

**Coordinated text of the Act of 2 August 2002 on the protection of individuals with regard to the processing of personal data amended by**

**the Act of 31 July 2006,**

**the Act of 22 December 2006,**

**the Act of 27 July 2007,**

**the Act of 28 July 2011.**

**Chapter I. General provisions relating to the protection of the individual with regard to the processing of personal data**

**Art. 1. Object**

*(Act of 27 July 2007)*

“This act protects the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data (...).”

**Art. 2. Definitions**

For the purposes of this Act:

- (a) *“code of conduct”*: sector contributions drawn up for a correct application of this Act. Codes of conduct are drawn up at a national or community level by professional associations and other organisations representing the controllers, and may optionally be submitted to the National Commission or the Working Party on the Protection of Individuals with regard to the Processing of Personal Data, as provided under Article 29 of Directive 95/46/EC;
- (b) *“National Commission”*: the National Commission for Data Protection;

*(Act of 27 July 2007)*

- (c) *“the data subject's consent”*: any freely given specific and informed indication of his wishes by which the data subject or his legal, judicial or statutory representative signifies his agreement to personal data relating to him being processed;
- (d) *“recipient”*: a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a legal inquiry shall not be regarded as recipients;

*(Act of 27 July 2007)*

- (e) *“personal data”* (hereinafter referred to as “data”): any information of any type regardless of the type of medium, including sound and image, relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- (f) *“health data”*: any information concerning the data subject's physical or mental state, including genetic information;
- (g) *“genetic data”*: any data concerning the hereditary characteristics of an individual or group of related individuals;
- (h) *“personal data filing system”* (herein after referred to as “filing system”): any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;
- (i) *“medical authority”*: any health practitioner and any person subject to the same professional secrecy obligation as well as any hospital covered by the Act of 28 August 1998 on hospitals, carrying out the data processing necessary for the purpose of preventative medicine, medical diagnosis, provision of care or treatment, or health service management;

“combination”: abrogated by the Act of 27 July 2007

- (j) “Minister”: the Minister in charge of data protection;

(Act of 22 December 2006)

- (k) “social security body”: any public or private body that provides optional or compulsory services relating to sickness, maternity, old age, physical accident, invalidity, dependency, death, unemployment, “parental leave” as well as any family benefits or social assistance;

- (l) “third country”: non-Member State of the European Union;

(Act of 27 July 2007)

- (m) “data subject”: any natural (...) person who is the subject of data processing of a personal nature;”

- (n) “controller”: the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law;

- (o) “processor”: a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(Act of 27 July 2007)

- (p) “surveillance”: any activity which, carried out using technical instruments, consists of observing, collecting or recording in a non-occasional manner the personal data of one or more persons, concerning behaviour, movements, communications or the use of electronic computerised instruments;”

- (q) “third party”: any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data. In the public sector, a third party means a ministry, an administration, a public institution, a regional authority or a public service other than the controller or his processor;

- (r) “processing of personal data” (hereinfter referred to as “processing”): any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

### **Art. 3. Scope**

(Act of 27 July 2007)

- (1) “This Act shall apply to:

- the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system;
- to any form of capture, processing and dissemination of sounds and images allowing to identify natural persons;
- the processing of data relating to public security, defence, seeking out and prosecuting criminal offences, or the State security, even if those data are related to a major economic or financial interest of the State, without prejudice to the specific provisions of national or international law governing these areas.

- (2) Is governed by this Act:

- (a) processing by a controller established on the territory of the Grand Duchy of Luxembourg;
- (b) processing by a controller who is not established in Luxembourg or the territory of any other Member State of the European Union and, for the purposes of processing personal data makes use of equipment, automated or otherwise, situated on the territory of Luxembourg, unless such equipment is used only for purposes of transit through the territory of the Community.

In the circumstances referred to in Article 3, paragraph (2) letter (b), the controller must designate by written declaration a representative based on Luxembourg territory who will take the controller's place in fulfilling his obligations as stated under this Act without releasing the latter from his own liability.

- (3) This Act shall not apply to the processing of personal data by a natural person in the course of a purely personal or household activity.

## **Chapter II. Rules governing the lawfulness of the processing**

### **Art. 4. Data quality**

- (1) The controller shall provide that personal data must be processed fairly and lawfully, and notably that the data is:
  - (a) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;
  - (b) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
  - (c) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
  - (d) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed without prejudice to paragraph (2) below.

*(Act of 27 July 2007)*

- (2) "Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible with the purposes specified for which the data was collected."
- (3) Any party who carries out processing in breach of the provisions of this Article is punished by a prison sentence of eight days to one year and a fine of 251 to 125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of this Article, subject to a financial penalty for which the maximum amount will be set by said court.

### **Art. 5. Legitimacy of processing**

*(Act of 27 July 2007)*

- (1) "Data may be processed only if (...):
  - (a) it is necessary for compliance with a legal obligation to which the controller is subject; or
  - (b) it is necessary for the execution of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or
  - (c) it is necessary for the execution of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or
  - (d) it is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1; or
  - (e) it is necessary in order to protect the vital interests of the data subject; or
  - (f) the data subject has given his consent."
- (2) Any party who carries out processing in breach of the provisions of this Article is punished by a prison sentence of eight days to one year and a fine of 251 to 125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of this Article, subject to a financial penalty for which the maximum amount will be set by said court.

### **Art. 6. Processing of special categories of data**

- (1) The processing of personal data revealing racial or ethnic origin, political opinions,

religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life, including the processing of genetic data, are forbidden.

(2) Paragraph (1) shall not apply where:

*(Act of 27 July 2007)*

(a) the data subject has given his explicit consent to the processing of those data, subject to the inalienability of the human body and unless forbidden by law, or

*(Act of 27 July 2007)*

(b) processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law in so far as it is authorized by national law providing for adequate safeguards; or

(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent; or

(d) processing is carried out in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects; or

(e) the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims, or

*(Act of 27 July 2007)*

(f) "the processing (...) is necessary for the establishment, exercise or defence of legal claims, or if

(g) the processing is necessary in the public interest for historical, statistical or scientific reasons without prejudice to the application of Article 7 hereafter (...), or if"

(h) the processing is implemented via a Grand-Ducal Regulation as stated in Article 17, "or if"

*(Act of 27 July 2007)*

(i) "the processing is implemented in the context of the processing of legal data within the meaning of Article 8."

(...)

(3) Nevertheless, (...) genetic data may be processed only:

a) to verify the existence of a genetic link for the purpose of legal proof, for compensation of the data subject, or the prevention or punishment of a specific criminal offence in the cases covered by paragraph (2) letters (f), (h) and (i) of this Article, or

b) in the case covered by paragraph (2) letter (c) of this Article if the processing is necessary to protect the vital interests, or

c) in the case covered by paragraph (2) letter (g) of this Article if the processing is necessary in the public interest for historical, statistical or scientific reasons, or

d) in the case covered by Article 7, paragraph (2) if the data subject has given his consent and if the processing is carried out only in the area of healthcare or scientific research subject to the inalienability of the human body and except where the law provides that the prohibition stated in paragraph (1) cannot not be lifted by the data subject's consent.

In cases where the law allows the prohibition to be lifted by the data subject's consent but for practical reasons it proves to be impossible to obtain consent or disproportionate to the objective sought and without prejudice to the right of opposition on the part of the data subject, the requirement to obtain prior consent may be overridden, subject to conditions to be laid down in a Grand-Ducal Regulation, or

e) in the case covered by Article 7, paragraph (1) if the processing of genetic data is necessary for the purpose of preventive medicine, medical diagnosis or the

provision of care or treatment. In this case, the processing of this data may only be carried out by the medical authorities.”

- (4) Any party who carries out processing or notifies a third party in breach of paragraph (1) is punished by a prison sentence of eight days to one year and a fine of 251 to 125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of paragraph (1), subject to a financial penalty for which the maximum amount will be set by said court.

#### **Art. 7. Processing of special categories of data by health services**

*(Act of 27 July 2007)*

“Without prejudice to application of Article 6, paragraph (3) concerning the processing of genetic data:

- (1) The processing of data on health and sex life necessary for the purpose of preventative medicine, medical diagnosis or the provision of care or treatment may be carried out by the medical authorities;
- (2) The processing of data on health and sex life necessary for the purpose of healthcare or scientific research may be carried out by the medical authorities, or by the research bodies or the natural or legal persons whose research project has been approved under the legislation applicable to biomedical research. If the controller is a legal entity, it shall indicate a delegated controller, who shall be subject to professional secrecy;
- (3) The processing of data on health and sex life necessary for the management of healthcare services may be carried out by the medical authorities or, if the controller is subject to professional secrecy, by social security bodies and authorities that manage the said data in execution of their legal and regulatory tasks, by insurance companies, pension fund management companies, the Caisse Médico-Chirurgicale Mutualiste and by those natural or legal persons authorised to do so for socio-medical or therapeutic reasons under the Act of 8 September 1998 governing relations between the State and the bodies working in the areas of social security, family and therapeutic matters where their activity falls with the areas to be listed in a Grand-Ducal Regulation.
- (4) The processing may be sub-contracted subject to the conditions laid down in Article 21.  
Provided their processing is in itself lawful as stated in Articles 6 and 7, the data covered therein may be notified to third parties or used for research purposes in accordance with terms and subject to conditions to be determined by Grand-Ducal regulations.  
The providers of care and suppliers may communicate the data concerning their services to the general practitioner and to a social security body or to the Caisse Médico-Chirurgicale Mutualiste for the purpose of repayment of the corresponding expenditure.”

#### **Art. 8. Processing of legal data**

- (1) The processing of data for the purpose of criminal investigations and legal proceedings will be performed pursuant to the provisions of the Code d'Instruction Criminelle, the Code de Procédure Civile, the Act relating to procedural regulations in administrative courts or other laws.
- (2) The processing of data relating to offences, criminal convictions or security measures may be carried out only in execution of a legal provision.
- (3) A complete register of criminal convictions may be kept only under the control of the competent official authority.
- (4) Any party acting privately who carries out processing in breach of the provisions of this Article is punished by a prison sentence of eight days to one year and a fine of 251 to 125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of this Article, subject to a financial penalty for which the maximum amount will be set by said court.

#### **Art. 9. Processing and freedom of expression**

*(Act of 27 July 2007)*

(...) Without prejudice to provisions laid down in the “Act of 8 June 2004 on the freedom of expression in the media” and in as far as the undermentioned derogations are necessary to reconcile the right to privacy to the rules governing freedom of expression, processing carried out solely for journalistic, artistic or literary expression are not subject:

- (a) - to the prohibition on processing the specific categories of data provided under Article 6, paragraph (1);
- to the limitations concerning the processing of legal data stated in Article 8;

*(Act of 27 July 2007)*

“if the processing is in connection with data that have manifestly been made public by the data subject, or to data which are directly related to the public life of the data subject or the event in which he is involved in a deliberate manner;”

- (b) to the condition that the adequate protection required in the case of processing of data that is transferred to a third country as stated in Article 18 paragraph (1) should be provided;
- (c) to the information obligation of Article 26, paragraph (1) if its application would compromise the collection of data from the data subject;
- (d) to the information obligation of Article 26, paragraph (2) if its application would either compromise the collection of data, or a planned publication, or public disclosure in any form whatsoever of the said data, or would provide information that would make it possible to identify the sources of information;

*(Act of 27 July 2007)*

- (e) “to the data subject’s right of access which is deferred and limited in accordance with (...) Article 29, paragraph (3).”

(...)

#### **Art. 10. Processing for surveillance purposes**

- (1) The data may only be processed for surveillance purposes:
  - (a) if the data subject has given his consent, or
  - (b) in surroundings or in any place accessible or inaccessible to the public other than residential premises, particularly indoor car parkings, stations, airports and on public transport, provided the place in question due to its nature, position, configuration or frequentation presents a risk that makes the processing necessary:

*(Act of 27 July 2007)*

“-for the safety of users and for the prevention of accidents; (...)

-for the protection of property, if there is a characteristic risk of theft or vandalism”, or

- (c) in private places where the resident natural or legal person is the controller, “or”

*(Act of 27 July 2007)*

- (d) “if the processing is necessary to protect the vital interests of the data subject or of another where the data subject is physically or legally incapable of giving his consent.”

- (2) Data subjects shall be informed by appropriate means such as signage, circulars and/or letters sent by registered post or electronic means of the processing stated in paragraph (1) letters (b) and (c). At the request of the data subject, the controller will provide the latter with the information stated in Article 26, paragraph (2).
- (3) The data collected for supervision purposes may be communicated only:
  - (a) if the data subject has given his consent, except where forbidden by law, or
  - (b) to the public authorities as stated in Article 17, paragraph (1), or
  - (c) to the competent legal authorities to record a criminal offence or take legal action in respect of it and to the legal authorities before which a legal right is being exercised or defended.
- (4) Any party who carries out processing in breach of the provisions of paragraph (1) is punished by a prison sentence of eight days to one year and a fine of 251 to



125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of this Article, subject to a financial penalty for which the maximum amount will be set by said court.

**Art. 11.** *Abrogated by the Act of 31 July 2006 and taken over by Article L.261-1 of the Employment Code*

*(Act of 27 July 2007)*

**“Article 11 (new). Processing for the purposes of surveillance at the workplace**

Processing for surveillance reasons at the workplace may not be carried out by the employer if the employer is the controller except in the cases referred to in Article L.261-1 of the Employment Code.”

### **Chapter III. Formalities prior to processing and publicizing of processing**

**Art. 12. Prior notification to the National Commission**

(1) (a) Apart from cases that fall within the scope of the provisions of Articles 8, 14 and 17, the controller shall notify the National Commission of the processing of data beforehand.

(b) Processing operations carried out by a single controller that are for identical or interlinked purposes may be contained in a single notification. In this case, the information required under Article 13 will be supplied for each processing operation only where it is specific to that operation.

*(Act of 27 July 2007)*

(2) “Are exempt from the obligation to notify:

(a) processing, unless for the surveillance purposes referred to in Article 10 above and Article L.261-1 of the Employment Code, carried out by the controller if that person designates a data protection officer. The data protection officer shall be responsible for establishing and forwarding to the National Commission a register listing the processing operations carried out by the controller except those exempt from notification in accordance with paragraph (3) of the present Article and in accordance with the provisions relating to the disclosure of processing operations as provided under Article 15;

(b) processing operations for the sole purpose of keeping a register which, under a legal provision, is intended for public information purposes and which is open to consultation either by the public in general or by any person demonstrating a legitimate interest;

(c) processing operations carried out by lawyers, notaries and process-servers and necessary to acknowledge, exercise or defend a right at law;

(d) processing carried out solely for journalistic, artistic or literary expression referred to in Article 9;

(e) processing necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent.

(3) Are also exempt from the obligation to notify:

(a) The processing of data relating exclusively to personal data necessary for the administration of the salaries of people in the service of or working for the controller, if this data is used exclusively for the said administration of salaries and is only communicated to recipients that are entitled.

(b) The processing of data relating exclusively to the management of applications and recruitments, as well as the administration of the staff in the service of or working for the controller.

The processing may not cover data on the health of the data subject, or sensitive or legal data within the meaning of Articles 6 and 8, or data intended for assessing the data subject.

Such data may not be communicated to third parties except in the context of application of a provision of law or regulation, or if they are essential to

achieving the goals of the processing.

- (c) The processing of data relating exclusively to the controller's bookkeeping, provided that this data is used exclusively for such bookkeeping and the processing covers only the persons whose data is necessary for the bookkeeping.

Such data may not be communicated to third parties except in the context of application of a provision of regulation or law, or if such communication is essential to the bookkeeping.

- (d) The processing of data referring exclusively to the administration of shareholders, debenture holders and partners, provided that the processing covers solely the data necessary for such administration, the data covers only those persons whose data is necessary for such administration, and the data is not communicated to any third party except in the context of application of a provision of law or regulation.
- (e) The processing of data relating exclusively to the management of the controller's client or supplier base.

The processing may only cover the controller's potential, current or former clients or suppliers.

The processing may not cover either data relating to the health of the data subject or sensitive or legal data within the meaning of Articles 6 and 8.

Such data may not be communicated to third parties except in the context of application of a provision of regulation or law, or if they are essential to the normal management of the company.

- (f) The processing of data carried out by a foundation, an association or any other non-profit organisation in the context of their ordinary activities.

The processing must refer exclusively to the administration of its own members, persons with whom the controller maintains regular contact, or benefactors of the foundation, association or organisation.

This data may not be communicated to any third party except in the context of the application of a provision of law or regulation.

- (g) The processing of identification data essential for communication carried out with the sole purpose of entering into contact with the party concerned, provided that this data is not communicated to any third party.

The letter (g) shall only apply to the processing of data not covered by any of the other provisions of the present Act.

- (h) The processing of data related exclusively to the recording of visitors carried out in the context of manual access control provided that the data processed is restricted to only the name and business address of the visitor, his/her employer, his/her vehicle, the name, department and function of the person visited, and the time and date of the visit.

This data may only be used exclusively for manual access control.

- (i) The processing of data carried out by educational establishments to manage their relations with their pupils or students.

Processing covers exclusively data of a personal nature concerning potential, current or former pupils or students of the educational establishment.

This data may not be communicated to any third party except in the context of application of a provision of law or regulation.

- (j) The processing of data of a personal nature carried out by administrative authorities if the processing is subject to specific regulations adopted by or by virtue of the law regulating access to the data processed and its use and the manner in which it is obtained.
- (k) The processing of data of a personal nature necessary for the management of computerised and electronic communications systems and networks provided



that it is not carried out for the purpose of supervision within the meaning of Article 10 and Article 11 (new).

- (l) Processing carried out in accordance with Article 36 of the Law of 28 August 1998 on hospitals, except for the processing of genetic data.
  - (m) Processing carried out in accordance with Article 7, paragraph (1) of the present Law by a doctor concerning his/her patients, except for the processing of genetic data.
  - (n) Processing carried out by a pharmacist or a professional subject to the amended Law of 26 March 1992 on the exercise and enhancement of certain health professions. The processing of data of a personal nature relates exclusively to the supply of medicines and care or services provided. This data may not be communicated to a third party except in the context of the application of a provision of law or regulation.”
- (4) Any party that does not carry out the obligation to notify or supplies incomplete or inaccurate information is liable to a fine of between 251 and 125,000 euros. The court hearing the case may order the discontinuance of processing that is contrary to the provisions of this Article, subject to a financial penalty the maximum amount of which will be set by the said court.

#### **Art. 13. Contents and form of the notification**

- (1) The notification shall include at least the following information:

*(Act of 27 July 2007)*

- (a) the name and address of the controller and of his representative (...), if any;
- (b) the cause of legitimacy of the processing;
- (c) the purpose or purposes of the processing;
- (d) the description of the category or categories of data subjects and of the data or categories of data relating to them;
- (e) the recipients or categories of recipients to whom the data might be disclosed;
- (f) the third countries to which it is proposed to transfer the data;
- (g) a general description allowing a preliminary assessment of the appropriateness of the measures taken pursuant to Articles 22 and 23 to ensure security of processing.

*(...) abolished by the Act of 27 July 2007*

- (2) Any amendment affecting the information stated in paragraph (1) must be notified to the National Commission prior to the processing.

*(Act of 27 July 2007)*

- (3) “The notification will be made to the National Commission on paper accompanied, as appropriate, by a computerised document or an electronic transmission in a manner that it will establish. A receipt of notification will be given.

A Grand-Ducal Regulation determines the amount and methods of payment of the fee to be collected for any notification and amendment to a notification.

- (4) Processing operations that have a single purpose relating to categories of identical data and intended for the same recipients or categories of recipients may be covered by a single notification to the National Commission. In this case, the controller for each processing operation sends the National Commission a formal undertaking of its compliance with the description that appears in the notification.”

#### **Art. 14. Prior authorisation by the National Commission**

*(Act of 27 July 2007)*

- (1) “A prior authorisation by the National Commission will be required for:
- (a) the processing of genetic data referred to in paragraph 3, letters (c) and (d) of Article 6;
  - (b) the processing operations for supervision purposes referred to in Article 10 if the data resulting from the supervision is recorded, and in Article 11 (new);
  - (c) the data processing operations for historical, statistical or scientific purposes referred to in Article 4, paragraph (2).
  - (d) the combination of data as referred to in Article 16;

- (e) processing relating to the credit status and solvency of the data subjects if the processing is carried out by persons other than professionals of the financial sector or insurance companies in respect of their clients;
  - (f) processing involving biometric data necessary for checking personal identity;
  - (g) the usage of data for purposes other than those for which they were collected. Such processing may be carried out only where prior consent is given by the data subject or if it is necessary to protect the vital interest of the data subject.”
- (2) The request for authorisation shall include at least the following information:

*(Act of 27 July 2007)*

- (a) the name and address of the controller (...) “and where applicable” his representative (...);
  - (b) the cause of legitimacy of the processing;
  - (c) the purpose or purposes of the processing;
  - (d) the origin of the data;
  - (e) a detailed description of the data or the categories of data as well as of the proposed processing operations;
  - (f) a description of the category or categories of data subjects;
  - (g) the recipients or categories of recipients to whom the data might be disclosed;
  - (h) the third countries to which it is proposed to transfer the data;
  - (i) a detailed description to evaluate compliance with the security measures provided in Articles 22 and 23.
- (...) abolished by the Act of 27 July 2007*

*(Act of 27 July 2007)*

- (3) “Any amendment affecting the information referred to in paragraph (2) must be authorised by the National Commission prior to carrying out the processing.
- (4) The request for authorisation is made to the National Commission on paper accompanied, as appropriate, by a digital document or an electronic transmission. A receipt of the request for authorisation will be given. A Grand-Ducal Regulation shall determine the amount and methods of payment of the fee to be collected for any authorisation and amendment to an authorisation.”
- (5) Processing operations that have a single purpose relating to categories of identical data and intended for the same recipients or categories of recipients may be authorised by a single decision of the National Commission. In this case, the controller for each processing operation will send the National Commission a formal undertaking of its compliance with the description that appears in the authorisation.
- (6) Any party who carries out processing in breach of the provisions of this Article will be liable to a prison sentence of between eight days and one year and a fine of 251 to 125,000 euros or only one of these penalties. The court hearing the case may order the discontinuance of processing that is contrary to the provisions of this Article, subject to a financial penalty the maximum amount of which will be set by the said court.

**Art. 15. Publicizing of processing operations**

- (1) The National Commission will hold a public register of processing operations.
- (2) This register shall contain:
  - (a) processing operations notified to the National Commission under Article 12, paragraph (1);
  - (b) processing operations authorised by the National Commission under Article 14, paragraph (1); and

*(Act of 27 July 2007)*

- (c) processing operations supervised by the data protection officer and forwarded to the National Commission under Article 12, paragraph (2) letter (a) and this person’s identity.”
- (3) The register held by the National Commission will contain the information required respectively under Article 13, paragraph (1) and Article 14, paragraph (2) for each processing operation. For the processing operations subject to prior authorisation, the register also gives information on the authorisation issued by the National Commission.

- (4) Any person may examine free of charge the information contained in this public register which is available on-line apart from that provided in Article 13, paragraph (1) letter (g) and Article 14, paragraph (2) letter (i).
- (5) However, the National Commission may restrict this disclosure if such a measure is necessary to safeguard:
  - (a) national security;
  - (b) defence;
  - (c) public safety;

(Act of 27 July 2007)

- (d) “the prevention, tracking down and recording of criminal offences and the combating of money laundering;”
  - (e) a major economic or financial interest of the State or of the European Union, including monetary, budgetary and taxation matters;
  - (f) the protection of the data subject or of the rights and freedoms of others;
  - (g) freedom of expression;
  - (h) a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in (c), (d) and (e); and
  - (i) professional secrecy and trade secrecy of the data subject and of the controller.
- (6) The National Commission shall publish an annual report listing notifications and authorisations.
  - (7) This Article does not apply to processing operations the sole purpose of which is to keep a register which under a Luxembourg law or regulation is intended to provide information to the public and which is open to consultation either by the public in general or by any person demonstrating a legitimate interest.

#### **Art. 16. Combination of data**

(Act of 27 July 2007)

- (1) The combination of data not expressly provided for by law “or regulation” has to be authorised in advance by the National Commission following a joint request presented by the relevant controllers.
- (2) The combination of data must allow the achievement of legal or statutory goals that are of legitimate interest for controllers, must not result in discrimination or the reduction of rights, freedoms and appropriate safeguards for the data subjects, must contain appropriate security measures and must take account of the type of data being combined.

(Act of 27 July 2007)

- (3) “Combination is authorised only where the files have compatible purposes and the professional secrecy to which the controllers are bound, where applicable, are respected.”

#### **Art.17. Authorisation by regulatory means**

- (1) The following are subject to a Grand-Ducal Regulation:
  - (a) processing operations of a general nature necessary for the prevention, investigation and detection of criminal offences that are restricted to the Grand-Ducal police force, the *Inspection Générale de la Police* and the Customs and Excise authority in line with their respective legal and regulatory duties.

The Grand-Ducal Regulation will determine the controller, the cause of legitimacy of the processing, the purpose or purposes of the processing, the category or categories of data subjects and the data or categories of data relating to them, the origin of these data, the third parties or categories of third parties to which these data may be disclosed and the measures to be taken to ensure secure processing pursuant to Article 22 of this Act,

- (b) processing operations relating to national security, defence and public security, and
- (c) data processing operations in the area of criminal law carried out under international treaties or intergovernmental agreements or in the context of

cooperation with the International Criminal Police Organisation (OIPC – Interpol).

(Act of 27 July 2007)

- (d) “the creation and operation, for the purposes and under the conditions referred to under (a) above, of a videosurveillance system for security areas. This includes any place to which the public has access that by its nature, location, configuration or frequentation presents a greater risk of criminal offences being committed.

Security areas shall be determined subject to the conditions provided for in a Grand-Ducal Regulation.”

- (2) The monitoring and supervision of processing operations carried out either in execution of a provision of national law or in application of an international convention shall be carried out by a supervisory authority composed of the Principal State Prosecutor or his deputy, who will act as its chairman, and two members of the National Commission, nominated at the latter’s proposal by the Minister.

The organisational structure and operations of the supervisory authority will be determined by a Grand-Ducal Regulation.

The supervisory authority will be informed immediately of a data processing operation as referred to in this Article. It will ensure that the said processing operations are carried out in accordance with the legal provisions that govern them.

In order to carry out its mission, the supervisory authority will have direct access to the data processed. In respect of the processing operations carried out, it may perform on-site checks and obtain any information and documents required to perform its duties. It may also appoint one of its members to perform specific supervisory functions that will be carried out under the conditions stated above. The supervisory authority will make any necessary rectifications and deletions. Every year, it will draw up a report on the execution of its duties to the Minister.

The right of access to data referred to in this Article may only be exercised through the supervisory authority. The supervisory authority will carry out the appropriate checks and investigations, arrange for any necessary rectifications and will inform the data subject that the processing in question does not contain any data contrary to the treaties, laws and implementing regulations.

- (3) Any party acting privately who carries out processing in breach of the provisions of this Article is punished by a prison sentence of eight days to one year and a fine of 251 to 125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of this Article, subject to a financial penalty for which the maximum amount will be set by said court.

#### **Chapter IV. Transfer of data to third countries**

##### **Art. 18. Principles**

- (1) The transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if the third country in question ensures an adequate level of protection and complies with the provisions of this Act and its implementing regulations.
- (2) The adequacy of the level of protection afforded by a third country shall be assessed by the controller in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country

in question and the professional rules and security measures which are complied with in that country.

- (3) In the event of doubt, the controller will immediately inform the National Commission which will consider whether the third country offers an adequate level of protection. In accordance with Article 20 the National Commission will notify the European Commission of cases where it considers that the third country does not offer an adequate level of protection.
- (4) If the European Commission or the National Commission consider that a third country does not ensure an adequate level of protection, transfer of data to that country will be prohibited.
- (5) Any party who transfers data to a third country in violation of the provisions of paragraphs (1), (2) and (4) above is punished by a prison sentence of eight days to one year and a fine of 251 to 125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of paragraphs (1), (2) and (4) of this Article, subject to a financial penalty for which the maximum amount will be set by said court.

#### **Art. 19. Derogations**

- (1) The transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 18, paragraph (2) may take place on condition that:
  - (a) the data subject has given his consent unambiguously to the proposed transfer; or
  - (b) the transfer is necessary for the execution of a contract between the data subject and the controller or the implementation of precontractual measures taken in response to the data subject's request; or
  - (c) the transfer is necessary for the conclusion or execution of a contract concluded in the interest of the data subject between the controller and a third party; or
  - (d) the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims; or
  - (e) the transfer is necessary in order to protect the vital interests of the data subject; or

*(Act of 27 July 2007)*

- (f) the transfer is made from a register as provided in "Article 12, paragraph (2) letter (b)."

*(Act of 27 July 2007)*

- (2) "In the case of a transfer made to a third country that does not offer an adequate level of protection within the meaning of Article 18, paragraph (2), the controller must, at the request of the National Commission, provide the Commission within fifteen days with a report stating the conditions under which it made the transfer."
- (3) Without prejudice to paragraph (1), the National Commission may authorize a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 18, paragraph (2), where the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses. The controller is required to comply with the decision of the National Commission.
- (4) Any party who transfers data to a third country in violation of the provisions of this Article is punished by a prison sentence of eight days to one year and a fine of 251 to 125.000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing contrary to the provisions of this Article, subject to a financial penalty for which the maximum amount will be set by said court.

#### **Art.20. Reciprocal information**

*(Act of 27 July 2007)*

- (1) "The National Commission will inform the Minister of any decision taken pursuant

- to Article 18, paragraphs (3) and (4), and Article 19, paragraph (3).”
- (2) The Minister will inform the National Commission of any decision relating to the level of protection of a third country taken by the European Commission.

## **Chapter V. Subordination and security of processing**

### **Art. 21. Subordination**

Any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller, unless he is required to do so by law.

### **Art. 22. Security of processing**

*(Act of 27 July 2007)*

- (1) The controller must implement appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. “A description of these measures and of any subsequent major change must be communicated to the National Commission at its request, within fifteen days.”
- (2) The controller must, where processing is carried out on his behalf, choose a processor providing sufficient guarantees in respect of the technical security measures and organizational measures governing the processing to be carried out, and must ensure compliance with those measures.
- (3) The carrying out of processing by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:
- (a) the processor shall act only on instructions from the controller,
  - (b) the obligations set out in this article shall also be incumbent on the processor.

### **Art. 23. Special security measures**

Depending on the risk of the breach of privacy, as well as the state of the art and the costs associated with their implementation, the measures set out in Article 22, paragraph (1) must:

- (a) prevent any unauthorised person from accessing the facilities used for data processing (monitoring of entry to facilities)
- (b) prevent data media from being read, copied, amended or moved by any unauthorised person (monitoring of media);
- (c) prevent the unauthorised introduction of any data into the information system, as well as any unauthorised knowledge, amendment or deletion of the recorded data (monitoring of memory);
- (d) prevent data processing systems from being used by unauthorised person using data transmission facilities (monitoring of usage);
- (e) guarantee that authorised persons when using an automated data processing system may access only data that are within their competence (monitoring of access);
- (f) guarantee the checking and recording of the identity of third parties to whom the data can be transmitted by transmission facilities (monitoring of transmission);
- (g) guarantee that the identity of the persons having had access to the information system and the data introduced into the system can be checked and recorded ex post facto at any time and by any person (monitoring of introduction);
- (h) prevent data from being read, copied, amended or deleted in an unauthorised manner when data are disclosed and data media transported (monitoring of transport);
- (i) safeguard data by creating backup copies (monitoring of availability).

- Art.24.** (1) Members of the National Commission and any other person who carries out duties on its behalf, as well the data protection officers, even after their employment has



ended, are to be subject to a duty of professional secrecy as provided under Article 458 of the Code Pénal.

- (2) The data protection officer when carrying out his functions may not plead the professional secrecy to which they are subject to the National Commission.
- (3) Certified service providers may not plead the professional secrecy to which they are subject in accordance with Article 19 of the Act of 14 August 2000 relating to electronic commerce to the National Commission.  
*(Act of 27 July 2007)*
- (4) Controllers acting within the framework of fulfilling their duties as specified in Article 7, “paragraphs (1) and (2)” may not plead the professional secrecy to which they are subject to the National Commission if the latter has been instructed in accordance with Article 32, paragraphs (4) and (5).

**Art.25. Sanctions relating to the subordination and security of processing operations**

Any party who carries out processing in breach of the confidentiality and security rules referred to in Articles 21, 22 and 23, will be liable to a prison sentence of between eight days and six months and a fine of between 251 and 125,000 euros or only one of these penalties. The court hearing the case may order the discontinuance of the processing that is contrary to the provisions of Article 21, 22 and 23, subject to a financial penalty for which the maximum amount will be set by said court.

**Chapter VI. Rights of the data subject**

**Art. 26. The data subject’s right to information**

- (1) In case of collection of data from the data subject, the controller must provide said data subject with at least the following information, except where he already has it:
  - (a) the identity of the controller and of his representative, if any;
  - (b) the purposes of the processing for which the data are intended;
  - (c) any further information such as
    - the recipients or categories of recipients of the data,
    - whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply,
    - the existence of the right of access to and the right to rectify the data concerning him;

*(...) abolished by the Act of 27 July 2007*

*(Act of 27 July 2007)*

“in so far as such further information is necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject.”

- (2) Where the data have not been obtained from the data subject, Member States shall provide that the controller or his representative must at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed provide the data subject with at least the following information, except where he already has it:
  - (a) the identity of the controller and of his representative, if any;
  - (b) the purposes of the processing;
  - (c) any further information such as
    - the categories of data concerned,
    - the recipients or categories of recipients,
    - the existence of the right of access to and the right to rectify the data concerning him

*(...) abolished by the Act of 27 July 2007*

*(Act of 27 July 2007)*

“in so far as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.”

- (3) Any party who is in breach of the provisions of this article will be liable to a prison sentence of between eight days and one year and a fine of 251 to 125,000 euros or only one of these penalties. The court hearing the case may order the discontinuance of processing that is contrary to the provisions of this Article, subject to a financial penalty the maximum amount of which will be set by said court.

**Art. 27. Exceptions to the data subject's right to information**

- (1) Article 26, paragraphs (1) and (2), shall not apply when the processing is necessary to safeguard:
  - (a) national security;
  - (b) defence;
  - (c) public safety;  
(Act of 27 July 2007)
  - (d) "the prevention, tracking down, recording and prosecution of criminal offences, including the combating of money laundering, or the progress of other legal proceedings;"
  - (e) an important economic or financial interest of the State or of the European Union, including monetary, budgetary and taxation matters;
  - (f) protection of the data subject or the rights and freedoms of others;  
(Act of 27 July 2007)
  - (g) "a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in letters (c), (d) and (e).
- (2) The provisions of Article 26 are subject to derogations if the data are collected in the cases provided for in Article 9, letters (c) and (d)."
- (3) The provisions of Article 26 paragraphs (1) and (2) will not apply where, in particular for a processing operation for a statistical, historical or scientific purpose, it is not possible to notify the data subject or doing so entails disproportionate efforts, or if the recording or the notification of the data is provided by law.
- (4) Any party in breach of the provisions of paragraphs (1) and (2) above will be liable to a prison sentence of between eight days and one year and a fine of 251 to 125,000 euros or only one of these penalties. The court hearing the case may order the discontinuance of processing that is contrary to the provisions of paragraphs (1) and (2) of this Article, subject to a financial penalty the maximum amount of which will be set by said court.

**Art. 28. Right of access**

- (1) Upon application to the controller, the data subject or his beneficiaries who can prove they have a legitimate interest, have the right to obtain without constraint at reasonable intervals and without excessive delay or expense:
  - (a) Access to data concerning him;
  - (b) confirmation as to whether or not data relating to him are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed,
  - (c) communication to him in an intelligible form of the data undergoing processing and of any available information as to their source,
  - (d) knowledge of the logic involved in any automatic processing of data concerning him at least in the case of the automated decisions referred to in Article 31;
- (2) Any party who intentionally obstructs by any method whatsoever the exercise of the right of access will be liable to a prison sentence of between eight days and one year and a fine of between 251 and 125,000 euros or just one of these penalties.
- (3) Patients have the right of access to data concerning them. The right of access will be exercised by the patient himself or through a doctor he appoints. In the event of the patient's death, his non legally separated spouse and his children as well as any other person who at the time of the death has lived with him in his household, or in the case of minors, his father and mother, may exercise the right of access as stated in the previous paragraph through a doctor they have appointed.  
The patient's right of access may still be exercised during the lifetime of a person

under guardianship or trusteeship as set forth under the Act of 11 August 1982 through a doctor appointed by his guardian or trustee.

*(...) abolished by the Act of 27 July 2007*

- (4) As appropriate, the controller will rectify, delete or block data the processing of which does not comply with this Act, in particular due to the incomplete or inaccurate nature of the data, subject to the penalty of a temporary or definitive ban on the processing or the destruction of these data under the conditions stated in Article 33.
- (5) Any person who when exercising his right of access has realistic reasons for assuming that the data disclosed to him do not comply with the data processed may inform the National Commission thereof and it will carry out the necessary checks.
- (6) Any rectification, deletion or blocking carried out in accordance with paragraph (4) will be immediately notified by the controller to the recipients to whom the data have been disclosed unless this should prove impossible.
- (7) Without prejudice to the sanction provided in paragraph (4), any party who intentionally breaches the provisions of this Article or any party who intentionally takes an assumed first name or surname or pretends to a false capacity to obtain disclosure of the data being processed pursuant to paragraph (1) will be liable to a prison sentence of between eight days and one year and a fine of between 251 and 125,000 euros or just one of these penalties.

#### **Art. 29. Exceptions to the right of access**

- (1) The controller may restrict or defer exercise of a data subject's right of access if such a measure is necessary in order to safeguard:
  - (a) national security;
  - (b) defence;
  - (c) public safety;  
*(Act of 27 July 2007)*
  - (d) "the prevention, tracking down, recording and prosecution of criminal offences, including the combating of money laundering, or the progress of other legal proceedings;"
  - (e) an important economic or financial interest of the State or of the European Union, including monetary, budgetary and taxation matters;
  - (f) protection of the data subject or the rights and freedoms of others;  
*(Act of 27 July 2007)*
  - (g) "a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in letters (c), (d) and (e).

*(...) abolished by the Act of 27 July 2007*

- (2) In the event that there is obviously no risk of breaching the privacy of a data subject, the controller may limit the right of access when the data are being processed solely for the purposes of scientific research, or are stored in data form for a period not exceeding that necessary for the sole purpose of establishing statistics, and the said data cannot be used for the purpose of taking a measure or a decision relating to specific persons.  
*(Act of 27 July 2007)*
- (3) "In the context of the processing of personal data carried out for journalistic, artistic or literary expression, everyone is entitled to access data concerning them. Nevertheless, in all cases, the data subject's right of access to the data concerning him used in the context of processing carried out for journalistic, artistic or literary expression is limited inasmuch as it may only cover information concerning the origin of the data making it possible to identify a source. Subject to this reservation, the data must be accessed through the intermediary of the National Commission for Data Protection in the presence of the Chairman of the Conseil de Presse or his representative, or the Chairman of the Conseil de Presse duly called upon."
- (4) The controller must state the reason for which he is limiting or deferring exercise of the right of access.  
When the right of access is deferred, the controller must state the date from which the right of access can again be exercised. The controller will notify the reason to the National Commission.
- (5) In the case of limitation of the data subject's right of access, the right of access will

be exercised by the National Commission which has investigative powers and arranges for the rectification, deletion or blocking of data the processing of which does not comply with this law. The National Commission may notify the data subject of the result of its investigations, while at the same time not endangering the purpose or purposes of the processing operations in question.

- (6) Any party who is in breach of the provisions of paragraph (4) above will be liable to a prison sentence of between eight days and one year and a fine of 251 to 125,000 euros or only one of these penalties.

**Art. 30. The data subject's right to object**

- (1) Any data subject has the right:
  - (a) to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where otherwise provided by national legislation. Where there is a justified objection, the processing instigated by the controller may no longer involve those data;  
*(Act of 27 July 2007)*
  - (b) to object, on request and free of charge, to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing, or
  - (c) to be informed before personal data are disclosed for the first time to third parties or used on their behalf for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosures or uses.
- (2) Any party who intentionally breaches the provisions of this Article will be liable to a prison sentence of between eight days and one year and a fine of 251 to 125,000 euros or only one of these penalties.

**Art. 31. Automated individual decisions**

A person may be subject to an automated individual decision which produces legal effects concerning him if that decision:

- (a) is taken in the course of the entering into or execution of a contract, provided the request for the entering into or the execution of the contract, lodged by the data subject, has been satisfied or that there are suitable measures to safeguard his legitimate interests, such as arrangements allowing him to put his point of view; or
- (b) is authorized by a law which also lays down measures to safeguard the data subject's legitimate interests.

**Chapter VII. Monitoring and supervision of the application of the law**

**Art. 32. Duties and powers of the National Commission**

- (1) A supervisory authority named the "Commission Nationale pour la Protection des Données" has been set up in charge of monitoring and checking that data being processed are processed in accordance with the provisions of this Act and its implementing regulations.
- (2) Every year the National Commission will submit a written report to the members of the Cabinet on the fulfilment of its duties. In this report it will cover in particular the status of notifications and authorisations, and the defects or misuses that are not specifically covered by the existing legal, regulatory and administrative provisions. It will publish its annual report. The report will be examined by the consultative commission on human rights, a consultative government body on human rights on Luxembourg territory whose membership and duties are set out in a Grand-Ducal Regulation.
- (3) The duties of the National Commission are as follows:
  - (a) to ensure the application of the provisions of this Act and its implementing regulations, in particular those relating to the confidentiality and security of processing operations;
  - (b) to receive notifications prior to the implementation of a processing operation and changes affecting the content of those notifications and to carry out ex

- post facto monitoring of the lawfulness of the processing operations notified; likewise it will be promptly informed of any processing subject to prior authorisation;
- (c) to publicise the processing operations notified to it by keeping an appropriate register, unless otherwise provided;
  - (d) to authorise the implementation of processing operations subject to the system described in Article 14 of this Act;
  - (e) to be asked for its opinion on all draft or proposed laws relating to the creation of a processing operation as well as all regulatory or administrative measures issued on the basis of this Act. These opinions will be published in the annual report referred to in Article 15, paragraph (6);
  - (f) to present to the Government any suggestions that might simplify and improve the legislative and regulatory framework with regard to the processing of data;
  - (g) to receive and where applicable, following discussions with the authors, approve codes of conduct relating to a processing operation or a set of processing operations submitted to it by professional associations which represent the controllers;
  - (h) to advise the Government, either at the request of the latter or on its own initiative, regarding the consequences of developments in information processing technologies with regard to the respect of the freedoms and fundamental rights of individuals; to this end it may commission studies, surveys or expert reports;
  - (i) to promote, on a regular basis and by any method it deems fit, the dissemination of information relating to data subjects' rights and controllers' obligations, particularly as regards the transfer of data to third countries.
- (4) The National Commission shall hear claims lodged by any person, or by a lawyer representing that person or by any other duly authorised natural or legal person, concerning the protection of his rights and freedoms with regard to the processing of personal data. The person concerned shall be informed of the outcome of the claim.
- (Law of 27 July 2007)*
- (5) The National Commission shall, in particular, hear claims for checks on the lawfulness of data processing lodged by any person with a request to check the lawfulness of a processing operation in the event of refusal or limitation of the exercise of the data subject's right of access in accordance with Article 29, "paragraph (5)" of this Act.
  - (6) If the National Commission is approached by one of the persons or bodies referred to in Article L-261-1, paragraph (2) of the Employment Code, regarding a violation of that Article, it will give a ruling within a month of the referral.
  - (7) Under this Act, the National Commission has investigative powers, such as powers of access to data forming the subject-matter of processing operations and powers to collect all the information necessary for the execution of its supervisory duties. To this end, it will have direct access to premises other than residential premises where processing takes place, as well as to the data that are being processed, and will carry out the necessary checks.
  - (8) The National Commission has the power to engage in legal proceedings in the interests of this Act and its implementing regulations. It will bring any known violations to the attention of the judicial authorities.
  - (9) The National Commission shall cooperate with the supervisory authorities of the other Member States of the European Union to the extent necessary for the execution of their duties, in particular by exchanging all useful information.
  - (10) The National Commission will represent Luxembourg on the "group for the protection of individuals with regard to the processing of personal data" set up by Article 29 of Directive 95/46/EC;
  - (11) Any party who intentionally prevents or obstructs by any method whatsoever the execution of the duties incumbent upon the National Commission will be liable to a prison sentence of between eight days and one year and fine of between 251 and 125,000 euros or just one of these penalties. Refusing its members access to premises other than residential premises where processing takes place, as well as to the data that are being processed, or refusing to disclose any information and documents requested will be regarded as intentional prevention or obstruction of the execution of the duties incumbent on the National Commission.



**Art. 33. Administrative sanctions**

- (1) The National Commission may take the following disciplinary sanctions:
  - (a) alert or admonish controllers who have violated the obligations imposed upon them by Articles 21 to 24;
  - (b) block, delete or destroy data that have been subject to a processing operation contrary to the provisions of this Act or its implementing regulations;
  - (c) impose a temporary or definitive ban on a processing operation that is contrary to the provisions of this Act or to its implementing regulations;
  - (d) order publication of the prohibition decision in full or in extracts in newspapers or by any other method, at the cost of the person sanctioned.
- (2) An appeal may be made against the above decisions pursuant to Article 3 of the Act of 7 November 1996 relating to the organisation of the administrative courts.

**Art. 34. Composition of the National Commission**

- (1) The Nationale Commission is a public authority in the form of a Public Institution (Etablissement Public). Its headquarters are in Luxembourg City. The headquarters may be transferred at any time to any other location in Luxembourg pursuant to a Grand-Ducal Regulation.

The National Commission has a legal personality and has financial and administrative autonomy under the supervision of the Minister.

It carries out the duties with which it is invested under this Act in a totally independent manner.

*(Act of 28 July 2011)*
- (2) "The National Commission is made up of three permanent members and three substitute members appointed and dismissed by the Grand Duke at the proposal of the Cabinet. The President is appointed by the Grand Duke. Members are appointed for a term of six years. This term may be renewed.

On each occasion the Cabinet will suggest to the Grand Duke as a permanent and substitute member at least one legal specialist and one information technology specialist who have completed university studies.

Before taking up office, the President of the National Commission will take the following oath before the Grand Duke or his representative: "I swear loyalty to the Grand Duke and obedience to the constitution and laws of the state. I promise to carry out my duties with integrity, precision and impartiality."

Before taking up office, members of the National Commission will take the following oath before the Grand Duke or his representative: "I swear loyalty to the Grand Duke and obedience to the constitution and laws of the state. I promise to carry out my duties with integrity, precision and impartiality."

The President and the members of the National Commission have the status of public officer with regard to function, their compensation and their pension plan.

The President and permanent members of the National Commission will receive special compensation reflecting the commitment required by their duties which will be set by Grand-Ducal Regulation. This compensation shall not be higher than the grade S1.

If the term of a member of the National Commission is not renewed or if he's dismissed, the member becomes a general advisor for the National Commission while maintaining his status and compensation with the exception of the special compensation attached to their former function. He can apply for a change of administration to another administration or établissement public, in accordance with the amended Act of 16 April 1979 fixing the general status of public officers.

The resignation of a member of the National Commission will automatically occur when he reaches the age limit of 65.

Substitute members will receive compensation the amount of which will be set by a Grand-Ducal Regulation."
- (3) Members of the National Commission may not be members of the Government, the Chambre des Députés, the Conseil d'Etat or the European Parliament and may not carry out any professional activities, or directly or indirectly hold interests in a company or any other body involved in the field of data processing.
- (4) If a member of the National Commission ceases to carry out his duties during the course of his term of office, the term of office of his successor will be limited to the remaining outstanding period.



**Art. 35. Operation of the National Commission**

- (1) The National Commission is a collegiate body. It will draw up its internal rules of procedure, including its working procedures and methods, within a month of being set up. The internal rules of procedure will be published in the Mémorial.
- (2) Subject to the provisions of this Act, the internal rules of procedure will set forth:
  - (a) the rules of procedure applicable before the National Commission,
  - (b) the rules of operation of the National Commission,
  - (c) the organisation of the departments of the National Commission.
- (3) The permanent members of the National Commission will be invited to attend meetings by the President. Meetings are properly called at the request of two permanent members. The invitation will contain the agenda. Permanent members who are unable to attend a meeting are required to notify their substitutes and forward the invitation to them.
- (4) The National Commission may validly sit and deliberate only if there are three members present.
- (5) Members of the National Commission may not sit, deliberate or pass decisions on any matter in which they have a direct or indirect interest.
- (6) Resolutions are passed by majority vote. Abstentions are not permitted.
- (7) The Cabinet which has proposed the appointment of a member of the National Commission may propose his dismissal to the Grand Duke. The opinion of the National Commission will be heard before any dismissals.
- (8) Whilst performing their duties, the members and substitute members of the National Commission will not receive any guidance from any authority.

**Art. 36. Status of members and employees of the National Commission**

*(Act of 27 July 2007)*

- (1) "The executive staff of the National Commission will include the following roles and positions:
  - a) in the higher career structure for "attachés de direction" (head office attaché), the seniority scale reference is: grade 12,
    - "conseillers de direction 1ère classe" (senior head office consultant)
    - "conseillers de direction" (head office consultant)
    - "conseillers de direction adjoints" (assistant head office consultant)
    - "attachés de direction 1ers en rang" (head office attaché, first rank)
    - "attachés de direction" (head office attaché)
  - b) in the higher career structure for "ingénieurs" (engineers), the seniority scale reference is: grade 12,
    - "ingénieurs 1ère classe" (senior engineers)
    - "ingénieurs chef de division" (head of division engineers)
    - "ingénieurs principaux" (chief engineers)
    - "ingénieurs-inspecteurs" (engineer inspectors)
    - "ingénieurs" (engineers)
  - c) in the normal career structure for "ingénieurs techniciens" (technical engineers), the seniority scale reference is: grade 7,
    - "ingénieurs techniciens inspecteurs principaux premiers en rang" (technical engineers, chief inspectors, first rank)
    - "ingénieurs techniciens inspecteurs principaux" (technical engineers, chief inspectors)
    - "ingénieurs techniciens inspecteurs" (technical engineers, inspectors)
    - "ingénieurs techniciens principaux" (chief technical engineers)
    - "ingénieurs techniciens" (technical engineers)
  - d) in the normal career structure for "rédacteurs" (junior executive officers), the seniority scale reference is: grade 7,
    - "inspecteurs principaux 1er en rang" (chief inspectors, first grade)
    - "inspecteurs principaux" (chief inspectors)
    - "inspecteurs" (inspectors)
    - "chefs de bureau" (head clerks)
    - "chefs de bureau adjoints" (deputy head clerks)
    - "rédacteurs principaux" (senior executive officers)
    - "rédacteurs" (junior executive officers)

Officials in the career paths provided for above are state civil servants.”

- (2) The managerial staff provided in paragraph (1) above may be supplemented by both state employees and state workers subject to the limits of the credit available. The compensation of state employees are set in accordance with the Grand-Ducal Regulation of 28 28 July 2000 setting out the arrangements for the compensation of employees of Government departments and services.
- (3) The earnings and other compensation of all members, staff and employees of the National Commission will be paid by the National Commission.
- (4) The National Commission may in certain cases use external specialists whose services will be defined and paid for on the basis of an agreement under private law.

**Art. 37. Financial provisions**

- (1) Upon its formation, the National Commission will receive initial funding of two hundred thousand euros from the State budget. The State will provide it with the movable and immovable property required to perform and carry out its duties properly.
- (2) The financial year of the National Commission will be the same as the calendar year.
- (3) The National Commission will draw up its operating account for the previous year and its annual report ,before 31 March each year. Before 30 September of each year, the National Commission will draw up the budget for the next financial year. The budget, the annual accounts and reports drawn up will be sent to the Cabinet which will decide whether to discharge the National Commission in respect of its duties. The decision confirming that the National Commission has been discharged of its duties and the annual accounts of the National Commission will be published in the Mémorial.  
*(Law of 27 July 2007)*
- (4) The National Commission is authorised to deduct the equivalent of the costs of its serving staff and its operational expenses from the fees collected as provided “in Articles 13 and 14”. In respect of the balance of the expenses still to be covered pursuant to its duties under this Act, the National Commission will receive funding at an amount to be set on an annual basis and included in the State budget.
- (5) *abolished by the Law of 27 July 2007*

**Chapter VIII. Judicial remedies**

**Art. 38. General provisions**

Without prejudice to the criminal sanctions introduced by this Act and the actions for damages governed by ordinary law, in the event of a processing operation that violates formalities provided for under this Act being undertaken, any person is entitled to legal remedies as stated hereafter.

**Art. 39. Action for discontinuance**

- (1) At the request of
  - the State Prosecutor who has instigated public action for the violation of this Act,
  - the National Commission, should a disciplinary sanction as referred to in Article 33 of this Act, against which has been no appeal or which has been upheld by the administrative court, not have been complied with, or
  - an injured party, should the National Commission not have declared itself in respect of a claim made on the basis of Article 32, paragraph (4), (5) or (6) of this Act,

the presiding judge of the district where the processing operation was carried out, or the judge who replaces him, will order the discontinuance of processing that is contrary to the provisions of this Act and the temporary suspension of the activity of the controller or processor. The presiding judge of the district where the processing operation is being carried out, or the judge who replaces him, may

order the temporary closure of the business of the controller or processor if its sole activity is to process data.

- (2) The action will be admissible even when the illegal processing has ceased or is not likely to recur.
- (3) The action will be introduced and heard in summary proceedings in accordance with Articles 932 to 940 of the Nouveau code de procédure civile. However, by way of derogation to Article 939, paragraph 2, of the Nouveau code de procédure civile, no application may be made to set the summary proceedings aside.
- (4) Articles 2059 and 2066 of the Code Civil will also apply.
- (5) Publication of the decision in full or in extracts may be ordered in newspapers or by any other method, at the cost of the offender. Publication may be made only by virtue of a legal decision passed *res judicata*.
- (6) Temporary suspension and, where applicable, temporary closure may be ordered independently of the public action. Temporary suspension or temporary closure ordered by the presiding judge of the district court or by the judge who replaces him will, however, cease in the event of a discharge or acquittal, and no later than the expiry of a period of two years from the date of the initial suspension or closure decision.

### **Chapter IX. The data protection officer**

#### **Art. 40. The data protection officer**

*(Act of 27 July 2007)*

- (1) Any controller may (...) appoint a data protection officer whose identity he will notify to the National Commission.
- (2) The powers of the data protection officer are as follows:
  - (a) investigative powers to ensure supervision of the controller's compliance with the provisions of this Act and its implementing regulations;
  - (b) a right to be informed by the controller and a correlative right to inform the controller of the formalities to be carried out in order to comply with the provisions of this Act and its implementing regulations.

*(Law of 27 July 2007)*

- (3) "In the execution of his duties, the data protection officer is independent of the controller who appoints him.  
In order to carry out his tasks the data protection officer must be allowed adequate time.  
There must be no possibility of the missions of activities being carried out concurrently by the data protection officer being likely to cause a conflict of interest with the exercise of his mission.
- (4) The data protection officer may not be the subject of reprisals on the part of the employer as a result of the exercise of his missions, except in the case of a breach of his legal or contractual obligations."
- (5) The data protection officer will consult the National Commission in the event of doubt regarding the compliance with this Act of a processing operation under his supervision.
- (6) Natural or legal persons who are approved by the National Commission may be appointed to the post of data protection officer.

*(Law of 27 July 2007)*

- (7) Approval for the activity of data protection officer will be subject to proof of completion of university studies in law, economics, commercial management, natural science or information technology (...).
- (8) By way of derogation to the previous paragraph, members registered in the following controlled professions can be approved unconditionally as data protection officials: barristers, auditors (*réviseurs d'entreprises*), accountants (*experts-comptables*), doctors.  
A Grand-Ducal Regulation may add to this list other controlled professions that are subject to a supervisory or disciplinary body, either an official body or one specific to the profession and recognised by law.
- (9) The National Commission will check the qualities of all data protection officers. It may at any time object to the appointment or continuance of the data protection

officer if he:

- (a) does not have the qualities required for the position of data protection officer, or
- (b) is already in contact with the controller in connection with activities other than the processing of data and this contact gives rise to a conflict of interests limiting his independence.

In the event of objection by the National Commission, the controller will have three days to appoint a new data protection officer.

- (10) The National Commission defines the methods of continuous monitoring of the qualities required for the position of data protection officer.
- (11) A Grand-Ducal Regulation will set forth the methods for the appointment and dismissal of the data protection officer, the execution of his duties and his relations with the National Commission.

## **Chapter X. Specific, transitional and final provisions**

### **Art. 41. Specific provisions**

*(...) abolished by the Act of 28 July 2011*

### **Art. 42. Transitional provisions**

- (1) Processing operations in automated or non-automated filing systems existing prior to introduction of this Act must be made to conform with the provisions of Chapter II and Chapter VI within a period of two years with effect from the introduction of this Act.
- (2) However, any data subject may obtain on request, particularly with respect to the exercise of his right of access, the rectification, deletion or blocking of data that are incomplete, inaccurate, or kept in a manner that is incompatible with the legitimate purposes pursued by the controller.
- (3) The National Commission may allow data kept solely for historical research purposes to be dispensed from compliance with paragraph (1).

*(Law of 27 July 2007)*

- (4) "For application of the provisions of Article 34 above, the remuneration of the official appointed on 14 October 2002 as an effective member of the Commission Nationale pour la Protection des Données who holds a university qualification in information technology is determined by supposing that a fictitious appointment to the position of an "attaché de gouvernement" was made on 1 November 2002, that he had the benefit of promotion to the function of attaché de gouvernement premier en rang" on 1 November 2005, and that he would have the benefit of promotion to the function of "conseiller de direction adjoint" on 1 November 2008 at the earliest."

### **Art. 43. Implementation of the transitional provisions**

- (1) The National Commission will establish a notification schedule as provided in Article 13 paragraph (3) within four months of the date when its members are appointed. It will inform the public by means of publication in the Mémorial and a press release to newspapers published in Luxembourg of the date from which the notification schedule will be available at the National Commission.
- (2) Controllers will proceed to notify their processing operations within four months of the date of the official publication mentioned in paragraph (1).
- (3) Controllers whose processing operations are authorised under a Grand-Ducal Regulation or ministerial decree "authorising the creation and operation of a data bank" when this Act comes into force will notify or request authorisation of their processing operations only on the expiry of the period of validity of the authorisation granted, unless they consider it necessary to do so beforehand for reasons of compliance with the provisions of this Act.
- (4) Non-automated processing operations involving data contained in or likely to appear in a filing system must be notified within twelve months of the date of the official publication mentioned in paragraph (1).

#### **Art. 44. Final provisions**

- (1) The amended Act of 31 March 1979 governing the usage of name data in computer processing is repealed.
- (2) In so far as they are not contrary to the provisions of this Act, regulations made in execution of the aforementioned amended Act of 31 March 1979 will remain in force until they are replaced by new provisions.  
(*Law of 27 July 2007*)
- (3) "Article 4, paragraph (3), letter d) of the Act of 30 May 2005 on the protection of privacy in the electronic communications sector must be amended as follows:
  - in the first paragraph, the sentence ending "in order to furnish proof of a commercial transaction" should read "in order to furnish proof of a commercial transaction or of any other commercial communication";
  - in the second paragraph, the first sentence should start thus: "The parties to the transactions or to any other commercial communications ...".
- (4) In Article 5, paragraph (1), letter a), and Article 9, paragraph (1), letter a) of the Act of 30 May 2005 on the protection of privacy in the electronic communications sector, the duration of "12 months" is replaced by that of "6 months".
- (5) The following additions shall be made at the end of Article 12 of the Act of 30 May 2005 concerning the protection of privacy in the electronic communications sector: "(...) without prejudice to application of Article 8 of the amended Act of 2 August 2002 on the protection of persons in respect of the processing of personal data".
- (6) Article 23 of the Act of 8 June 2004 on freedom of expression in the media is amended to read as follows:

In point 1 of paragraph (2), the ending "including in the field of the processing of personal data" is added after the words "and editors".

In point 2 of the same paragraph, the following words "including complaints concerning respect for the rights and freedoms of persons regarding the processing of personal data" are added between the words "through any of the media" and "without prejudice to reserved powers."

#### **Art. 45. Entry into force**

This Act will go into effect on the first day of the fourth month following its publication in the Mémorial. By way of derogation to the above, Articles 34, 35, 36 and 37 will be effective three days after the publication of this Act in the Mémorial.