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COMMITTEE OF EXPERTS ON DATA PROTECTION

Act No. 78-17 of 6 January 1978
on data processing, data files and freedoms
(France)

Information document

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ACT No. 78-17 of 6 January 1978
on data-processing, data files and freedoms

After adoption by the National Assembly and the Senate,
the President of the Republic promulgates the following Act:

CHAPTER 1

PRINCIPLES AND DEFINITIONS

Article 1 - Data-processing shall be at the service of every citizen. It shall be developed in the context of international co-operation. It shall not be prejudicial to human identity, human rights, private life or individual or public freedoms.

Article 2 - No judicial decision entailing an appraisal of human behaviour may be based on automatically processed data which define the characteristics or personality of the person concerned.

No administrative or private decision entailing an appraisal of human behaviour may be based solely on automatically processed data which define the characteristics or personality of the person concerned.

Article 3 - Everyone shall have the right to ascertain and challenge the information and arguments used in automatic data-processing whose results are invoked against him.

Article 4 - For the purposes of this Act, the expression "personal data" shall mean information which in any way whatever, directly or otherwise, enables the natural persons to whom it applies to be identified, whether the processing be carried out by a natural person or by a legal person.

Article 5 - For the purposes of this Act, the expression "automatic processing of personal data" shall mean any set of operations carried out by automatic means, relating to the collection, recording, elaboration, alteration, storing and destruction of personal data, and any set of operations of a similar nature relating to the use of data files or data bases, notably the cross-referencing, comparing, consultation or communication of personal data.

CHAPTER II

THE NATIONAL COMMITTEE ON DATA-PROCESSING AND FREEDOMS

Article 6 - A National Committee on Data-Processing and Freedoms shall be set up. It shall ensure the application of the provisions of this Act, notably by informing all persons concerned of their rights and obligations, conferring with them and supervising the uses made of the automatic techniques for the processing of personal data. To that end the committee may issue regulations in the cases provided for in this Act.

Article 7 - The appropriations needed by the National Committee for the performance of its functions shall be included in the budget of the Ministry of Justice. The provisions of the Financial Control Act of 10 August 1922 shall not be applicable to the management thereof. The committee's accounts shall be presented for scrutiny to the Auditing Office (Cour des Comptes).

However, expenditure entailed by the performance of some of the formalities referred to in Articles 15, 16, 17 and 25 of this Act may be subject to the charging of fees.

Article 8 - The National Committee on Data-Processing and Freedoms shall be an independent administrative authority.

It shall comprise 17 members appointed for 5 years or for the duration of their terms of office, viz:

- two Deputies and two Senators elected by the National Assembly and the Senate respectively;
- two members of the Economic and Social Council, elected by that body;
- two members or former members of the Council of State, one of whom shall have a rank at least equal to that of "conseiller", elected by the General Assembly of the Council of State;
- two members or former members of the Court of Cassation, one of whom shall have a rank at least equal to that of "conseiller", elected by the General Assembly of the Court of Cassation;
- two members or former members of the Auditing Office, one of whom shall have a rank at least equal to that of "conseiller-maître", elected by the General Assembly of the Auditing Office;
- two persons chosen for their knowledge of the applications of data-processing, appointed by decree on a proposal by the President of the National Assembly and the President of the Senate respectively;
- three persons chosen for their authority and competence, appointed by a Council of Ministers Decree.

The committee shall elect a chairman and two vice-chairmen for five years.

The committee shall draw up its own rules of procedure.

In the event of a tie, the Chairman shall have a casting vote.

If the Chairman or a member of the committee ceases to exercise his functions during his term of office, the term of office of his successor shall be limited to the period remaining to be completed.

Membership of the committee shall be incompatible with:

- membership of the government;
- the exercise of functions or the holding of shares in companies participating in the manufacture of equipment used in data-processing or telecommunications, or in the supply of data-processing or telecommunications services.

Any questions of incompatibility arising in regard to its members shall be decided by the committee in each individual case.

Apart from resignation, the functions of a member may not be terminated unless his inability to attend the meetings of the committee is established by the committee in such manner as it shall itself decide.

Article 9 - A government commissioner, appointed by the Prime Minister, shall sit on the committee.

He may, within 10 days of a deliberation, call for a further deliberation.

Article 10 - The committee shall have services directed by the Chairman or, on his delegation and under his authority, by a Vice-Chairman.

The committee may instruct the Chairman or the delegated Vice-Chairman to exercise its powers regarding the application of Articles 16, 17 and 21 (4), (5) and (6).

The agents of the National Committee shall be appointed by the Chairman or the delegated Vice-Chairman.

Article 11 - The committee may request the Appeals Court First Presidents or the Administrative Tribunal Presidents to delegate a judge under their authority, possibly assisted by experts, to carry out investigations and inspections under its direction.

Article 12 - The members and agents of the committee shall be bound by professional secrecy in respect of such facts, acts or information as come to their knowledge by reason of their functions, on the conditions laid down in Article 75 of the Criminal Code, and, subject to whatever is necessary for the preparation of the annual report provided for below, in Article 378 of the Criminal Code.

Article 13 - In the exercise of their powers, the members of the National Committee on Data-Processing and Freedoms and the members of regional delegations shall not receive instructions from any authority.

Data-processing experts called upon either to furnish information to the committee or to give evidence before it shall be discharged, as far as necessary, from their obligation to observe discretion.

CHAPTER III

FORMALITIES PRIOR TO THE AUTOMATIC PROCESSING OF DATA

Article 14 - The National Committee on Data-Processing and Freedoms shall ensure that the public or private automatic processing of personal data is carried out in accordance with the provisions of this Act.

Article 15 - Apart from cases which have to be authorised by law, any automatic processing of personal data carried out on behalf of the State, a public establishment or a territorial authority, or on behalf of a private corporation managing a public service shall require authorisation by means of a statutory instrument issued after the National Committee on Data-Processing and Freedoms has submitted a reasoned opinion.

If the committee's opinion is unfavourable, the processing may be effected only on the strength of a decree issued in the light of a concurring opinion of the Council of State or, in the case of a territorial authority, on the strength of a decision by its deliberative body approved a decree issued in the light of a concurring opinion of the Council of State.

If, after a period of two months which may be renewed once only by a decision of the Chairman, the committee has not communicated any opinion, its opinion shall be deemed favourable.

Article 16 - No automatic processing of personal data on behalf of persons other than those subject to the provisions of Article 15 may be carried out until a declaration thereon has been made to the National Committee on Data-Processing and Freedoms.

The declaration shall contain an assurance that the processing satisfies the requirements of the Act.

As soon as he has received a receipt issued without delay by the committee, the applicant may carry out the processing. He shall not be exempt from any of his liabilities.

Article 17 - In the case of the commonest forms of public or private data-processing which manifestly do not involve any interference in privacy or freedoms, the National Committee on Data-Processing and Freedoms shall draw up and publish simplified standards based on the specifications set out in Article 19.

In the case of data-processing satisfying these standards, only a simplified declaration of compliance with one of these standards shall be deposited with the committee. Unless the latter takes a specific decision, a receipt for the declaration shall be issued without delay. As soon as the receipt has been received, the applicant may carry out the processing. He shall not be exempt from any of his liabilities.

Article 18 - The use of the national register of natural persons for the purpose of processing personal data shall be authorised by a Council of State Decree issued after consultation of the committee.

Article 19 - The request for an opinion or the declaration shall specify:

- the person making the request and the person empowered to decide on the introduction of the processing or, if he is residing abroad, his representative in France;
- the characteristics, the purpose and, where appropriate, the designation of the processing;
- the department or departments responsible for carrying out the processing;
- the department to which the right of access defined in Chapter V below applies and the measures taken to facilitate the exercise of that right;
- the categories of persons who, because of their functions or the exigencies of the service, have direct access to the recorded data;
- the personal data processed, their origin and the duration of their storage, as well as the persons or categories of persons authorised to receive such data;
- any comparing, cross-referencing or other form of inter-connecting to be effected with the data, as well as any intention to assign them to third parties;
- the security measures taken with regard to the processing and the data as well as in respect of secrets protected by the law;

- whether the processing is to be carried out with a view to personal data being transmitted between French territory and abroad, in any form, including when the processing entails operations partially carried out in French territory on the basis of operations carried out earlier outside France.

Any change in the aforesaid particulars or any cancellation of processing shall be reported to the committee.

Requests for opinions concerning the automatic processing of personal data affecting State security, defence or public safety need not include all the particulars listed above.

Article 20 - The statutory instrument provided for in respect of data-processing covered by Article 15 above shall state inter alia:

- the designation and purpose of the data-processing;
- the department to which the right of access defined in Chapter V below applies;
- the categories of personal data recorded and the persons or categories of persons authorised to receive such data.

Council of State Decrees may stipulate that statutory instruments concerning certain forms of data-processing affecting State security, defence and public safety shall not be published.

Article 21 - In the exercise of its supervisory function, the committee:

1. shall take individual or general decisions in cases provided for in this Act;
2. may, by a specific decision, instruct one or more of its members or agents, assisted, where appropriate, by experts, to make on-the-spot inspections in respect of any data-processing and to obtain any information and documents necessary to the discharge of its functions;
3. shall lay down, where appropriate, model rules for ensuring the security of systems; in the event of exceptional circumstances arising, it may prescribe security measures, including the destruction of data media;
4. shall issue warnings to those concerned and report to the Public Prosecutor's Office any offences which come to its knowledge, in pursuance of Article 40 of the Code of Criminal Procedure;

5. ensure that conditions governing the exercise of the right of access and correction as laid down in the instruments and declarations provided for in Articles 15 and 16 do not hinder the free exercise of that right;
6. shall receive claims, petitions and complaints;
7. shall keep itself informed of manufacturing and service activities relating to automatic data-processing.

Ministers, public authorities, heads of public or private companies, leaders of groups and, in more general terms, persons holding or using personal data files may not obstruct the action of the committee or its members for any reason whatsoever but shall do all that is necessary to facilitate its task.

Article 22 - The committee shall place at the disposal of the public a list of the various forms of data-processing, stating in respect of each one:

- the statutory instrument authorising it to be carried out or the date on which it was declared;
- its designation and purpose;
- the department to which the right of access provided for in Chapter V below applies;
- the categories of personal data recorded and the persons or categories of persons authorised to receive such data.

Decisions, opinions or recommendations of the committee, a knowledge of which is relevant to the application or interpretation of this Act shall be placed at the disposal of the public in the manner laid down by decree.

Article 23 - The committee shall submit an annual report to the President of the Republic and to parliament on the execution of its mission. The report shall be published.

The report shall, inter alia, describe the procedures and working methods used by the committee and contain, in an appendix, all information concerning the organisation of the committee and its services that is likely to facilitate the public's relations with the committee.

Article 24 - On a proposal or following an opinion by the committee, the transmission between French territory and abroad, in any form whatever, of personal data that have been subjected to a form of automatic processing governed by Article 16 above may be subjected to prior authorisation or regulated in a manner specified in a Council of State Decree with a view to ensuring compliance with the principles laid down in this Act.

CHAPTER IV

COLLECTION, RECORDING AND STORAGE OF PERSONAL DATA

Article 25 - The collection of data by any fraudulent, unfair or unlawful means shall be prohibited.

Article 26 - Any natural person may object for legitimate reasons to the processing of personal data concerning him.

This right shall not apply to the forms of processing specified in the statutory instrument provided for in Article 15.

Article 27 - Persons from whom personal data are obtained shall be informed of:

- the compulsory or optional nature of replies;
- the consequences for them of any failure to reply;
- the identities of the natural or legal persons for whom the data are intended;
- the existence of a right of access and correction.

Where such data are collected by means of questionnaires, the above requirements shall be stated on the questionnaires.

These provisions shall not apply to the collection of information required for the establishment of offences.

Article 28 - Except where otherwise provided by law, data shall not be stored in a personal form for longer than the period specified in the request for an opinion or the declaration, unless the storing thereof is authorised by the committee.

Article 29 - Any person ordering or carrying out the processing of personal data shall ipso facto undertake, in respect of the persons concerned, to take all necessary precautions in order to ensure the security of the data and, in particular, to prevent them from being distorted, damaged or communicated to unauthorised third parties.

Article 30 - Except where otherwise provided by law, courts and public authorities acting in pursuance of their statutory powers and, subject to a concurring opinion of the National Committee, legal persons managing a public service shall be the only bodies authorised to process personal data concerning offences, convictions or security measures.

Pending the introduction of the register of drivers provided for in Act No. 70-539 of 24 June 1970, insurance companies may, under the committee's supervision, themselves process the data referred to in Article 5 of the aforesaid Act concerning the persons specified in the last paragraph of the same article.

Article 31 - Without the express agreement of the person concerned, it shall be prohibited to place or store in a computer memory personal data which directly or indirectly reveal the racial origins or political, philosophical, religious opinions or trade union affiliations of the persons to which they relate.

However, churches and religious, philosophical, political or trade union groups may keep an automated register of their members or correspondents. They shall not be subject to any supervision on that account.

Exceptions to the above prohibition may also be made by a Council of State Decree for reasons of public interest, on the basis of a proposal or a concurring opinion of the committee.

Article 32 - The electoral register shall be equally available for consultation by candidates and political parties, under the supervision of the electoral information boards.

Article 33 - The provisions of Articles 24, 30 and 31 shall not apply to personal data processed by bodies of the printed or audio-visual press in pursuance of the Acts governing them and in cases where the effect of the application of those provisions would be to restrict the exercise of freedom of expression.

CHAPTER V

EXERCISE OF THE RIGHT OF ACCESS

Article 34 - Anyone furnishing evidence of his identity shall have the right to question the departments or agencies responsible for carrying out the various forms of automatic data-processing, a list of which shall be available to the public in application of Article 22 above, with a view to ascertaining whether the personal data being processed concern him and, where appropriate, having the data communicated to him.

Article 35 - Any person having right of access may have the data concerning him communicated to him. The data shall be communicated in clear and shall correspond with those recorded.

Upon receipt of a copy of data, the person having right of access who requested it shall pay a fixed fee the amount of which, varying according to the form of processing, shall be determined by the committee and approved by the Minister of Economics and Finance.

However, if the officer in charge of the data file lodges an objection with the committee, the committee may grant him:

- a certain period in which to reply;
- permission not to heed certain requests which are manifestly abusive by virtue of their numerousness or repetitiveness.

If there is reason to fear the concealment or disappearance of the data referred to in the first paragraph of this article, and even before the lodging of a judicial appeal, the competent judge may be asked to order any measures calculated to prevent such concealment or disappearance.

Article 36 - Any person having right of access may demand that data concerning him which are inaccurate, incomplete, ambiguous or out of date or the collection, use, communication or storing of which is prohibited be corrected, completed, clarified, updated or obliterated.

If the person concerned so requests, the department or body concerned shall issue free of charge a copy of the recorded data as amended.

In the event of a dispute, onus of proof shall rest with the department concerned, unless it is established that the data in dispute were communicated by the person concerned or with his consent.

If a person having right of access succeeds in having the recorded data amended, the fee charged in application of Article 35 shall be reimbursed.

Article 37 - A personal data file shall be supplemented or corrected, even "proprio motu", if the body holding it learns of the inaccuracy or incompleteness of any data contained therein.

Article 38 - If data have been communicated to a third party, the latter shall be notified of their correction or cancellation unless exemption is granted by the committee.

Article 39 - In the case of the processing of data affecting State security, defence and public safety, the request shall be addressed to the committee, which shall designate one of its members belonging or having belonged to the Council of State, the Court of Cassation or the Auditing Office to conduct such investigations and arrange for such alterations as may be necessary. The member may be assisted by an agent of the committee.

The applicant shall be notified that verifications have been made.

Article 40 - If the exercise of the right of access applies to medical data, these may not be communicated to the person concerned except through a doctor designated by him for that purpose.

CHAPTER VI

CRIMINAL PROVISIONS

Article 41 - Anyone who has carried out, or caused to be carried out, any automatic processing of personal data without the statutory instruments provided for in Article 15 having been published or the declarations provided for in Article 16 having been made shall be liable to a term of imprisonment ranging from 6 months to 3 years and a fine ranging from 2,000 to 200,000 francs or to one of these two penalties only.

Furthermore, the court may order that all or part of its judgement be published in one or more newspapers and publicly displayed in whatever manner it specifies, at the expense of the person convicted.

Article 42 - Anyone who has recorded or caused to be recorded, stored or caused to be stored personal data, in violation of Articles 25, 26 and 28-31 shall be liable to a term of imprisonment ranging from 1 to 5 years and a fine ranging from 20,000 to 2,000,000 francs or to one of these two penalties only.

Furthermore, the court may order that all or part of its judgement be published in one or more newspapers and publicly displayed in whatever manner it specifies, at the expense of the person convicted.

Article 43 - Anyone who has acquired, in the course of their being recorded, classified, transmitted or subjected to any other form of processing, personal data whose disclosure would result in the reputation or standing of the person concerned being harmed or his privacy invaded and who has wittingly and without the authorisation of that person brought such data to the knowledge of someone who is not qualified to receive them under the provisions of this Act or other legislative provisions shall be liable to a term of imprisonment ranging from 2 to 6 months and a fine ranging from 2,000 to 20,000 francs or to one of these penalties only.

Anyone who, through imprudence or negligence, has divulged or caused to be divulged data of the kind referred to in the preceding paragraph shall be liable to a fine ranging from 2,000 to 20,000 francs.

Article 44 - Anyone who has held personal data in the course of their being recorded, classified, transmitted or subjected to any other form of processing and who has used them for a purpose other than that specified in the statutory instrument provided for in Article 15 above or in a declaration made in application of Articles 16 and 17 or in a legislative provision shall be liable to a term of imprisonment ranging from 1 to 5 years and a fine ranging from 20,000 to 2,000,000 francs.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Article 45 - The provisions of Articles 25, 27, 29, 30, 31, 32 and 33 concerning the collection, recording and storing of personal data shall be applicable to non-automatic or mechanised data files other than those used as part of the strict exercise of the right to privacy.

The first paragraph of Article 26 shall be applicable to the same data files, apart from public data files designated by a statutory instrument.

Any person furnishing evidence of his identity shall have the right to question departments or bodies holding data files of the kind referred to in the first paragraph of this article with a view to establishing whether they contain any personal data concerning him. A person having right of access shall have the right to have such data communicated to him; he may demand that the first three paragraphs of Article 36 of this Act, concerning the right of correction, be applied. The provisions of Articles 37, 38, 39 and 40 shall also be applicable. A Council of State Decree shall lay down conditions for the exercise of the right of access and correction. It may provide for the charging of fees for the issue of copies of data communicated.

On a proposal by the National Committee on Data-Processing and Freedoms, the government may decide, by a Council of State Decree, that the other provisions of this Act may, in whole or in part, apply to a non-automatic or mechanical data file or to categories of such data files which, either on their own or in conjunction with a computerised data file, entail dangers for the protection of freedoms.

Article 46 - Council of State Decrees shall lay down arrangements for the application of this Act. They shall be issued within 6 months of the promulgation of the Act.

The decrees shall stipulate the period within which the provisions of this Act shall enter into force. This period shall not exceed 2 years from the promulgation of the Act.

Article 47 - This Act shall be applicable to Mayotte and the overseas territories.

Article 48 - As a transitional measure, forms of data-processing governed by Article 15 above which have already been introduced shall be subject only to a declaration to the National Committee on Data-Processing and Freedoms on the conditions prescribed in Articles 16 and 17.

However, the committee may, by a specific decision, apply the provisions of Article 15 and fix the period within which the statutory instrument governing the data-processing shall be issued.

After a period of 2 years from the promulgation of this Act, all forms of data-processing governed by Article 15 shall be required to conform with the requirements of that article.

This Act shall be executed as a law of the State.

Done at Paris on 6 January 1978.

VALÉRY GISCARD D'ESTAING

By the President of the Republic

Prime Minister
R BARR

Keeper of the Seals, Minister of Justice
ALAIN PEYREFITTE

Minister of the Interior
CHRISTIAN BONNET

Minister of Defence
YVON BOURGES

Minister of Economics and Finance
ROBERT BOULIN

Minister of Public Works and Regional Development
FERNAND ICART

Minister of Education
RENE HABY

Minister of Industry, Commerce and Craft Activities
RENE MONORY

Minister of Labour
CHRISTIAN BEULLAC

Minister of Health and Social Security
SIMONE VEIL