

Entry into force of the amendments introduced by Act n° 1.353 on 1 April 2009

**Act n° 1.165
on the protection
of personal data
(23 December 1993)**

(title amended by Act n° 1.353 of 4 December 2008)

CHAPTER I

**AUTOMATED PROCESSING
OF PERSONAL DATA**

SECTION I *(heading amended by Act n° 1.353 of 4 December 2008)*
Principles and definitions

Article 1. *(amended by Act n° 1.353 of 4 December 2008)* – The automated or non-automated processing of personal data must not infringe the fundamental rights and freedoms enshrined in Title III of the Constitution.

Personal data, in any form whatsoever, is data which enables a particular or distinguishable natural person to be identified. A person is considered to be distinguishable where they may be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors that are specific to his or her physical, physiological, mental, economic, cultural or social identity.

The processing of personal data shall be considered as any operation or set of operations relating to such data, whatever procedure is used. The latter relates to the collection, recording, organization, amendment, storage, extraction, consultation or destruction of data, as well as the use, interconnection or cross-referencing, or the communication of data by transmission, dissemination or making available in any other way.

The person responsible for processing or 'data controller' shall be considered as the natural or legal person, governed by private law or public law, public authority, agency or any other body which alone or jointly with others determines the purposes of the data processing and means used and decides that it is to be carried out.

The recipient of the processed data shall be considered as the natural or legal person, governed by private law or public law, public authority, agency or other body that receives disclosed data, other than the data subject, data controller, subcontractor and persons who, under the direct authority of the controller or subcontractor, are authorised to process the data.

The person concerned by the processing of personal data (the 'data subject') is the person to whom the data being processed pertains.

SECTION II *(heading amended by Act n° 1.353 of 4 December 2008)*
- On the personal data protection supervisory authority

Article 2. *(amended by Act n° 1.353 of 4 December 2008)* - A supervisory authority is hereby created, referred to as the Personal Data Protection Supervisory Commission [in French *Commission de contrôle des informations nominatives*], with the task of monitoring and checking compliance with legislative and regulatory provisions relating to the protection of personal data. The Commission has the fully independent remit, under the conditions defined by this Act:

1° of receiving the declaration of processing by natural or legal persons governed by private law as described in Article 6;

2° of issuing a reasoned opinion where processing is to be carried out by the persons described in Article 7;

3° of issuing a reasoned opinion where processing is carried out for the purposes of research in the field of health, under the conditions laid down in the first paragraph of Article 7-1;

4° of authorizing automated data processing as described in Article 11-1;

5° of authorizing the transfer of personal data to countries or bodies without an adequate level of protection, on condition that the controller, or their representatives, afford sufficient guarantees to enable compliance with the protection of the fundamental rights and freedoms of the data subjects as well as the exercising of the corresponding rights by the recipients concerned;

6° of establishing and updating the automated data processing register described in Article 10;

7° of monitoring, under the conditions defined by this Act, the functioning of automated data processing, examining complaints and petitions sent to it, as well as requests for the verification of data to which interested parties cannot have direct access;

8° of reporting to the Prosecutor General facts constituting offences of which it becomes aware in carrying out its duties;

9° of providing the competent authorities with proposed provisions for enactment in order to establish either appropriate general measures to monitor and ensure the security of processing, or special measures, including, on an exceptional basis, the destruction of data-carrying media;

10° of making recommendations falling under the duties conferred upon it by the Act;

11° of informing data subjects of the rights and obligations resulting from this Act, in particular by communicating, upon request, to any person, or by publishing, if the Commission considers it useful for public information, its deliberations, opinions or recommendations of a general nature, except where such communication or publication would be of such a nature as to infringe public security or respect for family and private life;

12° of issuing warnings or formal notices to data controllers, for the purposes and under the conditions laid down by this Act;

13° of being a party to legal proceedings for the purposes and under the conditions laid down by this Act;

14° of public reporting on the application of this Act and its implementing instruments; an annual report on the activities of the Commission is to be remitted to the Prime Minister and the Chairman of the National Council; the report is to be published.

The Commission shall be consulted by the Prime Minister during the preparation of legislative and regulatory measures relating to the protection of human rights and freedoms concerning the processing of personal data and may also be consulted in respect of any other measure likely to affect said rights and freedoms.

Article 3. (amended by Act n° 1.353 of 4 December 2008) - Any natural or legal person whose rights as conferred by this Act or its implementing instruments have been infringed, or persons having reason to believe that such rights have been infringed, may refer the matter to the Chairman of the Personal Data Protection Supervisory Commission in order, if appropriate, to implement the measures laid down in Chapter III.

Article 4. (amended by Act n° 1.353 of 4 December 2008) - The Commission shall be composed of six members proposed for office, as a result of their expertise, as follows:

1° one member by the Monegasque Parliament;

2° one member by the Council of State;

3° one member by the Prime Minister;

4° one member having the capacity of sitting judge by the Minister of Justice;

5° one member by the Municipal Council;

6° one member by the Economic and Social Council.

Proposals shall be made independently of the authorities, councils and institutions concerned and according to terms established by Sovereign Ordinance.

Article 5. (amended by Act n° 1.353 of 4 December 2008) - Members of the Personal Data Protection Supervisory Commission shall be appointed by Sovereign Ordinance for a period of five years

that may be renewed once. The Commission shall, by absolute majority, elect a Chairman and a Deputy Chairman from among its representatives.

In the performance of their duties, the members of the Commission shall not receive instructions from any authority.

Except in the event of resignation or incapacity, the duties of a Member of the Commission may not be revoked.

In the event of a tied vote, the Chairman shall have the casting vote. Other rules relating to the functioning of the Commission shall be laid down by Sovereign Ordinance.

Article 5-1. *(created by Act n° 1.353 of 4 December 2008)* - Members of the Commission and any persons assisting in its activities shall be bound to professional secrecy under the conditions laid down in Article 308 of the Criminal Code. They shall, furthermore, be bound by an obligation of discretion as regards facts and information of which they may become aware in carrying out their duties.

Article 5-2. *(created by Act n° 1.353 of 4 December 2008)* - The Commission shall be composed of departments directed by the Chairman and placed under his or her authority. The departments of the Commission shall include the Secretary-General and Secretariat officials.

The Secretary-General shall be in charge of the operation and coordination of the departments of the Commission.

Article 5-3. *(created by Act n° 1.353 of 4 December 2008)* - Except where there are specific legal or regulatory provisions to the contrary, Commission staff shall be subject to the general rules applying to civil servants and State officials.

However, hierarchical and disciplinary powers shall be exercised in respect of such persons by the Chairman of the Commission.

Article 5-4. *(created by Act n° 1.353 of 4 December 2008)* - The funding required for the operation of the Personal Data Protection Supervisory Commission shall be listed in a specific chapter of the State budget.

As part of the preparation of the preliminary or amending State budget, the Chairman of the Personal Data Protection Supervisory Commission shall remit proposals concerning revenue and expenditure to the Prime Minister.

Expenditure shall be ordered by the Chairman or the Secretary-General. The Commission accounts must be audited on an annual basis under conditions laid down by Sovereign Ordinance.

Article 5-5. *(created by Act n° 1.353 of 4 December 2008)* - The Chairman of the Commission shall conclude all contracts and agreements required for the proper functioning of its departments.

Article 5-6. *(created by Act n° 1.353 of 4 December 2008)* - In the event of absence or incapacity of the Chairman, he or she shall be replaced by the Deputy Chairman.

SECTION III.

- On processing

Article 6. *(amended by Act n° 1.353 of 4 December 2008)* - With the exception of processing falling under the provisions laid down in Articles 7, 7-1 and 11-1, the automated processing of personal data, carried out by data controllers, natural or legal persons governed by private law, shall be the subject of a declaration to the Chairman of the Personal Data Protection Supervisory Commission. The declaration shall also comprise an undertaking that processing complies with the requirements of the law. The Chairman of the Personal Data Protection Supervisory Commission shall issue a receipt of declaration. Issue of such receipt shall enable processing to take place, but shall not exonerate the data controller making the declaration from their liability.

Nevertheless, standards may be enacted by Ministerial Order following a proposal or opinion issued by the Personal Data Protection Supervisory Commission, setting out the criteria to which certain processing categories of processing manifestly not infringing fundamental rights and freedoms must adhere. Such processing may be the subject of a simplified declaration of compliance, or be exempted from any obligation of declaration, under conditions laid down by the aforementioned Ministerial Order.

Article 7. (amended by Act n° 1.353 of 4 December 2008) - The automated processing of personal data by data controllers, legal persons governed by public law, public authorities, entities governed by private law with a duty of general public interest or public service concession holders included on a list established by Ministerial Order, shall be decided by the authorities or competent bodies following a reasoned opinion issued by the Personal Data Protection Supervisory Commission.

Such decision and the reasoned opinion accompanying it shall be published in the *Journal de Monaco* under conditions laid down by Sovereign Ordinance. As regards the data processing described in Article 11, only the purport of the Commission's opinion and the decision of the competent authority or body shall be published.

If the Commission's opinion is unfavourable, the competent authority or body may only carry out processing after having been authorized to do so by a reasoned Order issued by the Prime Minister or the Minister of Justice.

A general list of data processing carried out by the persons described in the first paragraph shall be published before 1 April each year by Ministerial Order.

Article 7-1. (amended by Act n° 1.353 of 4 December 2008) - Data controllers, whether natural or legal persons, may only carry out the automated processing of personal data for the purposes of research in the field of health once a reasoned opinion has been issued by the Personal Data Protection Supervisory Commission. Prior to the issue of such opinion, the latter may, under conditions laid down by Sovereign Ordinance, consult a competent public body in the field of health. Such consultation shall suspend the period of time granted to the Personal Data Protection Supervisory Commission to issue its opinion.

If the Commission's opinion is unfavourable, the data controller may only carry out data processing once they have been authorized to do so by a reasoned Ministerial Order.

These provisions shall not apply to data controllers acting in the field of biomedical research as defined in Act 1.265 of 23 December 2002 on the protection of persons in biomedical research. Data processing carried out in that field shall remain subject, according to the case, to the provisions of Articles 6 or 7.

In all cases, the dossier produced to support the request for an opinion or the declaration must include, in addition to the items described in Article 8, a description of the research aims, the population concerned, the method of observation or investigation chosen, a justification for the use of the personal data processed, the duration and organizational conditions of the research, the data analysis methods, and, if applicable, the opinion issued by the Ethics Advisory Committee for Biomedical Research set up by Act N° 1.265 of 23 December 2002. The Personal Data Protection Supervisory Commission shall be bound by the terms of said opinion.

Article 7-2. (created by Act n° 1.353 of 4 December 2008) - The Personal Data Protection Supervisory Commission, consulted in the context of Articles 7 and 7-1, shall rule within two months as from receipt of all required documents. Such period may be renewed once for an identical period if a reasoned decision is issued by the Chairman.

If an opinion requested of the Commission has not been issued upon expiry of the period laid down in the foregoing paragraph, renewed if applicable, the opinion shall be considered to be favourable.

Article 8. (amended by Act n° 1.353 of 4 December 2008) - Declarations, requests for opinions and applications for authorization sent to the Personal Data Protection Supervisory Commission must, in order to be admissible, include the following information.

1° the identity of the signatory and that of the data controller and, if applicable, the identity of their representative in Monaco making the declaration, request for an opinion or application for authorisation;

2° methods, purposes and justification within the meaning of Article 10-2, and, if applicable, a description of the data processing;

3° the name of the department or the identity of the persons responsible for using the data and the measures taken to enable the right of access to data to be exercised;

4° the categories of persons who, as a result of their duties, have access to the data;

5° the categories of data, and data, that is being processed, its origin, the duration of retention, categories of persons concerned by processing and the categories of authorized recipients to whom such data may be disclosed;

6° crossreferencing, interconnection or other means of relating data, as well as any transfers to third parties;

7° measures taken to ensure security of processing and of data, and to guarantee secrets protected by the law;

8° an indication, where appropriate, that processing is intended to communicate data abroad, even where it takes place by means of operations performed beforehand outside Monaco.

Article 9. - Any change taking place in any of the items listed in the previous Article must be the subject, according to the case, of a declaration, request for opinion or application for authorization.

The Personal Data Protection Supervisory Commission must be informed of the cancellation of processing.

(amended by Act n° 1.353 of 4 December 2008) - Except where there are legislative provisions to the contrary, data must not be stored in named form beyond the period set out in the request for an opinion, declaration or application for authorization, except where it is to be processed for historical, statistical or scientific purposes. The Commission may, however:

- establish a shorter period for data storage than has been set out in the declaration, request for an opinion or application for authorization;

- authorize data storage for a longer period than has been set out in the declaration, request for an opinion or application for authorization.

SECTION IV.-

- On the Data Processing Register

Article 10. *(amended by Act n° 1.353 of 4 December 2008)* - The Data Processing Register shall comprise:

1° the date of the declaration, request for an opinion or application for authorization relating to the data processing operation;

2° descriptions given on the declaration, request for an opinion or application for authorization, except for measures taken to ensure security of processing and of data, as well as the name of the department or identity of persons using the data;

3° the date of issue of the receipt of declaration, the date of the opinion or of the authorization;

4° the dates and wording of amendments made to the wording given in item 2° above;

5° the date at which processing was cancelled and the date, where applicable, of the cancellation of registration.

The register may be consulted by any natural or legal person.

Automated data processing as described in Article 11 shall not be listed on the register.

CHAPTER II PERSONAL DATA

Section I *(heading amended by Act n° 1.353 of 4 December 2008)*

- Principles relating to the status of personal data and conditions for the lawful processing thereof

Article 10.1. *(created by Act n° 1.353 of 4 December 2008)* - Personal data must be:

- collected and processed fairly and lawfully;

- collected for specified, explicit and legitimate purposes and not be further processed in a way incompatible with those purposes;

- adequate, relevant and not excessive in relation to the purposes for which it is collected and/or further processed;

- accurate and, if necessary, updated; every reasonable step must be taken to ensure that data which is inaccurate or incomplete, having regard to the purposes for which it was collected or for which it is further processed, is erased or rectified;

- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data was collected or for which it is further processed.

The data controller or their representative must ensure compliance with these provisions.

Art. 10-2. (created by Act n° 1.353 of 4 December 2008) - Processing of personal data must be justified:

- by consent from the data subject(s), or;
- by compliance with a legal obligation to which the data controller or their representative is subject, or;
- by it being in the public interest, or
- by the performance of a contract or pre-contractual measures with the data subject, or;
- by the fulfilment of a legitimate motive on the part of the data controller or their representative or by the recipient, on condition that the interests or fundamental rights and freedoms of the data subject are not infringed.

Article 11. (replaced by Act n° 1.353 of 4 December 2008) - Processing of the following data, whether automated or not, with or without biometric data, may only be carried out by judicial or administrative authorities, exclusively within the scope of the duties legally conferred upon them:

- data involving public security;
- data relating to offences, convictions or security measures;
- data having the purpose of preventing, investigating, recording or prosecuting criminal offences or fulfilling criminal convictions or security measures;

Article 11-1. (created by Act n° 1.353 of 4 December 2008) - As a derogation from the provisions of the foregoing Article, automated processing of personal data may be carried out by data controllers other than judicial and administrative authorities where:

- it relates to suspicions of unlawful activities, offences or security measures;
- it includes the biometric data required to check persons' identities;
- it is for the purposes of surveillance.

Said data processing may, however, only be carried out with prior authorization from the Personal Data Protection Supervisory Commission if it is required in order pursue an essential legitimate aim and where the rights and freedoms of data subjects as described in Article 1 are respected.

The Personal Data Protection Supervisory Commission shall deliver its decision within two months of receipt of full supporting documentation. Such period may be renewed once for an identical period if a reasoned decision is issued by the Chairman.

If an authorization requested of the Commission has not been issued upon expiry of the period laid down in the foregoing paragraph, renewed if applicable, the opinion shall be considered to be favourable.

Article 12. (amended by Act n° 1.353 of 4 December 2008) - No person may carry out data processing, whether automated or not, which reveals, directly or indirectly, political, religious or philosophical beliefs, trade union membership, racial or ethnic origin, or data relating to health, including genetic data, data concerning the party's sex life, lifestyle or relating to social welfare measures.

The provisions of the first paragraph shall not apply in the following cases:

- where the data subject has freely given their written and express consent, in particular under Act n° 1.265 of 23 December 2002 on the protection of persons in biomedical research, except where the Act provides that the ban described in the first paragraph may not be lifted by the consent of the data subject. The latter data subject may, at any time, withdraw their consent and request that the data controller or user of processed data destroy or delete their data;

- where it is in the public interest, the processing described in Article 7, where processing has been decided by the competent authorities or bodies following a reasoned opinion issued by the Personal Data Protection Supervisory Commission;

- where processing pertains to the members of an ecclesiastical institution or a body with a political, religious, philosophical, humanitarian or trade-union aim, as part of company or association objects and for the purposes of its functioning, 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 is not disclosed to a third party without the consent of the data subjects;

- where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services and social welfare schemes, or in the interests of research and where such data is processed by a health professional subject to the obligation of professional secrecy or by another person subject to an equivalent obligation of secrecy;

- where data processing relates to information that has manifestly been made public by the data subject;

- where data processing is required in order to record, exercise or in the defence of rights before the Courts or meets a legal obligation.

Article 13. (amended by Act n° 1.353 of 4 December 2008) - Natural persons shall be entitled:

- to oppose, for legitimate reasons, their personal data being the subject of processing, except where such processing is carried out in the exclusive scope of duties in the public interest by the data controllers described in Article 7;

- to have access, under the conditions laid down in Section II, to their data, and having such data amended if appropriate.

Except where there are legislative provisions to the contrary, relatives in ascending or descending lines up to second-degree relatives or the surviving spouse of a deceased person may, if they justify having an interest therein, exercise the rights provided for in the foregoing paragraph, to the extent of the data relating to that person.

Legal persons shall be entitled:

- to oppose, for legitimate reasons, their personal data being processed, or to oppose, with the agreement of their members, personal data relating to them being processed, except where such processing is carried out in the exclusive scope of duties in the public interest by the data controllers described in Article 7;

- to have access, under the conditions laid down in Section II, to their data, or, with the agreement of their members, to access their personal data, and have such data amended if appropriate.

The provisions of this Article shall not apply to the processing described in Article 11.

Article 14. (amended by Act n° 1.353 of 4 December 2008) - Persons from whom personal data is collected must be informed:

- of the identity of the data controller and, if applicable, the identity of their representative in Monaco;

- of the purpose of processing;

- of the obligatory or optional nature of replies;

- of the consequences for them of failure to reply;

- of the identity of recipients or categories of recipients;

- of their right to oppose, access and rectify their data;

- of their right to oppose the use on behalf of a third party, or the disclosure to a third party of their personal data for the purposes of prospection, particularly commercial prospection.

Where personal data is not collected directly from the data subject, the data controller or their representative must provide the data subject with the information listed in the previous paragraph, except where the data subject has already been informed, cannot be informed, or where this involves

disproportionate measures with regard to the utility of the action or if collection or disclosure of the data has been expressly provided for by legislative or regulatory provisions.

The provisions of this Article shall not apply to the processing described in Article 11.

Article 14-1. (*created by Act n° 1.353 of 4 December 2008*) All persons shall have the right not to be subject to a decision which produces legal effects concerning them or significantly affecting them and which is based solely on the automated processing of data intended to evaluate their profile or certain aspects of their personality.

A person may nevertheless be subject to a decision described in the previous paragraph if such decision:

- is taken in the course of the entering into or performance of a contract, provided the application for the entering into or performance of the contract, lodged by the data subject, has been satisfied or that there are suitable measures to safeguard their legitimate interests, such as arrangements allowing them to express their point of view and have their application re-examined;

- or is authorized by legal or regulatory provisions which lay down measures to safeguard the data subject's legitimate interests.

Article 14-2. (*created by Act n° 1.353 of 4 December 2008*) Prior to the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user, the subscriber or user must be provided with clear and comprehensive information about the purposes of processing, and the means available to them to refuse such processing.

An electronic communications network shall be defined as transmission equipment and, where applicable, routing or switching equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or other electromagnetic means.

It shall be prohibited to make access to a service available through an electronic communications network conditional upon the acceptance, by the subscriber or the user concerned, of the processing of data stored in their terminal equipment, unless storage or technical access is for the sole purpose of transmitting or facilitating the transmission of a communication via an electronic communications network, or is strictly necessary in order provide a service expressly requested by the subscriber or user.

It shall be prohibited to make access to a service available through an electronic communications network conditional upon the acceptance, by the subscriber or the user concerned, of the processing of data stored in their terminal equipment, unless storage or technical access is for the sole purpose of transmitting or facilitating the transmission of a communication via an electronic communications network, or is strictly necessary in order provide a service expressly requested by the subscriber or user.

Article 14-3. (*added by Act n° 1.383 of 2 August 2011 on the digital economy*) – without the express consent of the data subject, personal data collected by electronic certification service providers in order to issue and store certificates relating to electronic signatures must be collected directly from the data subject and may only be processed for the purposes for which it was collected.

SECTION II.**- On access to data**

Article 15. (*amended by Act n° 1.353 of 4 December 2008*) - All persons justifying their identity may obtain, from the data controller or their representative:

1° information at least as to the purposes of the processing operation, the categories of data concerned, and the recipients or categories of recipients to whom the data is disclosed;

2° confirmation as to whether or not data related to him or her is being processed;

3° such data communicated in written, non-coded form, conforming to the stored data; information of a medical nature shall be communicated to the data subject or the doctor that they have appointed for this purpose. If an opinion to the contrary is justified on medical grounds, data may be communicated only to said doctor. The implementing conditions of this item shall be determined by Sovereign Ordinance;

4° information relating to the automated reasoning process having led to the decision described in Article 14-1.

Communication of the data must take place within the month following receipt of the request. However, the President of the Personal Data Protection Supervisory Commission may, having obtained a favourable opinion from the Commission, grant additional time or grant exemption from the obligation to reply to requests that are abusive as a result of their number or repeated or systematic nature, where the data subject has been duly informed.

Article 15-1. (*created by Act n° 1.353 of 4 December 2008*) - A person whose personal data is processed as described in Article 11 may refer the matter to the Personal Data Protection Supervisory Commission by making an application for a verification of said data.

The Chairman of the Commission shall designate a Member to fulfil the role of sitting judge or, in the event of his/her incapacity, the Member proposed by the Council of State, to perform checks and make the necessary amendments, if appropriate. The latter may be assisted by a supervisory authority official that has been duly mandated and sworn in.

The Chairman of the Commission shall inform the data subject that such checks have been made. In agreement with the data controller or their representative, the Chairman may bring to the knowledge of the data subject such data as does not breach public security.

Article 15-2. (*created by Act n° 1.353 of 4 December 2008*) - The data controller or their representative must take appropriate measures in order to:

1. supplement or amend, *ex officio*, data which is incomplete or erroneous where they become aware of its incomplete or inaccurate nature;

2. delete, *ex officio*, data that might have been obtained by fraudulent, injurious or unlawful means, where they become aware of such methods;

3. delete the named form of data upon expiry of the storage period established in the declaration, request for an opinion or application for authorization, or upon expiry of the period fixed by the Commission, pursuant to Article 9.

Article 16. A data subject may demand that their data be rectified, supplemented, clarified, updated or deleted where such data proves to be imprecise, incomplete, equivocal, obsolete or if its collection; recording, disclosure or storage is prohibited.

(*amended by Act n° 1.353 of 4 December 2008*) - Upon request from the interested party, a copy of the amended data that has been recorded shall be issued free of charge.

If data has been disclosed to recipients, they must be notified of the amended data or its deletion, except where an exemption is granted by the Chairman of the Personal Data Protection Supervisory Commission".

SECTION III (*Heading amended by Act n° 1.353 of 4 December 2008*)
- Secure and confidential processing

Article 17. (*replaced by Act n° 1.353 of 4 December 2008*) - The data controller or their representative must implement appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction, accidental loss, corruption, unauthorized disclosure or access, in particular where processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Measures implemented must ensure an adequate level of security with regard to the risks posed by processing and by the nature of the data to be protected.

Where the data controller or their representative makes use of the services of one or more service providers, they must ensure that the latter are able to comply with the obligations laid down in the two previous paragraphs.

Processing carried out by a service provider must be governed by a written agreement between the service provider and the data controller or their representative, stipulating in particular that the service provider and members of their staff are acting solely upon instructions from the data controller or their representative alone and that the obligations described in the two previous paragraphs are also incumbent upon said service provider.

If the service provider wishes to use the services of one or more subcontractors in order to provide all or some of the services set out in the aforementioned agreement, the provisions of the previous paragraph shall apply thereto.

Article 17-1. (*replaced by Act n° 1.353 of 4 December 2008*) - Where processing is carried out pursuant to Articles 11 and 11-1, the data controller shall also take specific technical and organizational measures to safeguard the data. The list of measures that can be taken in this regard shall be established by Sovereign Ordinance.

Such measures shall be aimed in particular at determining a list of names of authorized persons who alone shall have access, strictly limited to the performance of their duties, to premises and facilities used for processing and the data being processed.

The data controller shall also ensure that the recipients of processed data can be clearly identified.

CHAPTER III

ON MONITORING DILIGENT PROCESSING

(*Heading amended by Act n° 1.353 of 4 December 2008*)

Article 18. (*amended by Act n° 1.353 of 4 December 2008*) - The Personal Data Protection Supervisory Commission shall have the necessary verifications and investigations carried out in order to monitor processing, either by its Members, or by officials belonging to its Secretariat, or by investigators appointed by the Chairman following a proposal made by Commission and subject to the obligations laid down in Article 5-1. Officials and investigators shall be mandated and sworn in for this purpose.

The persons described in the previous paragraph must be provided with a letter of appointment from the Chairman of the Personal Data Protection Supervisory Commission explicitly stating the name and address of the natural or legal person concerned, as well as the purpose of the appointment, in order to access the latter's premises, to carry out all necessary checks, to consult any processed data, to request disclosure or copies of any professional document and to collect from any competent person information that is useful to their task.

Visits of premises and on-site verification operations may only take place between 6 am and 9 pm and in the presence of the occupier of the premises, the data controller or their representative, or failing this, a police officer called upon for this purpose.

Following the visit and on-site verification operations, a report shall be drawn up by the persons described in the first paragraph. Copies shall be remitted to the occupier of the premises, to the data controller or their representative and to the Chairman of the Personal Data Protection Supervisory Commission.

Article 19. (amended by Act n° 1.353 of 4 December 2008) - If irregularities are noted in respect of natural persons or legal persons governed by public law or private law, the Chairman of the Personal Data Protection Supervisory Commission shall send a warning to the data controller or a formal notice to put an end to said irregularities or eliminate the effects thereof.

Irregularities constituting criminal offences shall be passed on without delay to the Prosecutor General by the Chairman of the Commission.

If the formal notice remains unheeded upon expiry of the period given, the Presiding Judge of the Court of First Instance, to whom the matter shall be referred by the Chairman of the Commission, ruling in emergency proceedings, shall order any appropriate measures to end such irregularities or to eliminate the effects thereof, without prejudice to criminal penalties incurred or applications for compensation from data subjects having suffered harm. A fine may also be issued with this decision.

The provisions of the previous paragraph shall not apply to legal persons governed by public law. For such persons the Chairman of the Commission may call upon the Prime Minister to take the necessary measures to end the irregularities noted or to eliminate the effects thereof. With regard to departments not falling under the Prime Minister's responsibility, the latter shall refer the matter to the competent administrative bodies for the same purposes and may, if the appropriate measures are not taken, carry this out on an *ex officio* basis.

CHAPTER III*bis*

ON THE TRANSFER OF PERSONAL DATA

(created by Act n° 1.353 of 4 December 2008)

Article 20. - The transfer of personal data outside the Principality may only take place subject to the condition that the country or organization that is to be the recipient of the transfer has an adequate level of protection.

The adequate nature of the level of protection afforded by the third country must be appreciated in the light of all circumstances relating to a transfer of personal data, in particular the nature of the data, the purpose, the duration of processing operation(s) envisaged, the rule of law in force in the country in question, and the professional rules and security measures complied with in said country.

Without prejudice to the foregoing provisions, the Personal Data Protection Supervisory Commission shall make available to any interested party a list of countries with an adequate level of protection within the meaning of the previous paragraph.

Article 20-1. - The transfer of personal data to a country or organization which does not provide, within the meaning of the second paragraph of Article 20, an adequate level of protection, may nevertheless take place if the data subject has consented to the transfer or if the transfer is required:

- to safeguard that person's life;
- to safeguard the public interest;
- in compliance with obligations in respect of the recording, exercising or defence of legal rights;
- for the consultation, under proper conditions, of a public register which, by virtue of legislative or regulatory provisions, is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can provide proof of a legitimate interest;
- the performance of a contract between the data controller or their representative and the data subject, or pre-contractual measures taken at the latter's request;
- the conclusion or performance of a contract concluded or to be concluded in the interests of the data subject, between the data controller or their representative and a third party.

Without prejudice to the provisions of the previous paragraph, the Personal Data Protection Supervisory Commission may authorize, on the basis of a duly substantiated application, a transfer of personal data to a country or organization which does not have an adequate level of protection within the meaning of the second paragraph of Article 20 if the data controller or their representative, as well as the recipient of data, offer sufficient guarantees to ensure compliance with the protection of the rights and

freedoms described in Article 1. Such safeguards may in particular result from appropriate contractual clauses.

The data controller must comply with the Commission's decision.

CHAPTER IV

PENALTIES

Article 21. (*amended by Act n° 1.353 of 4 December 2008*) - The following shall be punished by imprisonment for one to six months and by a fine as described in item 3 of Article 26 of the Criminal Code or only one of those two penalties:

1° persons carrying out or attempting to carry out the automated processing of personal data or continuing or attempting to continue to carry out such processing without having performed the required prior formalities or having obtained the authorizations laid down in Articles 6, 7, 7-1 and 11-1;

2° persons who, apart from the exemptions laid down by the law, voluntarily refrain from communicating to a data subject their personal data, or from amending or deleting any of such information which has proved to be imprecise, incomplete, equivocal or collected in violation of the law;

3° persons who, as a result of imprudent or negligent behaviour, do not maintain or cause to be maintained the security of personal data or divulge or allow to be divulged data which has the effect of damaging the reputation of a person or encroaching upon their private or family life;

4° persons who retain personal data beyond the period indicated in the declaration, request for an opinion or application for authorization or beyond the period fixed by the Personal Data Protection Supervisory Commission;

5° persons who, apart from the cases described in Articles 20 and 20-1, transfer personal data or cause it to be transferred to countries or organizations not affording an adequate level of protection;

6° persons who, failing to observe Article 14, collect personal data without the data subject having been informed, except where informing that person proves to be impossible or involves disproportionate efforts, or if the collection or disclosure of such data is expressly provided for by applicable legislative or regulatory provisions:

7° persons failing to observe the provisions of Article 14-2.

Article 22. (*amended by Act n° 1.353 of 4 December 2008*) - The following shall be punished by imprisonment for three months to one year and by a fine as described in item 4 of Article 26 of the Criminal Code or only one of those two penalties:

1° persons who, apart from the exemptions laid down by the law, collect or cause to be collected, record or cause to be recorded, store or cause to be stored, use or cause to be used, personal data that is reserved for certain authorities, establishments, organizations and natural persons or data which is likely to reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or data concerning health, including genetic data, data pertaining to sex life, lifestyle or social welfare measures;

2° persons who collect or cause to be collected personal data by using or inciting to be used fraudulent, injurious or unlawful means;

3° persons who deliberately prevent or hinder investigations carried out in application of the law or do not provide information or documents requested;

4° persons who knowingly communicate or cause to be communicated inaccurate information or documents either to data subjects or to the persons in charge of the necessary investigations;

5° persons who collect or cause to be collected, record or cause to be recorded, store or cause to be stored, use or cause to be used personal data despite the opposition of data subjects, apart from the cases provided for by the law;

6° persons who, with the exception of the competent authorities, knowingly collect or cause to be collected, record or cause to be recorded, store or cause to be stored, use or cause to be used personal data with or without biometric data in respect of offences, convictions or security measures or which have the purpose of preventing, investigating, establishing or prosecuting criminal offences or the execution of criminal convictions or security measures;

7° persons who, knowingly, collect or cause to be collected, record or cause to be recorded, store or cause to be stored, use or cause to be used personal data relating to suspected unlawful activities, offences, security measures or including biometric data that is required to check persons' identities or is intended for the purposes of surveillance without having obtained the authorization laid down in Article 11-1;

8° persons who knowingly communicate with unqualified persons in order to receive information from them data the disclosure of which may damage the reputation of a natural person or encroach upon their private and family life;

9° persons knowingly use or cause to be used personal data for other purposes than those described in the declaration, request for an opinion or application for authorization.

Article 23. (amended by Act n° 1.353 of 4 December 2008) - Any conviction handed down pursuant to the two previous Articles shall, *ipso jure*, lead to the ceasing of the effects of the declaration or authorization and removal from the Automated Data Processing Register.

The Court may, furthermore, order the confiscation and destruction, without compensation, of media containing incriminated personal data and prohibit re-registration for a period not exceeding three years and of no less than six months.

It may also order a legal person governed by private law to be constrained, jointly and severally with their corporate representative, to pay a fine issued against the latter.

Article 23-1. (created by Act n° 1.353 of 4 December 2008) - No interconnections may be created between an extract from police records and any other file or processing of personal data held by any person whatsoever or by a department not falling under the responsibility of the Directorate of Legal Affairs.

CHAPTER V

SCOPE

(title amended by Act n° 1.353 of 4 December 2008)

Article 24. (amended by Act n° 1.353 of 4 December 2008) - The provisions of this Act shall apply to the automated processing of personal data:

- carried out by a data controller established in Monaco;
- carried out in Monaco, even if such processing is destined only for use abroad;
- where the data controller is established abroad, but makes use of processing facilities located in Monaco; in such case, the data controller must appoint a representative established in Monaco, who is to make the declaration, request for an opinion or application for authorization and upon whom the obligations laid down by the law are incumbent, without prejudice to legal action that might be lodged against the data controller themselves.

If automated processing of personal data carried out abroad is accessible for consultation in Monaco only, by automated means, users in the Principality shall be subject to the provisions of this Act, with the exception of the provisions of Sections III and IV of Chapter I.

Article 24-1. (created by Act n° 1.353 of 4 December 2008) - The provisions of this Act, with the exception of those of Sections III and IV of Chapter I, shall apply to personal data contained in or likely to be included in a non-automated file or data storage medium, namely in a structured set of personal data accessible according to determined criteria.

Article 24-2. (created by Act N° 1.353 of 4 December 2008) - The provisions of the Act shall not apply:

1° to processing carried out pursuant to Article 15 of the Constitution;

2° to processing carried out by the judicial authorities for the purposes of proceedings initiated before the Courts and international mutual assistance procedures;

3° automated data processing carried out and non-automated files of personal data held by a natural person solely as part of their personal or domestic activities.

Article 25. (*amended by Act n° 1.353 of 4 December 2008*) - The provisions of Articles 12, 13, 14, 15, 15-2 and 16 and those of Chapter III*bis* shall not apply to the automated processing of non-automated files or data storage media of personal data deployed solely for the purposes of literary and artistic expression, or solely in order to exercise journalistic activities, in compliance with applicable laws and rules of ethics, insofar as such exemptions and derogations are required to reconcile the right to a private life with the rules governing freedom of expression.

The provisions of the foregoing paragraph shall not form an obstacle to the implementation of laws pertaining to the printed or audio-visual press which lay down conditions for exercising a right of reply and which provide for, limit, grant compensation for and, if applicable, punish, encroachment upon private life and damage to personal reputations.

Article 25-1. (*created by Act N° 1.353 of 4 December 2008*) - The implementing conditions of this Act shall be established by Sovereign Ordinance.

Art. 26. (*replaced by Act n° 1.353 of 4 December 2008*) - Authorizations granted by the Personal Data Protection Supervisory Commission by virtue of Articles 9, 11-1 and 20-1 may, in order to safeguard the interests protected by this Act, be accompanied by specific conditions.

They may be withdrawn if the beneficiary breaches the provisions of said Act or its implementing instruments, exceeds the limitations of the authorization granted to them or fails to comply with the conditions stated therein. Prior to any decision, the interested party shall be called upon to provide an explanation and/or their explanations shall be heard.