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COMMITTEE OF EXPERTS ON DATA PROTECTION



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NOMINAL DATA (Automatic Processing) ACT  
of 31 March 1979

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NOMINAL DATA (Automatic Processing) ACT  
of 31 March 1979

PART 1: Purpose, definitions, field of application

Article 1:

Natural and legal persons shall be protected against the improper use of nominal data in connection with

- a. the collection of such data for automatic processing;
- b. the storage of such data in data banks;
- c. the automatic processing of such data;
- d. the transmission to third parties of such data and of the results of their processing.

Article 2:

For the purpose of this act:

Nominal data means information about any identified or identifiable person.

Person means any natural person, public or private corporate body or group of persons.

Data Bank means a collection of basic information stored on a data medium.

Owner of the data bank means the person for whom the bank is kept and who is free to dispose of it.

Manager of the data bank means the person who actually keeps the bank and applies automatic processing operations to nominal data.

Third Parties means any person other than the owner or manager. In the public sector, third party means an administrative authority, public service or ministry other than that which owns or manages the bank.

Article 3:

1. The act shall apply to all nominal data banks installed or used in the Grand Duchy of Luxembourg.
2. The field of application of this act shall not include
  - a. data banks which are accessible to the public by virtue of an act or public administrative regulation;

- b. data banks containing only data relating to the owner of the bank.
- c. data banks established on behalf of institutions of public international law.

3. The provisions of the present act shall apply to data banks established in Luxembourg even if the data are used solely abroad.

Where a data bank on foreign territory is accessible from a terminal within the Grand Duchy of Luxembourg, the provisions of the present act must be observed by the user of such terminal.

## PART 2: Establishment and operation of data banks

### Section 1: Data banks not controlled by the State

#### Article 4:

The establishment and operation of any data bank not controlled by the State shall be subject to prior authorisation by the minister responsible for keeping the national register of data banks provided for in Article 13.

#### Article 5:

1. Applications for authorisation shall be made to the minister by the owner and any manager.
2. In the case of the use of a data bank outside Luxembourg territory, the application for authorisation shall be made by the user inside Luxembourg territory.
3. The application must give, for each data bank, the following particulars:
  - a. the name or title and address of the owners and managers, or user, as the case may be.
  - b. the name of the data bank.
  - c. a detailed description of the bank's purpose.
  - d. the nature and origin of the data stored in the bank and their relevance to the bank's purpose.
  - e. where data are disclosed to third parties, the nature of the data and results disclosed and the identity of third parties or groups of third parties to whom they are disclosed.

Article 6:

After the receipt of the opinion of the Advisory Board provided for in Article 30 or, failing that, upon expiry of 3 months from the time of reference to the Advisory Board, authorisation shall be granted by the minister where there is no reason to fear improper use of the nominal data or any violation of the provisions of the present act.

The minister's decision granting or refusing authorisation shall be accompanied by reasons.

Such authorisation shall apply solely to the application as made. It shall state the period of its validity, which may in no case exceed 10 years.

The authorisation may also include stipulations concerning the following points:

- a. the security and control systems to be operated.
- b. the period beyond which data may no longer be kept, used or disclosed.

Any change affecting the terms of the authorisation including the points stipulated by the minister in his decision, shall be subject to prior authorisation in compliance with the provisions of Articles 4 and 5.

Authorisation shall be issued in the name of the owner, manager and user. It may be rescinded and shall be withdrawn for failure to comply with its terms.

Article 7:

Appeals against the minister's decisions to grant, refuse or withdraw authorisations provided for by the present act shall lie to the Council of State (Disputes Committee) which shall rule on the merits.

Such appeals shall be subject to a time limit of 1 month from notification of the contested decision.

Section 2: Data banks controlled by the StateArticle 8:

Nominal data banks may be established and operated on behalf of the State only in pursuance of an act or Grand Ducal regulation.

Article 9:

The government shall seek the Advisory Board's opinion on the text of any bill or draft Grand Ducal regulation establishing a data bank and on the text of any amendments to the aforesaid bill or draft regulation.

It shall provide the Board with all the particulars listed in Article 5 (3).

Article 10:

The Advisory Board's opinion, which shall be accompanied by reasons, shall be concerned with observance of the rights protected by this act.

It may contain proposals relating to:

- a. the security and control systems to be operated in order to ensure the completeness of the data and to prevent and detect the misuse of data, whether deliberate or not.
- b. the period beyond which the data must not be kept, used or disclosed.

The Board's opinion shall be adopted by a majority of its members. A minority opinion may be appended thereto without the author being named.

Article 11:

The act or Grand Ducal regulation authorising the establishment and operation of a bank on behalf of the State shall fix the period of validity of the authorisation, which may in no case exceed 10 years.

Article 12:

The government in council may waive the requirement of entry in the national register provided for in Article 13 in respect of data banks relevant to State security, national defence and public safety.

PART 3: National Register of Data Banks

Article 13:

A national register of data banks falling within the field of application of the present act shall be established. The national register shall contain, in respect of each data bank:

- a. the name or title and address of the owners and managers or users;
- b. the name of the bank;

- c. a description of the bank's purpose;
- d. the nature and origin of the data stored in the bank;
- e. the third parties to whom processed information is to be disclosed and the nature of the data disclosed;
- f. the date of the authorisation or of the act or Grand Ducal regulation authorising a bank to be established and operated;
- g. the period of validity of the authorisation;
- h. where appropriate, the date of withdrawal of authorisation or of the winding up of the data bank.

To this register, as defined above, shall be added an appendix containing the opinions provided for in Articles 9 and 10.

For the purposes of supervision and consultation, the register may itself be compiled in the form of a data bank without being subject to the authorisation procedure.

#### PART 4: Collection of Data

##### Article 14:

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

##### Article 15:

The following may not be collected and stored in data banks:

- a. data concerning political, trade union, philosophical or religious opinions or activities;
- b. data concerning private life.

A registered or unregistered association shall not be prohibited from keeping a register of its members in the form of a data bank.

Trade union affiliations may likewise be collected and stored in data banks at the specific request of those concerned.

Such data may not be divulged to third parties.

##### Article 16:

The storage and processing of the following data shall be reserved to the State, subject only to the limits imposed by law or by regulations:

- a. criminal records, except judgements and declarations of bankruptcy;
- b. orders made under the Youth Protection Act of 12 November 1971.

Article 17:

The collection and storage of medical data shall be reserved to the medical authorities, social security agencies and the ministerial department of public health, as shall be determined by Grand Ducal Regulation, issued after consultation of the Council of State.

This provision shall not prevent the processing and retention of medical data being entrusted to a manager.

Article 18:

1. The persons from whom nominal data are collected for automatic processing shall be informed:

- a. of the purpose of the automatic data processing;
- b. whether it is compulsory or optional to reply;
- c. of any consequences to them of failure to reply;
- d. of any third parties to whom the information is to be supplied;
- e. whether there is a right of access and rectification.

Where such information is collected by means of a questionnaire, such questionnaire shall give particulars of these provisions.

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

PART 5: Right of Access

Article 19:

Any person may, free of charge, consult information contained in the national register of data banks and, upon payment of an office fee to be fixed by Grand Ducal Regulation, obtain a copy of all or part of the information concerning a particular data bank.

Article 20:

Any person shall be entitled to question the owner, or user in the case of foreign banks, in writing, as to whether the data bank contains nominal data concerning him and, if so, to secure their disclosure to him.

Such disclosure shall be effected, within one month of receipt of the request, in an intelligible form which is a time representation of the data recorded.

A Grand Ducal Regulation shall fix the amount of the charge to be made for the supply of such information.

Article 21:

Notwithstanding the provisions of Article 20, nominal data shall not be disclosed which, by virtue of an Act or Grand Ducal Regulation, may not be divulged to persons exercising the right of consultation.

The obligation of disclosure shall not apply to information already disclosed or disclosable by virtue of an Act, regulation or contract, in a form other than that provided for in the present Article.

Where the right of access is exercised in respect of medical information, such information may not be divulged to the person concerned except through a doctor designated by him for that purpose.

Article 22:

The person entitled to exercise the right of access may demand the rectification, completion, classification, up-dating or deletion of data concerning him if they are inaccurate, incomplete, ambiguous or out of date, or if the collection, storage, disclosure or retention thereof is prohibited.

The person concerned shall, on request, be issued free of charge a copy of the corrected item.

If the person entitled to access secures an amendment of the entry, the charge paid under Article 20 shall be refunded.

Article 23:

If a datum has been transmitted to a third party, its rectification or cancellation must be notified to such third party.

Article 24:

Any person who, in exercising the right of access, has reasonable grounds for believing that the data supplied to him do not correspond to the data stored may so inform the Minister responsible for the national register of data banks. It shall be for the Minister to order an enquiry where appropriate.

PART 6: Obligations of owners, managers  
and users of data banks

Article 25:

Persons who, in the performance of their duties, are involved in the collection, processing or transmission of personal data shall be bound by professional secrecy.



Article 26:

Owners and managers of data banks must make every effort to keep their contents up to date, correct inaccurate data and delete obsolete data or data obtained by unlawful or fraudulent means.

They must take all suitable precautions to maintain the security of the data stored and, in particular, to prevent them from being distorted, mutilated or disclosed to unauthorised persons.

They must satisfy themselves that the automatic data processing programmes are appropriate and that they are properly used.

They must ensure that data and results are transmitted in accordance with the appropriate rules.

Article 27:

The general technical measures required to ensure the material security of data banks and of processing may be stipulated in a Grand Ducal Regulation issued after consultation of the Council of State and the Advisory Board. The degree of protection so secured shall be commensurate with the expenditure entailed.

Article 28:

Owners and managers or users shall be required to notify the Minister responsible for the register of data banks within one month of any change of address.

PART 7: Functions of the Competent Minister and the Advisory Board

Article 29:

1. The Minister responsible for the national register of data banks shall ensure that automatic processing of personal data is effected in accordance with the provisions of this Act, with regulations issued thereunder and with the operating conditions laid down.
2. He shall take individual decisions in the cases provided for in the present Act and in its complementary regulations.
3. He shall effect entries in the national register of data banks. He may delete from the register data banks which have not been in operation for at least 5 years.
4. He may, by means of an individual decision instruct one or more officials to effect on-the-spot checks in respect of any processing and require the production of any information and material relevant to his functions.
5. He shall address requests for explanations to the persons concerned.
6. He shall receive complaints.
7. He shall address recommendations and warnings to the persons concerned.

8. He shall supervise the exercise of the right of consultation and rectification as provided for in Articles 19-23.

9. He shall report offences which come to his notice to the judicial authorities.

Article 30:

There shall be set up an Advisory Board to the Minister responsible for the national register of data banks, which shall be composed of at least 5 members appointed by the Grand Duke for a term of 5 years and recruited from the private and public sectors, among lawyers and data-processing specialists. Their term of office shall be renewable. The organisation, procedure and working methods of the Board shall be specified in a Grand Ducal regulation.

Article 31

1. The Board shall issue opinions as provided for in the present Act.

2. It shall also perform an information function, in connection with which it shall:

- a. keep itself informed and advise the government of the consequences of the use of data processing and of its development prospects with reference to the exercise of freedoms and the operation of democratic institutions; for this purpose, it shall carry out studies and surveys;
- b. draw the government's attention to defects or abuses which are not specifically referred to in existing statutory and administrative provisions;
- c. report to the government annually on the performance of its functions. Its report shall be published.

PART 8: Criminal Provisions

Article 32

It shall be an offence punishable by imprisonment of not less than 8 days and not more than 6 months, or a fine of not less than 2,501 and not more than 500,000 francs, or both such penalties to establish, operate or use a data bank without holding a valid authorisation as provided for in Part 2 of the present Act, or to fail to comply with the terms thereof.

The same penalties shall apply to anyone who operates or uses a data bank after the authorisation referred to in the preceding paragraph has been withdrawn.

The same penalties shall apply if, in the course of storage, filing, transmission or other form of processing, the holder of nominal data has diverted them from their purpose as defined in the authorisation provided for in Part 2 of the present Act or in the

statutory provisions under which the data bank operates, or if the holder of nominal data has, without authorisation by the person concerned, knowingly transmitted such data or allowed them to be transmitted to third parties.

Article 33:

It shall be an offence punishable by imprisonment of not less than 1 month and not more than 1 year, or a fine of not less than 10,000 and not more than 500,000 francs, or both such penalties, to collect, or arrange for the collection of, to record, or arrange for the recording of, or to store or arrange for the storage of, nominal data in violation of the provisions of Articles 14, 15, 16 and 17.

In addition, the court may order that the judgement be published in part or in full in one or more newspapers and that it be posted up in such manner as the court shall decide, at the expense of the offender.

Article 34:

It shall be an offence punishable by imprisonment of not less than 8 days and not more than 1 month, or a fine of not less than 2,501 and not more than 100,000 francs, or both such penalties, to fail to supply within the time-limit prescribed by law information requested by virtue of Article 20, knowingly to provide inaccurate information, or to fail to comply with the obligations under Articles 22 and 23.

Article 35:

It shall be an offence punishable by imprisonment of not less than 8 days and not more than 3 months, or a fine of not less than 2,501 and not more than 300,000 francs, or both such penalties, to have used an assumed name or a false title for the purpose of obtaining disclosure of nominal data in pursuance of Article 20.

Article 36:

It shall be an offence punishable by a fine of not less than 2,501 and not more than 100,000 francs to fail to comply with the provisions of Articles 26 and 28 or of Grand Ducal regulations issued under Article 27.

Article 37:

It shall be an offence punishable by imprisonment of not less than 8 days and not more than 6 months, or a fine of not less than 2,501 and not more than 500,000 francs, or both such penalties, deliberately to prevent or hinder, in any way whatsoever, the performance of the functions of the Minister responsible for the register of data banks or of the Advisory Board.

Such deliberate hindrance or prevention of the performance of the Minister's functions shall be deemed to include refusal to allow agencies entrusted with an enquiry access to premises and documents or to supply the information requested.

Article 38:

The confiscation and destruction without compensation of all or part of the data bank in respect of which the offences provided for in Articles 32 and 33 were committed shall in all cases be ordered in the event of conviction. They may also be ordered in respect of offences provided for in Articles 34, 36 and 37.

Article 39:

Book 1 of the Penal Code and the Act of 18 June 1979 enabling the courts to make allowances for extenuating circumstances, as amended by the Act of 16 May 1904, shall apply to offences provided for in the present Act.

PART 9: Entry into Force and  
Transitional Provision

Article 40:

The Act shall enter into force on the first day of the sixth month following that in which it was published in the Gazette.

Article 41:

The owners, managers or users of data banks in existence at the time of entry into force of the present Act shall comply therewith within 12 months from its entry into force.

They shall apply for authorisation within 6 months after the entry into force of the Act.