

National Law Gazette of the Principality of Liechtenstein

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Data Protection Ordinance

of December 11, 2018

Pursuant to Article 5 paragraph 7, Article 15 paragraph 5, Article 39 paragraph 2 and Article 85 of the Data Protection Act of October 4, 2018, LGBl. 2018 No. 272, the government decrees:

I. General Regulations

Article 1

Subject matter

This Ordinance lays down rules in order to implement the Data Protection Act as well as the Regulation (EU) 2016/679 and in particular the following:

- a) data processing by public bodies by outsourcing to or on behalf of third parties;
- b) notification of video surveillance;
- c) accreditation of certification bodies;
- d) transfer of personal data to third countries or international organizations based on adequacy decisions and standard data protection clauses;
- e) fees for services rendered by the Data Protection Authority and controllers.

Article 2

Terminology

The terms used in this Ordinance to refer to persons are understood as applying to both male and female.

Unofficial Translation

II. Data processing by public bodies outsourced to or on behalf of third parties

Article 3

Data Processing of third parties on behalf of public bodies

- 1) Public bodies may delegate the processing of personal data to third parties acting as processors unless prohibited by a legal provision.
- 2) Processing by a processor shall be governed by a contract. The contract shall meet in particular the requirements as set out in Article 28 paragraph 3 of Regulation (EU) 2016/679. The official secrecy and the interest in maintaining confidentiality of third parties shall be ensured.

Article 4

Data Processing of public bodies on behalf of third parties

- 1) Public bodies may process data on behalf of third parties if:
 - a) it is provided by a legal provision; or
 - b) there is a public interest in processing the data.
- 2) Unless regulated by law, the data processing by a processor shall be governed by a contract. The contract shall in particular meet the requirements as set out in Article 28 of Regulation (EU) 2016/679.

III. Notification of Video Surveillance

Article 5

Notification procedures

- 1) All reportable video surveillance subject to Article 5 paragraph 7 of the Data Protection Act shall be notified to the Data Protection Authority in writing prior to commissioning.
- 2) The notification shall contain at least the following information:
 - a) controller (name, contact information, responsible person, place of business, establishment);
 - b) type of video surveillance (recording/live, fixed mounted/pan-and-tilt, video/audio);
 - c) monitored areas;
 - d) hours of operation;
 - e) purpose and necessity of video surveillance and data processing;
 - f) information regarding proportionality (milder measures, legitimate interests of data subjects concerned);

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- g) information about the persons to be monitored;
 - h) description of the data processing (technical procedure, evaluation possibilities, transfer of data);
 - i) data storage (modalities, duration, erasure);
 - k) technical and organizational measures to ensure the security of data;
 - l) the modalities of how persons subject to video surveillance shall be informed.
- 3) The Data Protection Authority provides a form for the notification. The form may be provided electronically.

IV. Accreditation of certification bodies

Article 6

Applicable law

The accreditation of certification bodies according to Article 39 of the Data Protection Act is subject to the Act of Accreditation and Notification insofar as Regulation (EU) 2016/679 and this Ordinance do not contain any diverging provisions.

Article 7

Foreign certification bodies

- 1) The Liechtenstein Accreditation Body may accredit foreign certification bodies after consultation with the Data Protection Authority if they can prove that:
- a) they have a qualification which is equal to the qualification that is applied in the Principality of Liechtenstein;
 - b) the requirements pursuant to Regulation (EU) 2016/679 are met; and
 - c) they possess sufficient knowledge of data protection regulations applicable in the Principality of Liechtenstein.
- 2) The Liechtenstein Accreditation Body may set a time limit for the validity of the accreditation and link the accreditation to conditions or obligations. The accreditation shall be revoked when the accreditation requirements are not met or are no longer met or any of the conditions or obligations are not respected.

Article 8

Confidentiality

Third parties appointed by the authority, in particular experts and specialists, shall maintain secrecy with regard to all matters that become known to them when performing their tasks. They are bound to official secrecy in the performance of their tasks.

Unofficial Translation

V. Transfer of personal data to third countries or international organizations

Article 9

Transfer of data based on adequacy decisions

The third countries and international organizations which possess a sufficient data protection level according to adequacy decisions taken by the EU Commission pursuant to Article 45 of Regulation (EU) 2016/679 and that are applicable in the Principality of Liechtenstein and are listed in appendix 1.

Article 10

Transfer of data based on standard data protection clauses

The standard data protection clauses adopted by the EU Commission pursuant to Article 46 of Regulation (EU) 2016/679 are listed in appendix 2.

VI. Fees

Article 11

Services subject to fees

1) The Data Protection Authority may charge fees for the following services according to Article 12:

a) when handling an evidently unfounded or excessive inquiry, in particular when repeatedly submitted, according to Article 15 paragraph 5 of the Data Protection Act;

b) when fulfilling their tasks upon the request of data protection officers who perform their tasks according to a service agreement as set out in Article 37 paragraph 6 of Regulation (EU) 2016/679. In particular, when:

1. the result of the tasks performed by the Data Protection Authority are used commercially by the data protection officer with their service recipients; and

2. thus leads to an outsourcing of tasks to the Data Protection Authority;

c) when fulfilling their tasks upon the request of consultants who render services professionally in the field of data protection and this leads to an outsourcing of tasks to the Data Protection Authority.

2) Upon request, data protection officers and consultants shall provide information or adequate evidence to the Data Protection Authority of any subsequent commercial use according to paragraph 1 lett. b and c.

3) If a controller becomes active based on evidently unfounded or excessive inquiries pursuant to Article 59 paragraph 3 of the Data Protection Act, the controller may charge a fee according to Article 12.

4) Regarding public bodies, no fees are charged.

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Article 12

Calculation of fees

- 1) All fees under Article 11 are based on the time required to perform the services.
- 2) The hourly rate ranges from 50 to 500 Swiss Francs, depending on the required expertise.
- 3) The Data Protection Authority shall inform the enquirer in advance about the applicable hourly rate.
- 4) Administrative costs which incur in relation to the chargeable service are calculated separately but are charged with the fees. Administrative costs in particular are:
 - a) transfer and communication costs;
 - b) costs for translation services;
 - c) travel expenses;
 - d) costs in relation to third parties involved;
 - e) cash expenditure.

VII. Final provisions

Article 13

Repeal of current legislation

The following current legislations are repealed:

- a) Ordinance dated July 9, 2002, relating to the Data Protection Act (Data Protection Ordinance "DSV"), LGBl. 2002 No. 102;
- b) Ordinance dated December 10, 2013, concerning the Data Protection Certifications ("VDSZ"), LGBl. 2013 No. 403.

Article 14

Entry into force

This Ordinance shall apply from January 1, 2019.

Princely Government:

sig. Adrian Hasler

Prime Minister of the Principality of Liechtenstein

Appendix 1

(Article 9)

Third countries and international organisations with adequate Data Protection levels

Third countries and international organizations which possess a sufficient data protection level according to the adequacy decisions adopted by the EU commission that are applicable in the Principality of Liechtenstein pursuant to Article 45 of Regulation (EU) 2016/679 are the following:

1. Andorra;
2. Argentina;
3. Faroe Islands, pursuant to Decision 2010/146/EU of the EU Commission dated March 5, 2010, according to Directive 95/46/EC of the European Parliament and the Council assigned to evaluate the adequate level of protection concerning the processing of personal data by Faroe Law (EEA Compendium of Laws: Appendix XI-5el.01; ABl. L 58, dated March 9, 2010, p. 17);
4. Guernsey,
5. Isle of Man;
6. Israel, pursuant to the Decision 2011/61/EU of the Commission dated January 31, 2011, according to Directive 95/46/EC of the European Parliament and the Council assigned to evaluate the adequate level of protection concerning the processing of personal data by Israel Law (EEA Compendium of Laws: Appendix XI-5en.01; ABl. L 58, dated March 9, 2010, p. 17);
- 6a. Japan, pursuant to the implementing decision (EU) 2019/419 of the Commission dated 23 January 2019, and pursuant to Regulation (EU) 2016/679 of the European Parliament and the Council assigned to evaluate the adequate level of protection concerning the processing of personal data by Japan law (ABl. L 76, dated March 19, 2019, p. 1);
7. Jersey;
8. Canada;
9. New Zealand;
10. Switzerland;
11. Uruguay;
12. Invalidated.

Appendix 2

Standard data protection clauses adopted by the EU commission pursuant to Article 46 of Regulation (EU) 2016/679

Standard data protection clauses adopted by the EU commission pursuant to Article 46 of Regulation (EU) 2016/679 are contractual clauses according to:

1. Decision 2001/497/EC of the Commission dated June 15, 2001, on standard contractual clauses for the transfer of personal data to third countries under Directive 95/46/EG (ABI. L 181, dated July 4, 2001, p. 19), decision 2004/918/EC (ABI. L 385, dated December 29, 2004, p. 74) and the implementation decision (EU) 2016/2297 (ABI. L 344, dated December 17, 2016, p. 100);
2. Decision 2010/87/EU of the Commission dated February 5, 2010, on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EG of the European Parliament and the Council (ABI. L 39, dated February 12, 2010, p. 5) and the implementation decision (EU) 2016/2297 (ABI. L 344, dated December 17, 2016, p. 100).

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1. Regulation (EU) 2016/679 of the European Parliament and the Council dated April 27, 2016, regarding the protection of natural persons in regards to processing of personal data for a free data transfer and the repeal of Regulation 95/46/EG (General Data Protection Regulation) (ABI. L 119, dated May 4, 2016, Page 1).

2. Appendix 1 amended by National Law Gazette of the Principality of Liechtenstein (LGBL) LGBL. 2019 Nr. 282.