive 95/46/EC (Regulation general on data protection) (hereinafter referred to as the “GDPR”), to which article 7 of the law of 1 August 2018 on the organization of the National Commission for the protection data and the general data protection regime, the National Commission for data protection (hereinafter referred to as the “National Commission” or the “CNPD”) “advises, in accordance with the law of the Member State, the national parliament, the government and other institutions and bodies on legislative and administrative measures relating to the protection of the rights and freedoms of natural persons with regard to processing”.

By letter dated December 2, 2020, the Minister of Sports invited the Commission national authority to decide on the draft Grand-Ducal regulation relating to the determination and the organization of training for technical and administrative staff for the various forms sporting activities (hereinafter referred to as the “draft Grand-Ducal regulation”).

According to the explanatory memorandum, sport in Luxembourg encompasses physical activity in all its forms, such as school sports, health sports, sports for the disabled, sports for all, sport-fitness, leisure sport, competitive sport and high-level sport. In order to that the entire population can practice these physical or sporting activities in a way that is adapted to their needs, they must be supervised by people who have adequate training and therefore the necessary skills for this purpose.

It also emerges from the explanatory memorandum that the current regulatory framework dates from the 1990s

so that it has become necessary to adapt it to contemporary reality and to repeal the Grand-Ducal regulation of 16 January 1990 restructuring the training courses for coaches in the interest of sports federations and societies as well as Grand-Ducal regulations of 16 January 1990 restructuring the training of sports-leisure leaders.

In addition, the draft Grand-Ducal regulation constitutes the continuation of the "subsidy quality+" introduced by the Grand-Ducal regulation of 23 December 2016 concerning subsidies

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granted to sports clubs affiliated with an approved sports federation and granted on the basis of the qualification of coaches of young people under the age of 16.

In this opinion, the National Commission will address issues related to the protection of personal data raised by Title V, entitled "Electronic Register", of the draft Grand-Ducal regulation.

1. Ad article 55 of the draft Grand-Ducal regulation

Article 55 of the draft Grand-Ducal regulation provides for the creation, under the authority of the minister having in its attributions for Sports, of an electronic register, entitled "patent register", which has for purposes "the organization, management and administrative follow-up of initial training and continuous, aimed at obtaining the various patents, state patents, approvals and licenses ENEPS thereto, as well as the exemptions granted". Thus, the National Commission Congratulates that the authors of the draft Grand-Ducal regulation have taken care to determine the controller and the purposes of this register.

The commentary to the articles specifies that "[t]he establishment of such a database electronics is part of the digitization efforts undertaken by the administrations Luxembourg" and aims to facilitate and optimize the administrative tasks of ENEPS. In this In this regard, the National Commission would like to point out that the GDPR applies not only to

computerized files but also to paper files which, where applicable, already exist¹.

2. Ad article 56 of the draft Grand-Ducal regulation

Article 56, paragraph 1, of the draft Grand-Ducal regulation states that the register of patents is subdivided into three parts, while specifying the categories of personal data staff who will appear in the different parts.

The CNPD welcomes the fact that the draft Grand-Ducal regulation defines the categories of data to be personal character which will be entered in the patent register. However, she insists on recall the importance of the principle of data minimization enshrined in Article 5, paragraph 1, letter c) of the GDPR according to which the personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In view of the explanations provided in the commentary to the articles, the data to be

¹ See Article 2(1) GDPR.

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personal character entered in the patent register seem to be limited to what is necessary with regard to the purposes set out in Article 55 of the draft Grand-Ducal regulation. Article 56, paragraph 2, of the draft Grand-Ducal regulation continues that “[t]he data referred to in points 1° to 3° of paragraph 1 may be communicated to the controller of the database in connection with the execution of the amended Grand-Ducal regulation of 23 December 2016 concerning subsidies granted to sports clubs affiliated with a accredited sports federation.

According to the commentary of the articles, this communication is carried out with a view to the attribution the “quality +” subsidy governed by the amended Grand-Ducal regulation of 23 December 2016. authors state that “[t]his communication may indeed be essential, because obtaining and the amount of the “quality +” subsidy depends on the quality of the supervision offered to young people

by affiliated sports clubs.

The use of data from the patent register for the purpose of awarding the "quality +" subsidy seems to be a purpose compatible with those described in Article 55 of the draft Grand-Ducal, especially since the Minister having in his attributions the Sports is also the responsible for processing the database provided for by the amended Grand-Ducal regulation of December 23, 2016.

However, the brief explanations provided by the authors of the draft Grand-Ducal regulation do not allow the National Commission to assess whether there is a real need to communicate the data contained in the patent register. In any case, it seems it is unlikely that it will be necessary to communicate all the data contained in the register patents, such as telephone number or email address. However, the principle of minimization of data requires that only the data actually necessary for the award of the grant "quality +" are transmitted.

3. Ad article 57 of the draft Grand-Ducal regulation

Article 57 of the draft Grand-Ducal regulation provides that the minister having in his attributions les Sports is the data controller within the meaning of the GDPR and attributes to the director of ENEPS the quality of subcontractor within the meaning of the GDPR.

This article continues that "[l]access to files is secured and information relating to the person who carried out the consultation, the information consulted, the date, time and file reference, as well as the specific reason for the consultation can be traced. " Being given that this provision is found in the second paragraph of article 57 relating to sub-

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processing, it would be possible to deduce that it only applies to accesses carried out by the sub-treating. However, the CNPD considers that this provision should apply to all accesses, i.e.

i.e. also to access made by the data controller himself, and offers from

when inserting it in a separate paragraph.

Furthermore, the National Commission notes that the draft Grand-Ducal regulation does not define the retention period of the personal data contained in the patent register.

The data controller must nevertheless ensure compliance with Article 5, paragraph

1, letter e) of the GDPR according to which the personal data stored in a form

allowing the identification of the persons concerned for a period not exceeding that

necessary in relation to the purposes for which they are processed. The National Commission

considers it necessary for the draft Grand-Ducal regulation to specify the retention period(s)

data or at least the applicable criteria for determining the retention periods.

Finally, the CNPD wishes to recall that the rights of data subjects provided for by the

GDPR must be respected. Thus, under Articles 13 and 14 of the GDPR, the person responsible for the

processing is obliged to provide the persons concerned with a certain amount of information

when personal data is collected directly from them or

indirectly through a third party, for example through a club or a federation.

Thus decided in Belvaux on February 24, 2021.

The National Data Protection Commission

Tine A. Larsen

President

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