

**Act n° 1.165  
On the protection  
Of personal data**

(23 December 1993)

**CHAPTER 1  
AUTOMATED PROCESSING  
OF PERSONAL DATA**

**SECTION I  
- Principles and definitions**

**Article 1.** – 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 all of its forms, is any information that can be used to determine a natural person's identity (specific or identifiable). Is recognised as identifiable, a person who can be identified, directly or indirectly, in particular with reference to an identification number or one or more specific marks that form the person's own physical, physiological, psychic, economic, cultural, or social identity.

The processing of personal data encompasses any operation or set of operations pertaining to such information, regardless of the means employed. These may be collecting, recording, organising, modifying, conversing, extracting, consulting or destroying information, as well as, exploiting, interconnecting or approximating, the communication or the disclosure of such information or by any other means of making it available.

The person in charge of the processing or 'data controller' shall be considered as the natural or legal person, governed by private or public law, of 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, subcontractors 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  
- On the personal data protection supervisory authority**

**Article 2.** – A supervisory authority is hereby created, referred to as the 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 present conditions defined by this law:

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 defined in the first paragraph of Article 7-1;

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

5° of authorising the transfer of personal data to countries or bodies without an adequate level of protection, on condition that the controller, or their representatives, affords 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 data processing register described in Article 10;

7° of monitoring, under the conditions defined by this law, 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 the 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 law;

11° of informing data subjects of the rights and obligations resulting from the present law, 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 defined by the present law;

13° of being a party to legal proceedings for the purposes and under the conditions defined by the present law;

14° of the public reporting on the application of this law and its implementing instruments; an annual report on the activities of the Commission is to be remitted to the Minister of State and the President of the National Council;

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

**Article 3.** – Any natural or legal person whose rights as conferred to them by this law or the implementing instruments have been infringed, or persons having reason to believe that such rights have been infringed, may refer the matter to the President of the Commission de Contrôle des Informations Nominatives, in order to, if appropriate, implement the measures defined by Chapter 3.

**Article 4.** – The Commission is composed of six members, proposed for office as a result of their expertise, as follows:

1. One member by the National Council;
2. One member by the Council of State;
3. One member by the Minister of State;

4. One member having the capacity of sitting judge by the Director of Judicial Services;
5. One member by the Town 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 the terms established by Sovereign Ordinance.

**Article 5.** – The members of the Commission de Contrôle des Informations Nominatives 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 President and a Vice President.

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 (no majority), the President shall have the casting vote. Other rules relating to the functioning of the Commission shall be defined by Sovereign Ordinance.

**Article 5-1.** – The members of the commission as well as any person assisting in its mission shall be bound by professional secrecy as described in the Article 308 of the Criminal Code. Furthermore, these persons shall be bound by an obligation of confidentiality with regards to the facts and information to which they may have access or become aware while carrying out their mission.

**Article 5-2.** – The Commission has at its command departments that are directed by the President and placed under his or her authority. These departments of the Commission shall include the Secretary General and Secretariat officials. The Secretary General shall be in charge of the operations and coordination of the departments of the Commission.

**Article 5-3.** – Except where there are specific legal or regulatory provisions to the contrary, the staff of the Commission shall be subject to the general rules applying to civil servants and State officials.

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

**Article 5-4.** – The funding required for the operations of the Commission de Contrôle des Informations Nominatives shall be listed in a specific chapter of the State budget.

As part of the preparation of the preliminary or amending State budget, the President of the Commission de Contrôle des Informations Nominatives shall remit proposals concerning revenue and expenditure to the Minister of State.

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

**Article 5-5.** – The President of the Commission concludes all contracts and agreements required for the proper functioning of its departments.

**Article 5-6.** – In the event of absence or incapacity of the President, he or she shall be replaced by the Vice-President.

**SECTION III**  
- On processing

**Article 6.** – 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 subject to a declaration to the President of the Commission de Contrôle des Informations Nominatives.

The declaration shall comprise a commitment that the processing complies with the requirements of the law. The President of the Commission de Contrôle des Informations Nominatives shall issue a receipt of declaration. The issuing of such a receipt shall authorise the processing to take place, but shall not exonerate the data controller from their liability.

Nevertheless, standards may be enacted by Ministerial Order following a proposal or opinion issued by the Commission de Contrôle des Informations Nominatives, setting out the criteria to which certain categories of processing that manifestly do not infringe 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.** – The implementation of 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 Commission de Contrôle des Informations Nominatives.

Such decision and reasoned opinion accompanying it shall be published in the Journal of Monaco under the conditions laid down by Sovereign Ordinance. Regarding 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 authorised to do so by a reasoned Order issued by the Minister of State or the Director of Judicial Services.

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.** – The persons in charge of the processing, 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 after a reasoned opinion has been issued by the Commission de Contrôle des Informations Nominatives.

Prior to the issue of such opinion, the latter may, under the 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 Commission de Contrôle des Informations Nominatives to issue its opinion.

If the Commission's opinion is unfavourable, the data controller may only be able to carry out the processing after being authorised to do so by reasoned Ministerial Order.

These provisions shall not apply to data controllers who are acting in the field of biomedical research as those defined by the law n° 1.265 du 23 December 2002 pertaining to 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 documents 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 purposes, the population concerned, the method of observation or investigation chosen, a justification for the use of the personal data processed, the duration and organisational 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 Commission de Contrôle des Informations Nominatives shall be bound by the terms of the said opinion.

**Article 7-2.** - The Commission de Contrôle des Informations Nominatives consulted in the context of Articles 7 and 7-1 shall rule within two months as from receipt of all required documents. This period may be renewed once for an identical period if a reasoned decision is issued by the President.

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.** - Declarations, requests for opinions and requests for authorisation sent to the Commission de Contrôle des Informations Nominatives 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 request for authorisation;

2° the 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 are being processed, their origin, the storage period, categories of persons concerned by the processing and the categories of authorised recipients to whom such data may be disclosed;

6° The cross-referencing, interconnection or other means of relating data, as well as any transfers to third parties;

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

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

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

The Commission de Contrôle des Informations Nominatives shall be advised of the cancellation of the processing.

- 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 request for authorisation, 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 request for authorisation;

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

#### **SECTION IV.-**

- On the Data Processing Register

**Article 10.** - The Data Processing Register shall comprise:

1° the date of the declaration, request for an opinion or request for authorisation related to the implementation of the processing;

2° The descriptions given on the declaration, request for an opinion or request for authorisation, with the exception of the measures taken to ensure the security of the processing and of the 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 authorisation;

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

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

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

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

## **CHAPTER 2 ON PERSONAL DATA SECTION I**

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

**Article 10-1.** - Personal data must be:

- collected and processed fairly and lawfully;
- collected for a specified, explicit and legitimate purpose and not be further processed in a way incompatible with those purposes;
- Adequate, relevant and not excessive in relation to the purpose for which they were collected and/or further processed;
- accurate and, if necessary, updated; every reasonable measure must be taken to ensure that data that are inaccurate or incomplete with regards to the purpose for which they were collected or for which they were further processed, are erased or rectified;
- stored in such a form that permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they were further processed.

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

**Article 10-2** – The 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.** – The processing of the data, whether automated or not, with or without biometric data, shall only be carried out by judicial or administrative authorities, exclusively within the scope of the duties legally conferred upon them:

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

**Article 11-1** - By derogation of the provisions of the previous article, automated processing of personal data may be carried out by data controllers other than judicial and administrative authorities where:

- it relates to suspected unlawful activities, offences or security measures;
- it includes the biometric data required to a person's identity;
- it is for the purpose of surveillance.

However, the said data processing shall only be carried out with prior authorisation from the Commission de Contrôle des Informations Nominatives if it is required in order to pursue an essential legitimate aim and where the rights and freedoms of data subjects as described in Article 1 are respected.

The Commission de Contrôle des Informations Nominatives 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 President.

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

**Article 12.** - 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 pertaining to 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 said 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 Commission de Contrôle des Informations Nominatives;
- 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 are 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 healthcare services and social welfare schemes, or in the interests of research and where such data are 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.** - 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 previous 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.** - Persons from whom personal data are 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 in failure to reply;
- of the identity of recipients or categories of recipients;
- of their right to oppose, access and amend 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 are 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.** - 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, requested 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 authorised by legal or regulatory provisions which lay down measures to safeguard the data subject's legitimate interests.

**Article 14-2.** 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 purpose of the 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 that 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 to 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 to provide a service expressly requested by the subscriber or user.

**Article 14-3.** – 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 shall only be processed for the purposes for which the data were collected.

## **SECTION II.**

### **- On access to data**

**Article 15.** - All persons justifying their identity may obtain, from the data controller or their representative:

1° information at least as to the purpose of the processing operation, the categories of data concerned, and the recipients or categories of recipients to whom the data are 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 the 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 Commission de Contrôle des Informations Nominatives 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** - A person whose personal data are processed as described in Article 11 may refer the matter to the Commission de Contrôle des Informations Nominatives by making an application for a verification of said the data.

The President 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 who has been duly mandated and sworn in.

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

**Article 15-2.** - The data controller or their representative must take appropriate measures in order to:

1. supplement or amend, ex officio, data that are 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 request for authorisation, 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 prove to be imprecise, incomplete, equivocal, obsolete, or if the collection; recording, disclosure or storage of such data is prohibited.

Upon request from the interested party, a copy of the amended data that have been recorded shall be issued free of charge.

If data have been disclosed to recipients, they must be notified of the amended data or the deletion of the said data, except where an exemption is granted by the President of the Commission de Contrôle des Informations Nominatives.

### **SECTION III**

#### **- Secure and confidential processing**

**Article 17.** - The data controller or their representative must implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction, accidental loss, corruption, unauthorised disclosure or access, in particular where processing involves the transmission of data over a network, and against all other unlawful forms of processing.

All 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 the 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.** - Where processing is carried out pursuant to Articles 11 and 11-1, the data controller shall also take specific technical and organisational 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 authorised persons who alone shall have access, strictly confined 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 3 ON MONITORING DILIGENT PROCESSING**

**Article 18.** - The Commission de Contrôle des Informations Nominatives shall proceed with the necessary verifications and investigations in order to monitor the implementation of the processing, either by its Members, or by officials from its Secretariat, or by investigators appointed by the President following a proposal made by the 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 Officials or investigators described in the previous paragraph shall have in their possession a letter of appointment from the President of the Commission de Contrôle des Informations Nominatives explicitly stating the name and address of the natural or legal person concerned, as well as the purpose of the appointment.

The verification operations may only be carried out between 6 am and 9 pm or, outside of these times, when access by the public is authorised, or when an activity is in progress.

During the aforementioned operations, the officials or investigators shall carry out all necessary verifications; consult any processing, request disclosure or copies, regardless of the means used, of any professional documents and collect from any competent persons information that is useful to the purpose of their mission. They shall have access to any computer programs and data and demand the transcripts, in any form appropriate, in documents directly used for the purpose of the verification.

However, only a doctor designated by the President of the Commission de Contrôle des Informations Nominatives among those present on the list established by the Council of Physicians of Monaco and comprising at least five names qualified to demand to be communicated personal medical information included in a treatment necessary for the purposes of preventive medicine, medical research, medical diagnosis, the provision of care or treatment or the management of healthcare services, and that are implemented by a member of a regulated healthcare profession. The appointed medical practitioner shall transmit to the Commission de Contrôle des Informations Nominatives only that information necessary for the purpose of the verification without any reference, under any circumstances, of any personal information to which he/she may have access.

In the context of the verification mission of the Commission, the persons interviewed are required to provide the requested information unless they are bound by professional secrecy as specified in the article 308 of the Penal Code.

Outside of these on-the-spot verifications and by invitation, the officials or investigators shall carry out any observations judged relevant, they shall in particular from an online public service, consult data freely accessible or made accessible, either by imprudence, by negligence or due to an act by a third party, where necessary by accessing and by staying in the automated data processing systems, the time necessary to make the observations, they may transcribe the data in any form appropriate in documents directly used for the purpose of the verification.

A report of the observations, verifications, and visits carried out shall be prepared in application of the present article. This report shall be prepared in the presence of both parties when the verifications and visits are conducted on-the-spot or on invitation.

**Article 18-1.** – To carry out the missions described in the previous article, the aforementioned officials or investigators shall, after notifying the person responsible for the private business premises or his representative of his right to oppose, gain access to the site, premises, venues, facilities, or establishments being used to implement the processing of personal data and intended for professional use, excluding sections of these that are part of the private domicile. The operations shall be carried out in the presence of the person responsible for the premises or his representative.

When the right to oppose is exercised, the operations shall take place only after the permission is granted by the President of the court of the first instance, to whom the matter shall be referred from the President of the Commission. The President of the Court rules by taking into consideration the motive or lack of motive to justify the right to oppose.

The terms of paragraph 3 of the article 22 do not apply in the exercise of the right to oppose.

However, when the urgency or risk of the destruction or imminent disappearance of pieces or documents justifies it, the operations mentioned in the first paragraph may be carried out without the person responsible for the premises or representative being able to oppose the verification operations. In this situation, all interested parties to which the aforementioned operations cause grievance may request that the President of the court of the first instance, seized as in expedited proceedings declare the invalidity of these operations and any evidence collected during these operations, which must be destroyed.

**Article 18-2.** – When there are reasons to suspect that the implementation of the processing may not be in accordance with the provisions of the present law, the aforementioned officials or investigators shall, with the prior permission from the President of the court of the first instance, to whom the matter shall be referred by the President of the Commission de Contrôle des Informations Nominatives, and seized as in expedited proceedings, gain access to the premises.

The request shall state the factual and legal nature to justify the aforementioned operations in order to enable the President of the court of the first instance to assess its admissibility. The court order authorising the operations is effective by the minute hereof. It may be subject to legal recourse as specified in the article 852 of the Code of Civil Procedure within eight days following the verification. This appeal is not suspensive.

When the application is granted, the President of the court of the first instance may declare the invalidity of these operations and any evidence collected during these operations, which must be destroyed.

The totality of these operations are carried out in the presence of the person responsible for the premises or their representative or, in case of hindrance or impossibility to attend, of at least one witness, requisitioned for this purpose by the persons referred to in the first paragraph of the article 18 and not under their authority.

**Article 19.** - If irregularities are noted against the data controller, the President of the Commission de Contrôle des Informations Nominatives shall ask one of the members of the Commission to draw up a report of which the data controller shall be notified. This latter, within a delay of one month from the notification, may formulate to the President, his observations.

At the conclusion of a procedure carried out in the presence of both parties, the President of the Commission de Contrôle des Informations Nominatives may decide to send a warning to the data controller. He may also send a formal notice to put an end to the said irregularities or eliminate the effects thereof.

Irregularities constituting criminal offences shall be passed on without delay to the Prosecutor General.

If the formal notice remains unheeded upon expiry of the period given, the President of the Commission after having invited the data controller to provide further explanations within another month may issue an injunction to end such irregularities or to eliminate the effects thereof. At the expiration of this period, if the injunction was not acted upon, the President of the Commission may refer the President of the court of the first instance, seized as in expedited proceedings that he shall order the end of such irregularities or 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 decisions taken by the President of the Commission in application of the present article shall state the reasons upon which they are based.

## **CHAPTER 3bis**

### **ON THE TRANSFER OF PERSONAL DATA**

**Article 20.** - The transfer of personal data outside the Principality may only take place subject to the condition that the country or organisation 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 the 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 the said country.

Without prejudice to the foregoing provisions, the Commission de Contrôle des Informations Nominatives 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 organisation that 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 public interests;
- to ensure the compliance with legal obligations with regards to 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;
- as part of a contract between the data controller or representative and the data subject, or pre-contractual measures taken at the latter's request;
- the conclusion or as part of a contract concluded or to be concluded in the interests of the data subject, between the data controller or representative and a third party.

Without prejudice to the provisions of the previous paragraph, the Commission de Contrôle des Informations Nominatives may authorise, on the basis of a duly substantiated application, a transfer of personal data to a country or organisation that 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 4**

### **PENALTIES**

**Article 21.** - 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 authorisations 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, and 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 storage period indicated in the declaration, request for an opinion or request for authorisation or beyond the period fixed by the Commission de Contrôle des Informations Nominatives;

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 organisations 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** - 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 are reserved for certain authorities, establishments, organisations and natural persons or data that are 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 for 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 pertaining to 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 are required to check persons' identities or are intended for the purposes of surveillance without having obtained the authorisation laid down in Article 11-1;

8° persons who knowingly communicate with unqualified persons in order to receive 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 request for authorisation.

**Article 23.** - Any conviction handed down pursuant to the two previous Articles shall, ipso jure, lead to the ceasing of the effects of the declaration or authorisation and removal from the 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.

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

**Article 23-1.** - 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 Director of Judicial Services.

## **CHAPTER V SCOPE**

**Article 24.** - The provisions of the present 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 request for authorisation and upon whom the obligations laid down by the law are incumbent, without prejudice to legal action that might be initiated against the data controllers 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 the present Act, with the exception of the provisions of Sections III and IV of Chapter 1.

**Article 24-1.** - The provisions of the present Act, with the exception of those described in 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.** 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.** - The provisions of Articles 12, 13, 14, 15, 15-2 and 16 and those of Chapter 3bis 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 previous 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.** - The implementing conditions of this Act shall be established by Sovereign Ordinance.

**Article 26.** - Authorisations granted by the Commission de Contrôle des Informations Nominatives 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 the said Act or its implementing instruments, exceeds the limitations of the authorisation 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.