

The Lawyer: GDPR in Luxembourg - More Power to Data Subjects

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GDPR IN LUXEMBOURG – MORE POWER TO DATA SUBJECTS

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The General Data Protection Regulation (GDPR) took effect in Luxembourg and all EU Member States on 25 May 2018. Although a Regulation, it offers Member States some leeway. The Luxembourg draft bill No7184 is still under discussion.

In Luxembourg the Commission Nationale pour la Protection des Données, or CNPD, is the supervisory authority. It is a public body with legal personality, financial and administrative autonomy, tasked with ensuring compliance with the provisions of the GDPR and the Luxembourg Data Protection Act and applying sanctions, adopting regulations published on the Luxembourg Legal Gazette.

Sanctions in Luxembourg will include imposing penalty payments on the data controller or processor of up to 5 per cent per day of average daily turnover for failure to provide information or comply. Obstructing the CNPD can result in imprisonment and/or a fine. It may publicise its decisions, at the offender's expense, except periodic payment decisions, once all legal remedies have been exhausted and only if publication is not harmful to the parties involved.

A new administration, the Commissariat du Gouvernement à la protection des données auprès de l'Etat, will also be created which will be in charge of data protection in state administrative bodies and develop guidance, assistance and advice on data protection.

Specific Luxembourg provisions will exist for journalistic, academic, artistic or literary expression. Rights of access, rectification, limitation and objection – inasmuch as those rights risk making the realisation of specific purposes impossible or seriously interfering with such, provided certain measures are implemented – may be limited in scientific or historical research or for statistical purposes.

Health services may process data if the data controller establishes additional security measures, and this may be communicated to third parties or used for research if specific security measures exist, eg anonymisation of data or, at least, security of transfer by pseudonymisation or encryption.

Employers must distinguish between:

- processing for compliance with health and safety provisions, temporary monitoring of the production process or employees' performance (when processing is required to determine employee remuneration), and implementing a flexible time arrangement (a co-decision process with staff representatives/

concerned employees or the Luxembourg Labour Inspection (ITM) may take place before implementation – if no agreement is reached the CNPD can intervene); and

- other grounds for processing personal data at the workplace that may be subject to staff representatives/concerned employees requesting a preliminary opinion from the CNPD. Such a request will have a suspensive effect. Providing prior information to staff delegates/concerned employees or the ITM remains mandatory.

Access by the CNPD to personal data obtained by a data controller holding a professional secrecy obligation can be limited and must comply with access rules as determined by each regulated profession.

Accountability

GDPR is a major change for companies and entities in the way data protection is applied. The accountability principal requires the data controller to carry out an analysis before data processing, to inform data subjects prior to implementation and to demonstrate the legitimacy of the processing in the event of a control.

In Luxembourg GDPR does not overturn data protection as the main principles already exist under the law of 2 August 2002, but it provides a different approach as data subjects' rights have been strengthened.

Because the regulation is the same whatever the size of the business GDPR can seem an impenetrable barrier for SMEs, but when companies conform it is a banner of trust for consumers and suppliers.

The CNPD plans to send companies questionnaires during the summer regarding their GDPR compliance process, analyse the responses in the autumn and then start imposing controls. This will allow companies to continue with their conformity process while giving some leeway to latecomers who missed the 25 May deadline.



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