



GDPR in Luxembourg

The General Data Protection Regulation (“GDPR”) took direct effect in Luxembourg on 25 May 2018, but since it allows EU Member States latitude in specific areas, Luxembourg passed a new law on 1 August 2018 which repealed the former Luxembourg law on data protection of 2 August 2002: the 1 August 2018 Act concerning the organisation of the CNPD (the Luxembourg Data Protection Authority) and the General Data Protection Regulation (the **“Data Protection Act”**). The Data Protection Act took effect on 20 August 2018. The Luxembourg legislator mainly focused on implementing the provisions required under the GDPR, rather than adding further restrictions on the processing of personal data.

The **DATA PROTECTION ACT** includes the following provisions:

Issue

Luxembourg specifics

National Data Protection Authority
(Article 58 of GDPR)

The “Commission Nationale pour la Protection des Données” or “CNPD”:

- a public body, having legal personality, financial and administrative autonomy;
- in charge of the verification of compliance with the provisions of GDPR and Luxembourg data protection laws and sanctions;
- provides **accreditation of certification bodies**.

Sanctions
(Articles 83 and 84 of GDPR)

CNPD can **impose periodic penalty payments** on the controller or the processor of up to 5 per cent of the average daily turnover per day for failure to provide any requested information or to observe a corrective measure (administrative fines).

Any deliberate obstruction or interference with the CNPD’s missions can be punished by imprisonment **from 8 days to 1 year and/or a fine from EUR 251 to EUR 125,000** (criminal penalty).

The CNPD may order the **publication of its decisions** in newspapers or in any other way, at the expense of the sanctioned person.

Proceedings

Proceedings before the CNPD are subject to the rules governing **non-contentious administrative procedure**.

An action can be introduced against the CNPD’s decision before the Administrative Court.

The CNPD has the power to initiate or take part in civil legal proceedings to enforce the provisions of the GDPR.

Specific processing

Journalistic or academic, artistic or literary expression purposes
(Article 85 of GDPR)

Processing is not subject to

- prohibiting the processing of special categories of personal data (racial origin, political opinions, etc.) under certain conditions;
- limiting the processing of judiciary personal data under certain conditions;
- the rules that apply to data transfer to third countries or international organizations;
- the obligation to provide the data subject with information, whether or not the personal data is collected from the data subject.

The right of access is postponed and limited to the extent that it cannot refer to the personal data of a source if this could lead to the identification of the source.

Scientific or historical research or statistical purposes
(Article 89 of GDPR)

The rights of access, rectification, limitation and objection can be limited to the extent that those rights risk making the realization of the research project impossible, or seriously interfering with it, provided that certain appropriate measures are implemented and under certain other conditions.

Genetic data
(Article 9 of GDPR)

Processing of genetic data for the purposes of exercising the data controller's own rights in the field of labour and insurance law is prohibited.

Monitoring at the workplace
(Article 88 of GDPR)

Processing of employee's personal data for surveillance purposes can be carried out only in the cases mentioned in Article 6 paragraph 1 of the GDPR and in compliance with Article L. 261-1 of the Labour Code.

For such processing of personal data, including video surveillance, the employer must, prior to the data processing, inform:

- the concerned employee(s) in compliance with Article 13 of the GDPR; and
- the staff representatives (or in certain cases ITM).

This information must contain a detailed description of the purpose(s) of the proposed processing, the methods of implementation of the surveillance system and, if appropriate, the retention period of personal data or the criteria to determine that period, as well as a formal commitment of the employer not to use the collected data for a purpose other than that explicitly provided for in the prior notification.

In addition, data processing carried out for the following purposes is subject to a co-decision process between the employer and the staff delegation, except where such data processing is required for compliance with a legal obligation: i) compliance with health and safety provisions; ii) monitoring the production process or employees' performance (where such processing is the only means to determine the employees' salary); or iii) implementing and monitoring a flexible-time arrangement.

Moreover, in all cases of processing of employee's personal data for surveillance purposes, the staff delegation, or, in the absence of a staff delegation, the concerned employees, may, within 15 days following the above prior information, submit a request for a prior opinion on the compliance of the envisaged processing to the CNPD, which has to take a decision in the month of the referral. The request has a suspensive effect during this period.