

OFFICIAL GAZETTE

OF THE GRAND DUCHY OF LUXEMBOURG
MEMORIAL A

N° 686 of 16 August 2018

The Act of 1 August 2018 on the organisation of the National Data Protection Commission, implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), amending the Labour Code and the amended Act of 25 March 2015 stipulating the rules of remuneration and the terms and conditions for the promotion of State civil servants.

We, Henri, Grand Duke of Luxembourg and Duke of Nassau

Heard by our Council of State;

With the agreement of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 26 July 2018 and that of the Council of State of 27 July 2018 on the absence of the need for a second vote;

Hereby decree:

Title 1 – General provisions

Chapter 1 - Scope

Art. 1.

(1) Any processing of personal data that is not covered by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, hereinafter referred to as “Regulation (EU) 2016/679”, or by the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters, is covered by the provisions of Chapter I, Article 4, and the provisions of Chapters II to VI, VIII and IX, and Chapter VII, Section 1 of Regulation (EU) 2016/679 and the present Act, subject to existing legal texts containing other specific provisions relating to personal data protection.

(2) This law does not apply to the processing of personal data carried out by natural persons in the course of a purely personal or household activity.

Art. 2.

The provisions of Title II apply to controllers and processors established on the territory of Luxembourg.

Chapter 2 – The National Data Protection Commission

Section 1 – Legal status and independence

Art. 3.

The National Data Protection Commission, hereinafter referred to as “CNPD”, is an independent public institution with legal personality.

It is financially and administratively autonomous.

Its headquarters are determined by Grand-ducal regulation.

Section II – Competences of the CNPD

Art. 4.

The CNPD is responsible for monitoring and verifying that data subject to processing activities are processed in compliance with the provisions of:

1° Regulation (UE) 2016/679;

2° the present Act;

3° the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters ;

4° legal texts containing specific provisions relating to personal data protection.

Art. 5.

The CNPD is not competent to supervise the processing of personal data carried out by courts of the judicial order, including the public prosecutor (*ministère public*), or the administrative order acting in their judicial capacities.

Art. 6.

The CNPD represents Luxembourg on the “European Data Protection Board” established by Article 68 of Regulation (EU) 2016/679 and contributes to its activities.

Section III – The tasks of the CNPD

Sub-section 1 – The tasks of the CNPD within the framework of the Regulation (EU) 2016/679

Art. 7.

The CNPD carries out the tasks it is charged with under Article 57 of Regulation (EU) 2016/679.

Sub-section II – The tasks of the CNPD within the framework of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters

Art. 8.

Within the framework of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data processing in criminal and national security matters, the CNPD:

1° monitors and enforces the application of the provisions and its implementing measures;

2° promotes public awareness and understanding of the risks, rules, guarantees and rights relating to personal data processing;

3° advises the Chamber of Deputies (*Chambre des députés*), the Government and other institutions and organisations on legislative and administrative measures relating to the protection of the rights and freedoms of natural persons with regard to personal data processing;

4° promotes the awareness of controllers and processors of their obligations

5° upon request, provides information to any data subject on the exercise of their rights and, if necessary, cooperates with the supervisory authorities of other Member States to that end;

6° deal with complaints lodged by a data subject or by a body, organisation or association in accordance with Article 44 of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data processing in criminal and national security matters, investigates the subject-matter of the complaint, to the extent appropriate, and informs the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is required;

- 7° checks the lawfulness of the processing and informs the data subject within a reasonable period of the outcome of this check pursuant to Article 16, paragraph 3 of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data processing in criminal and national security matters, or the reasons why the check has not been carried out;
- 8° implements effective mechanisms to encourage confidential reporting of infringements of the processing of personal data;
- 9° cooperates with, including by sharing information, and provides mutual assistance to other supervisory authorities, with the view to ensure the consistency of the application and enforcement of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data processing in criminal and national security matters, and of the measures taken to ensure it is upheld;
- 10° conducts investigations on the application of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data processing in criminal and national security matters, including on the basis of information received from another supervisory authority or other public authority;
- 11° monitors relevant developments insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
- 12° provides advice on the processing operations referred to in Article 27 of the law of 1 August 2018 on the protection of natural persons with regard to the processing of personal data processing in criminal and national security matters.

Art. 9.

The CNPD facilitates the submission of complaints referred to in Article 8, point 6, by measures such as providing a complaint submission form, which can also be completed electronically, without excluding other means of communication.

Sub-section III – Common provisions

Art. 10.

The CNPD shall produce an annual report on its activities, which includes a list of the types of infringements notified and the types of sanctions imposed in accordance with Regulation 2016/679 and the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters. These reports are submitted to the Chamber of Deputies, the Government, the European Commission and the European Data Protection Board and are made public.

Art. 11.

The performance of the tasks are free of charge for the data subject and, where applicable, for the data protection officer in the course of his work.

When a request is manifestly unfounded or excessive, the CNPD may charge a reasonable fee based on its administrative costs, or refuse to follow up on the request. It is for the CNPD to demonstrate the manifestly unfounded or excessive character of the request.

Section IV - The powers of the CNPD

Art. 12.

In the context of the tasks set out in Article 7, the CNPD is vested with the powers provided for in Article 58 of Regulation (EU) 2016/679.

Art. 13.

The CNPD has the power to bring any infringements of Regulation (EU) 2016/679, or of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters or of this Act to the attention of judicial authorities and, where applicable, the power to initiate legal proceedings in the interests of Regulation (EU) 2016/679, in accordance with Article 58 of Regulation (EU) 2016/679, and in the interests of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters.

Art. 14.

In the context of its tasks set out in Article 8, the CNPD has the following powers:

- 1° to obtain from controllers and/or processors access to all personal data processed and all information necessary for the performance of its tasks;

- 2° to issue warnings to a controller or a processor that planned data processing operations are likely to infringe provisions adopted pursuant to the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters;
- 3° to order the controller or processor to bring processing operations into compliance with the provisions adopted pursuant to the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters, where appropriate, in a specified manner and within a specified period, in particular by ordering the rectification or erasure of personal data or restriction on processing in accordance with Article 15 of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters;
- 4° to impose a temporary or definitive limitation, including a ban, on processing;
- 5° to advise the controller in accordance with the prior consultation procedure referred to in Article 27 of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters;
- 6° to issue, on its own initiative or on request, opinions to the Chamber of Deputies (*Chambre des députés*) and its Government or other institutions and organisations as well as the public, on any question relating to personal data processing.

Section V - Certification

Art. 15.

The certification bodies referred to in Article 43, paragraph 1 of Regulation (EU) 2016/679 must be accredited by the CNPD.

Section VI - Composition of and nomination of the CNPD

Art. 16.

The CNPD is a collegiate body made up of four members, one of which is a president. The members are called Data Protection Commissioners and are authorised to use the title “Commissioner”, with this title having no impact on their rank or their remuneration. Four deputy members are also appointed.

The deputy members are called to replace members of the college when they are absent or unable to attend.

Art. 17.

The members of the college and the deputy members are appointed and dismissed by the Grand Duke on a proposal of the Government Council (*Conseil de gouvernement*). The president is designated by the Grand Duke. The members of the college and the deputy members are appointed for a term of six years, which is renewable once.

The members of the college and the deputy members act with complete independence in performing their tasks and exercising their powers. They remain free from all external influence, whether direct or indirect, and shall neither seek nor accept instructions from anyone.

Art. 18.

The Government Council (*Conseil de gouvernement*) proposes Luxembourg nationals, who meet the entry criteria for the entry-exam for the A1 remuneration group, to the Grand Duke for the positions of members of the college and deputy members.

The members of the college and the deputy members are appointed, on the basis of their skills and experience in the area of the protection of personal data.

Vacant positions for the mandates of members of the college are advertised at least six months before the mandate expires. The publication takes the form of a call for candidates, detailing the number of vacant positions, the conditions for appointment, the duties of the body to be formed and the application procedure.

Art. 19.

Before taking office, the president shall take the following oath before the Grand Duke or his representative: “I swear loyalty to the Grand Duke, obedience to the Constitution and to the laws of the State. I promise to fulfil my duties with integrity, accuracy and impartiality.”

Before taking office, the members and deputy members shall take the following oath before the president: “I swear loyalty to the Grand Duke, obedience to the Constitution and to the laws of the State. I promise to fulfil my duties with integrity, accuracy and impartiality.”

Art. 20.

The members of the college are considered as civil servants (*fonctionnaire*) in terms of their status, remuneration and pension scheme.

They receive a special allowance to account for the commitment required by their position, to be determined by Grand-ducal regulation. The scaled remuneration and the special allowance together cannot rise above the pay scale of the S1 grade.

Art. 21.

Without prejudice to any potential disciplinary sanctions, a member of the college, who previously held a position as state official (*agent de l'Etat*) and whose mandate is not renewed or is revoked, shall be appointed to the highest grade of the highest position within one of the remuneration sub-groups, with the exception of the sub-group with special powers, in remuneration category A, remuneration group A1 of his original administration, at the pay scale reached in his previous position or, if there is no equivalent, at the pay scale immediately below. The special allowances attached to his position as a member of the college shall not be maintained. The former member may be transferred to another administration or public institution, in accordance with Article 6 of the amended Act of 16 April 1979 determining the general statute on State civil servants.

Art. 22.

Without prejudice to any potential disciplinary sanctions, a member of the college, who did not previously hold a position as state official (*agent de l'Etat*) and whose mandate is not renewed or is revoked, shall be appointed to the highest grade of the highest position within one of the remuneration sub-groups, with the exception of the sub-group with special powers, in remuneration category A, remuneration group A1 of a governmental department, at the pay scale reached in his previous position or, if there is no equivalent, at the pay scale immediately below. The special allowances attached to his position as a member of the college shall not be maintained. The former member may be transferred to another administration or public institution, in accordance with Article 6 of the amended Act of 16 April 1979 determining the general statute on State civil servants.

Art. 23.

If there are no vacant positions budgeted for in the remuneration group mentioned in Articles 21 and 22, staff numbers shall be temporarily increased until the next vacant position in this remuneration group becomes available.

Art. 24.

Deputy members receive an allowance, the amount of which is determined by Grand-ducal regulation.

Art. 25.

(1) The members of the college and the deputy members shall be dismissed only in cases of serious misconduct or if they no longer meet the required conditions for the exercise of their duties. In these cases, the mandate shall be revoked by the Grand Duke on a proposal of the Government Council (*Conseil de gouvernement*).

(2) Notwithstanding the age limit set by Article 7.1.2 of the amended law of 25 March 2015 establishing a special transitory pension plan for State and Municipal civil servants as well as for officials of the Luxembourg National Railway Company, and by Article 67.II.1 of the amended law of 3 August 1998 establishing special pension schemes for State and Municipal civil servants as well as for officials of the Luxembourg National Railway Company, members of the college who reach the age of sixty-five during their mandate may continue their mandate until the age of sixty-eight.

The age limit for deputy members is sixty-eight.

(3) Notwithstanding Article 29, the disciplinary powers attributed to the purview minister are exercised with regard to the members of the college by the minister responsible for Relations with the National Data Protection Commission.

Art. 26.

In case of cessation of the mandate of a member of the college or a deputy member, a successor shall be appointed in accordance with Articles 17 to 19.

Art. 27.

Members of the college and deputy members cannot be members of the Government, the Chamber of

Deputies (*Chambre des Députés*), the Council of State (*Conseil d'Etat*) or the European Parliament, nor can they carry out any professional activity or, directly or indirectly, hold interests in a company or any other body operating in the field of data processing.

Section VII - Operation of the CNPD

Art. 28.

The staff of the CNPD includes civil servants of various remuneration categories as set out in the amended Act of 25 March 2015 determining the rules of remuneration and the terms and conditions for the promotion of State civil servants. The staff may be supplemented by interns, state employees (*employés de l'Etat*) and state workers (*salariés de l'Etat*), according to needs and within the limits of budgetary credits.

Art. 29.

The powers vested in the head of the administration by the laws and Grand-ducal regulations applicable to state officials (*agents de l'Etat*) are exercised in respect of the staff of the CNPD by the president. The powers vested in the purview minister or the Government Council (*Conseil de gouvernement*) or the authority vested with the power to make appointments by virtue of the laws and regulations mentioned above are exercised in respect of the staff of the CNPD by the college.

Art. 30.

The remuneration and other allowances of all members of the college, deputy members and officials of the CNPD shall be paid by the CNPD.

Art. 31.

The CNPD may call upon external experts, whose services shall be defined and compensated on the basis of a private law contract.

Art. 32.

(1) The CNPD shall draw up its rules of procedure, including its internal procedures and working methods. The rules of procedure shall be adopted unanimously by the members of the college in plenary session. These internal rules of procedure are published in the Official Gazette of the Grand Duchy of Luxembourg.

(2) The college may delegate technical or administrative powers to a member of the college. The delegation must be laid out in the internal regulations.

Art. 33.

Subject to the provisions of this Act and without prejudice to the texts cited in Article 4, the internal regulations determine:

- 1° operating conditions for the CNPD;
- 2° the organisation of the services of the CNPD;
- 3° the procedures for convening the members of the college and holding collegiate meetings.

Art. 34.

The college may validly sit and deliberate only if at least three members of the college are present.

Art. 35.

The members of the college and the deputy members cannot sit, deliberate or adopt decisions in a matter in which they have a direct or indirect interest.

Art. 36.

The decisions shall be adopted by majority vote. If the number of votes are equal, the president has the deciding vote. Abstentions are not permitted.

Section VIII - Investigation and decision on the outcome of the investigation

Art. 37.

The CNPD may act on its own initiative or on the request of any natural or legal person, in accordance with Articles 77 and 80 of Regulation (EU) 2016/679 and Articles 44 and 46 of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security

matters.

Art. 38.

The opening of an investigation may be proposed at any time by any member of the college. The member submits this proposition to the college, which approves it within a period of a month by majority vote and designates a member of the college as head of the investigation. The president cannot be designated as head of the investigation.

Art. 39.

Investigations shall be conducted as to gather both inculpatory and exculpatory evidence.

Art. 40.

A CNPD regulation specifies the procedure before the CNPD in accordance with the adversarial principle.

Art. 41.

The college shall adopt a decision on the outcome of the investigation without undue delay. The head of the investigation cannot sit, nor deliberate when the college decides on the outcome of the investigation.

Section IX - Professional secrecy

Art. 42.

Without prejudice to Article 23 of the Luxembourg Criminal Procedure Code, all persons exercising or having exercised an activity for the CNPD are bound by the obligation of professional secrecy and liable to the penalties set forth in Article 458 of the Luxembourg Criminal Code if the secrecy is violated. This secrecy requires that the confidential information received in the course of their professional activities cannot be disclosed to any person or authority, save in a summarised or aggregated form which does not permit the persons subject to supervision to be identified, without prejudice to cases under criminal law in the case of breach of secrecy.

Art. 43.

Notwithstanding the prohibition on disclosure and communication set out in Article 42 of this Act and in Article 458 of the Luxembourg Criminal Code, members of the college, deputy members and officials (*agents*) of the CNPD are authorised, in the course of their work, to communicate to public authorities and services the information and documents necessary for these bodies to carry out their tasks, on the condition that these authorities, bodies and persons are covered by an obligation of professional secrecy equivalent to that cited in Article 42 of this Act.

Art. 44.

Notwithstanding the prohibition on disclosure and communication set out in Article 42 of this law and in Article 458 of the Luxembourg Criminal Code, members of the college, deputy members and officials (*agents*) of the CNPD are authorised, in the course of their work, to communicate to the supervisory authorities of other Member States, the European Data Protection Board and the European Commission, the information and documents necessary for these entities to carry out their supervision, on the condition that these authorities, bodies and persons are covered by an obligation of professional secrecy equivalent to that cited in Article 42 of this Act and insofar as these authorities, bodies and persons provide the same information to the CNPD.

Section X - Financial provisions

Art. 45.

The financial year of the CNPD coincides with the calendar year.

Art. 46.

The accounts of the CNPD are kept according to the rules of commercial accounting. Prior to 30 June of each year, the president of the college of the CNPD shall submit the annual accounts to the college, including the balance sheet, profit and loss statement and appendix, as at 31 December of the previous financial year, as well as its activity report and the report of the approved statutory auditor (*réviseur d'entreprises agréé*). Prior to 31 December, the president of the college shall submit the annual budget of the CNPD for the following year to the college.

The annual accounts as of 31 December of the previous financial year with the report of the approved statutory auditor, the activity report and the annual budget shall be submitted to the Government Council (*Gouvernement en conseil*), which shall decide on the discharge to be given to the CNPD. The decision establishing the discharge granted to the CNPD as well as the annual accounts of the CNPD shall be published in the Official Gazette.

The Government Council (*Gouvernement en conseil*) appoints the approved statutory auditor (*réviseur d'entreprises agréé*) on a proposal issued by the college of the CNPD. The approved statutory auditor shall be responsible for verifying and certifying the annual accounts of the CNPD. The approved statutory auditor is appointed for a renewable term of three years. The college may require the approved statutory auditor to carry out specific verifications. The fees of the approved statutory auditor shall be paid by the CNPD.

Art. 47.

The CNPD is granted an endowment to be determined on an annual basis and to be accounted for in the State budget.

Without prejudice to Article 11, the CNPD may charge fees within the framework of its powers of authorisation and consultation pursuant to Article 58, paragraph 3, letters e), f), h) and j) of Regulation (EU) 2016/679. A CNPD regulation determines the amount and payment terms of these fees.

Section XI - Sanctions

Art. 48.

(1) The CNPD may impose administrative fines as set out in Article 83 of Regulation (EU) 2016/679, save against the State and municipalities.

(2) In the context of a violation of Article 10 of Regulation (EU) 2016/679 by a natural person or a legal person under private or public law, with the exception of the State and municipalities, the CNPD can impose the administrative fines set out in Article 83, paragraph 4 of Regulation (EU) 2016/679.

Art. 49.

(1) The CNPD may, by way of a decision, impose periodic penalty payments on the controller or processor, with the exception of the State and municipalities, not exceeding 5 % of the average daily turnover of the preceding business year, or of the last ended business year, per day calculated from the date appointed by the decision, in order to compel him:

- 1° to communicate all information required by the CNPD pursuant to Article 58, paragraph 1 letter a) of Regulation (EU) 2016/679;
- 2° to comply with a corrective measure that the CNPD has adopted in accordance with Article 58, paragraph 2, letters c), d), e), f), g), h) and j) of Regulation (EU) 2016/679.

For the application of this paragraph, agents of the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement et des domaines*) are required to provide the CNPD with all the available information necessary for determining the periodic penalty payments.

(2) Where controllers have fulfilled the obligation, which the periodic penalty payment was intended to enforce, the CNPD may set the definitive amount of the periodic penalty payment at an amount lower than that which would result under the original decision.

Art. 50.

The Luxembourg Registration Duties, Estates and VAT Authority Domain Registry (*Administration de l'enregistrement et des domaines*) is responsible for the collection of penalties and periodic penalty payments. The procedure for registrations shall apply.

Art. 51.

Any person who wilfully prevents or impedes, in any way, the execution of the tasks of the CNPD, shall be sentenced to imprisonment for a period of eight days to one year and a fine of 251 to 125 000 euros or one of these punishments alone.

Art. 52.

The CNPD may order, at the expense of the person sanctioned, the complete or partial publication of its decisions, excluding decisions relating to the imposition of periodic penalty payments, on the condition that:

- 1° all means of appeal against the decision have been exhausted; and

2° the publication does not risk causing disproportionate damage to the parties concerned.

Section XII – Statute of Limitations

Art. 53.

(1) The powers conferred on the CNPD by Article 58 of Regulation (EU) 2016/679 and Articles 14, 48, 49 and 52 of this Act shall be subject to a limitation period of five years.

(2) Time shall begin to run from the day the infringement of Regulation (EU) 2016/679, of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters and of this Act has ceased.

(3) Any action taken by the CNPD shall interrupt the limitation period. The limitation period shall be interrupted with effect from the date on which the action is notified to the controller or processor, which has participated in the processing activity.

(4) Each interruption shall start time running afresh. . However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the CNPD having imposed a fine or periodic penalty payment. This period shall be extended by the time during which the limitation period is suspended pursuant to paragraph 5.

(5) The limitation period shall be suspended as long as the decision of the CNPD is the subject of proceedings pending before the Administrative Tribunal.

Art. 54.

(1) The fines and penalties adopted in accordance with Articles 48 and 49 shall lapse after a period of five years.

(2) Time shall begin to run on the day of which the decision becomes final.

(3) The limitation period for the enforcement of the decision shall be interrupted:

1° by the notification of a decision modifying the original amount of the fine or periodic penalty payment or refusing a request to obtain such a modification;

2° by any action of the Registration Duties, Estates and VAT Authority Domain Registry (*Administration de l'enregistrement et des domaines*) aiming to enforce the payment of the fine or periodic penalty payment.

(4) Each interruption shall start time running afresh.

(5) The limitation period for the enforcement of the decision shall be suspended for:

1° as long as time for payment is allowed;

2° as long as enforcement of payment is suspended due to a court ruling.

Section XIII - Appeals against the decisions of the CNPD

Art. 55.

An appeal against the decisions of the CNPD taken pursuant to this Act can be made before the Administrative Tribunal, which rules on the merits of the case.

Chapter 3 - The Office of the Government Commissioner for data protection with the State

Art. 56.

A body called “the Office of the Government Commissioner for data protection with the State” is hereby created, hereinafter referred to as the “Office of the Government Commissioner”.

The Office of the Government Commissioner is placed under the authority of the Prime Minister, Minister of State.

Art. 57.

The purview ministers, or, under their authority, the relevant heads of administration, shall appoint one or several data protection officers.

The purview ministers, or, under their authority, the relevant heads of administration, may appoint the Office of the Government Commissioner as their Data Protection Officer.

The Office of the Government Commissioner shall be notified of the appointment.

Art. 58.

The Office of the Government Commissioner may also be appointed to the role of Data Protection Officer by municipalities.

Municipal councils (*les collèges des bourgmestre et échevins*) may appoint the Office of the Government Commissioner as their Data Protection Officer.

The Office of the Government Commissioner shall be notified of the appointment.

Art. 59.

The tasks of the Office of the Government Commissioner are:

- 1° to foster the protection of personal data within the State administration;
- 2° to promote good practices throughout the State administration and to encourage promoting awareness among officials;
- 3° to contribute to the consistent implementation of policies in this area:
 - a) by submitting to the Government a programme for managing compliance of data processing activities of bodies of the State administration with the applicable legislation, by guiding and supporting the relevant heads of administration in the implementation of appropriate measures, procedures and guidelines for state officials (*agents de l'Etat*).
 - b) by assisting the data protection officers of the State administration;
 - c) by advising, on request, the members of the Government;
- 4° to undertake, in the case of the application of Article 57, subparagraph 2, the role of data protection officer as defined in Article 38 of the Regulation (EU) 2016/679 with the tasks described in Article 39 of Regulation (EU) 2016/679;
- 5° to work closely with the minister responsible for Data Protection.

Art. 60.

The Office of the Government Commissioner is headed by a Government Commissioner for the protection of data with the State. The Government Commissioner may be assisted by a Deputy Government Commissioner.

Art. 61.

(1) The staff includes a Government Commissioner, a Deputy Government Commissioner for the protection of data for the State appointed by the Grand Duke on a proposal of the Government Council (*Gouvernement en conseil*), as well as civil servants from various remuneration categories as set out in the amended Act of 25 March 2015 stipulating the remuneration and the terms and conditions for the promotion of State civil servants.

(2) The staff may be supplemented by interns, state employees (*employés de l'Etat*) and state workers (*saliés de l'Etat*), as needed and within the limits of budgetary credits.

(3) Applicants for the positions of Government Commissioner for the protection of data with the State and Deputy Government Commissioner must possess specialised knowledge of the legislation and practices relevant to data protection and meet the entry criteria for remuneration group A1.

Title II – Specific provisions according to the Regulation (EU) 2016/679

Chapter 1 – Processing and freedom of expression and information

Art. 62.

Processing of personal data carried out for the sole purpose of journalism or academic, artistic or literary expression is not subject:

- 1° a) to the prohibition on processing special categories of data set out in Article 9, paragraph 1, of Regulation (EU) 2016/679;
b) to the limitations on processing of judicial data set out in Article 10 of Regulation (EU) 2016/679;
when the processing relates to data manifestly made public by the data subject or to data in direct relation to the public life of the data subject or with the events in which they were voluntarily involved;
- 2° to Chapter V relating to transfers to third countries or international organisations of Regulation (EU) 2016/679;

- 3° to the obligation to provide information according to Article 13 of Regulation (EU) 2016/679, where the application thereof would compromise the collection of data from the data subject;
- 4° to the obligation to provide information according to Article 14 of Regulation (EU) 2016/679, where the application thereof would compromise the collection of data, a planned publication, the making available, in any manner, of the data to the public, or would provide indications enabling the identification of the sources of information;
- 5° to the right of access of the data subject, which is deferred and limited in that it cannot concern information on the origin of the data, and/or enable the identification of a source of information. Subject to this limitation, access must be exercised via the intermediary of the CNPD in the presence of the president of the Press Council or their representative, or when the president of the Press Council has been duly summoned.

Chapter 2 – Processing for the purposes of scientific or historical research or statistical purposes

Art. 63.

Where personal data are processed for scientific or historical research purposes or for statistical purposes, the controller may derogate from the rights of the data subject as laid out in Articles 15, 16, 18 and 21 of Regulation (EU) 2016/679, insofar as these rights are likely to render impossible or seriously impair the achievement of specific purposes, subject to the implementation of appropriate measures as referred to in Article 65.

Art. 64.

The processing of special categories of personal data as defined in Article 9, paragraph 1 of Regulation (EU) 2016/679, may be carried out for the purposes referred to in Article 9 paragraph 2, point j) of this same regulation, if the controller meets the requirements set out in Article 65.

Art. 65.

Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller of processing carried out for scientific or historical research purposes or statistical purposes, must implement the following additional appropriate measures:

- 1° the appointment of a data protection officer;
- 2° the performance of an impact assessment of the planned processing activities on the protection of personal data;
- 3° the anonymisation and pseudonymisation as defined in Article 4, paragraph 5 of Regulation (EU) 2016/679, or other operational separation measures guaranteeing that the data collected for scientific or historical research purposes or statistical purposes, cannot be used to adopt decisions or take actions concerning data subjects;
- 4° the use of a trusted third party, operationally independent from the controller, for the anonymisation or pseudonymisation of the data;
- 5° the encryption of personal data in transit and at rest, as well as state of the art key management;
- 6° the use of technology reinforcing the protection of the private lives of data subjects;
- 7° the use of access restrictions to personal data within the controller;
- 8° the use of a log file enabling the reason, date and time that data is consulted and the identity of the person collecting, modifying or deleting personal data to be retraced;
- 9° promoting the awareness of the staff involved about the processing of personal data and professional secrecy;
- 10° the regular evaluation of the effectiveness of the technical and organisational measures implemented through an independent audit;
- 11° the prior drawing up of a data management plan;
- 12° the adoption of the sector specific codes of conduct as set out in Article 40 of Regulation (EU) 2016/679, approved by the European Commission pursuant to Article 40, paragraph 9 of Regulation (EU) 2016/679.

For each project for scientific or historical research purposes or statistical purposes, the controller must document and justify any exclusion of one or several of the measures listed in this article.

Chapter 3 – Processing of special categories of personal data

Art. 66.

The processing of genetic data for the purposes of the exercise of the specific rights of the controller in the field of labour law and insurance is prohibited.

Chapter 4 – Secrecy obligations

Art. 67.

(1) The access powers of the CNPD as laid out in Article 58, paragraph 1, letters e) and f) of Regulation (EU) 2016/679, exercised towards or regarding a lawyer, must take place in accordance with the rules laid out in Article 35, paragraph 3 of the amended Act of 10 August 1991 on the profession as a lawyer.

(2) The access powers of the CNPD as laid out in Article 58, paragraph 1, letter e) of Regulation (EU) 2016/679, exercised towards or regarding a notary, must take place in accordance with the rules laid out in Article 41 of the amended Act of 9 December 1976 relating to the organisation of the notarial profession.

(3) The access powers of the CNPD as laid out in Article 58, paragraph 1, letters e) and f) of Regulation (EU) 2016/679, exercised towards or regarding a professional referred to in the amended Act of 23 July 2016 relating to the auditing profession, must take place in accordance Article 28, paragraph 8 of that act.

(4) In accordance with Article 90, paragraph 2 of Regulation (EU) 2016/679, the rules laid out in paragraphs 1, 2 and 3 are only applicable to the personal data that a lawyer, notary, or professional referred to in the amended Act of 23 July 2016 relating to the auditing profession has received or obtained in the course of an activity subject to an obligation of professional secrecy.

Title III – Amending, repealing, transitional and final provisions

Chapter 1 – Amending provisions

Art. 68.

All references to the amended Act of 2 August 2002 concerning the protection of individuals with regard to the processing of personal data shall be replaced by a reference to Regulation (EU) 2016/679, to the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal and national security matters.

Art. 69.

The following shall be added to the amended Act of 25 March 2015 stipulating the rules of remuneration and the terms and conditions for the promotion of State civil servants:

(1) Article 12 is amended as follows:

- (a) In paragraph 1, point 8, the words “of a member of the National Data Protection Commission” shall be deleted and the terms “of the deputy Government Commissioner for data protection with the State,” shall be added after the words “of the deputy Government Commissioner of the Commission for disciplinary investigations,”;
- (b) In paragraph 1, point 9 the words “and of the Government Commissioner for data protection with the State” shall be added after the words “Government Commissioner in charge of disciplinary investigations”;
- (c) In paragraph 1, point 16 the words “president of the National Data Protection Commission” shall be replaced by “Data Protection Commissioner”;
- (d) In paragraph 1, point 23, the words “of the president of the National Data Protection Commission” shall be added after “of the president of the accident insurance association”.

(2) Article 16, paragraph 3, letter g) shall be deleted.

(3) Appendix A – The classification of positions – is amended as follows:

- (a) for grade 16, the position of “member of the National Data Protection Commission” shall be deleted and the position of “deputy Government Commissioner for data protection with the State” shall be added after that of “deputy Government Commissioner of the Commission for disciplinary investigations”;
- (b) for grade 17, the position of “president of the National Data Protection Commission” shall be replaced by “Data Protection Commissioners” and the position of “Government Commissioner for data protection with the State” shall be added after that of “Government Commissioner in charge of disciplinary investigations”

- (c) for grade 18, the position of “president of the National Data Protection Commission” shall be added.
- (4) Appendix B – B2) Extensions – is amended as follows:
- (a) in paragraph 1, the words “member of the National Data Protection Commission” shall be deleted;
 - (b) in paragraph 1, the words “of the deputy Government Commissioner for data protection with the State,” shall be added after “of the deputy Government Commissioner of the Commission for disciplinary investigations” and the words “of a member of the National Data Protection Commission” shall be deleted.

Art. 70.

The heading of Title VI of volume II of the Labour Code will read as follows:

“

Title VI – Personal data processing for the purposes of surveillance in the employment context.

”

Art. 71.

Article L.261-1 of the Labour Code will read as follows:

“L. 261-1.

(1) The processing of personal data for the purposes of the surveillance of employees in the employment context cannot be implemented by the employer save in the cases referred to in Article 6, paragraph 1, letters a) to f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to personal data processing and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), and in accordance with the provisions of this article.

(2) Without prejudice to the right of information of the data subject, the following shall receive information from the employer: for persons covered by legislation relating to contracts under private law: the joint staff committee, or failing this, the staff delegation, or failing this, the Labour and Mines Inspectorate (*Inspection du Travail et des Mines*); for persons covered by a statutory scheme: the staff representative organisations as set out in the applicable laws and regulations.

This prior notice shall contain a detailed description of the purposes of the planned processing, as well as the implementing measures of the surveillance system and, if necessary, the length of and criteria for data retention, along with a formal commitment from the employer that the data collected will not be used for purposes other than those explicitly mentioned in the prior notice.

(3) If the processing of personal data referred to in paragraph 1 is conducted:

1. for the health and safety of employees;
2. to monitor the output or services provided by the employee, when such a measure is the only means of determining their exact salary, or,
3. within the framework of a flexitime work organisation, in accordance with the provisions of this Code,

the provisions laid out in Articles L.211-8, L.414-9 and L.423-1 apply, except if the processing is based on a legal or regulatory obligation.

(4) For planned processing of the kind referred to in paragraph 1, the staff delegation, or failing this, the employees concerned, can, in the 15 days following the prior notification, submit a request for a prior opinion on the compliance of the planned processing for the purposes of surveillance of employees in the employment context, to the National Data Protection Commission, which must provide an opinion within a month of the request. This request has a suspensive effect during this timeframe.

(5) The concerned employees have the right to lodge a complaint to the National Data Protection Commission. Such a complaint cannot be a serious or legitimate cause for dismissal.”

Chapter 2 – Repealing provision

Art. 72.

The amended Act of 2 August 2002 concerning the protection of individuals with regard to the processing of personal data is hereby repealed.

Chapter 3 – Transitional provisions

Art. 73.

The CNPD will carry on the legal personality, including staff and legal commitments, of the National Data Protection Commission as created by the amended Act of 2 August 2002 concerning the protection of individuals with regard to the processing of personal data.

Art. 74.

The duration of the mandate of the college members and deputy members appointed prior to the entry into force of this Act, is calculated as from the date of appointment for the mandate being served at the time of the entry into force of this act.

Art. 75.

The members of the college appointed prior to the effective date of this act shall be ranked in the new grade at the same scale number, reduced by one or, in the absence of such a number, at the highest level of the grade they have been reclassified to, without prejudice to the carryover of seniority for the grade reached under the former legislation.

Art. 76.

If the mandate of a member of the college, who was appointed for the first time prior to the effective date of this Act, is not renewed or is revoked, the member becomes a general advisor for the CNPD with the same status and basic remuneration, that is, grade 17 for the president and grade 16 for the two other members, with the exception of the special allowance attached to their previous position. The former member can be transferred to another administration or public institution, in accordance with Article 6 of the amended Act of 16 April 1979 determining the general statute on State civil servants.

Chapter 4 – Reference title

Art. 77.

References to this Act can be made in an abridged form, using the following title: “The Act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework ”.

We request and require that this Act be included in the Official Gazette of the Grand Duchy of Luxembourg to be executed and upheld by all those concerned.

For the Minister for communications and media, Cabasson, 1 August 2018.

the Minister for agriculture, viticulture and consumer protection, **Henri**

Fernand Etgen

Doc. parl. 7184 ; sess. ord. 2016-2017 and 2017-2018.