

## Translation of Liechtenstein Law

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**Law**

of 14 March 2002

**Data Protection Act (DSG)**

I hereby grant My consent to the following resolution adopted by Parliament:

**I. General provisions**

Article 1

*Objective*

1) This Act seeks to protect the personality and fundamental rights of those individuals about whom data is processed.

2) This Act implements EU Directive 95/46 of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data (EEA Compendium of Laws: Appendix. XI - 5e.01).

Article 2

*Scope*

1) This Act regulates the processing of data about natural and legal persons undertaken by:

- a) private individuals;
- b) public authorities.

2) This Act also regulates the processing of all data:

- a) conducted as part of the activities of a branch of the file controller in Liechtenstein;

- b) conducted by a file controller established in a place where the law of Liechtenstein is applicable;
  - c) conducted by a file controller not established in the European Economic Area and making use of automated or non-automated means located in Liechtenstein for the purpose of processing data, unless such means are used solely for the purpose of passage through the European Economic Area. Notwithstanding the file controller's responsibilities to the Data Protection Office, the file controller must appoint a representative in Liechtenstein.<sup>1</sup>
- 3) This Act does not apply to:
- a) personal data that is processed by a natural person exclusively for personal use and that is not disclosed to a third party;
  - b) deliberations of Parliament and its committees;
  - c) pending civil proceedings or administrative complaint proceedings;<sup>2</sup>
  - d) cases pending before the Constitutional Court;
  - e) the activities of the National Audit Office.
  - f) Repealed<sup>3</sup>
  - g) Repealed<sup>4</sup>
- 4) The above provisions are subject to differing and supplementary provisions in other laws, provided such provisions ensure the protection of data from unauthorized processing in terms of this Act.

### Article 3

#### *Definitions*

- 1) The expressions below are defined as follows:
- a) "personal data (data)": all information relating to an identified or identifiable person;
  - b) "data subjects": the natural or legal persons and legal partnerships about whom data is processed;
  - c) "private individuals": natural or legal persons and legal partnerships which are subject to private law;

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<sup>1</sup> Article 2(2)(c) amended by LGBl. 2008 No. 273.

<sup>2</sup> Article 2(3)(c) amended by LGBl. 2012 No. 28.

<sup>3</sup> Article 2(3)(f) repealed by LGBl. 2009 No. 46.

<sup>4</sup> Article 2(3)(g) repealed by LGBl. 2009 No. 46.

- d) "authorities": organs of the State, municipalities, corporations, foundations, establishments, and private institutions which are actively performing public duties assigned to them;
- e) "sensitive data": data relating to:
  - aa) religious, philosophical, or political opinions or activities,
  - bb) health, sexuality, or racial origin,
  - cc) social security files,
  - dd) criminal or administrative proceedings and penalties;
- f) "personal profile": a collection of data that allows the appraisal of fundamental characteristics of the personality of a natural person;
- g) "processing of personal data": any operations relating to personal data, such as the collection, storage, use, modification, communication, archiving, or destruction of data;
- h) "disclosure of personal data": rendering data accessible, for example allowing the inspection, communication, or publication of personal data;
- i) "file": any collection of personal data whose structure facilitates a search for data on a particular data subject;
- k) "file controller (controller)": the private individuals or authorities who decide on the purpose and content of the file;
- l) "recipient": the private individual, authority, institution, or any other body which receives data, regardless of whether or not it constitutes a third party. However, authorities which may receive data as part of an individual investigation shall not be considered recipients;
- m) "consent of the data subject": any declaration of intent not given under duress, given for the specific case and in knowledge of the situation, by which declaration the data subject accepts that data relating to the data subject will be processed.
- n) "public place": a place the accessibility of which is determined by general criteria that may be met by any person.<sup>5</sup>

2) Unless otherwise specified in this Act, the masculine terms used in this Act and related to natural persons shall indicate members of both the male and female sexes.

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<sup>5</sup> Article 3(1)(n) inserted by LGBL 2009 No. 46.

## II. Use of data

### A. General provisions

#### Article 4

##### *Principles*

- 1) Personal data may only be processed in a lawful manner.<sup>6</sup>
- 2) Processing must be conducted in good faith and must be proportionate.
- 3) Personal data may only be processed for the purpose which was either given during its collection or which is provided for by law.<sup>7</sup>
- 4) If the consent of the data subject is required for the processing of personal data, such consent is not valid unless it has been given voluntarily and following adequate information. In the processing of sensitive data or personal profiles, such consent shall be required to be given expressly.<sup>8</sup>

#### Article 5<sup>9</sup>

##### *Prior information*

- 1) In the event that data is collected, the file controller must inform the data subject about this; this obligation to inform applies even where the data is not collected from the data subject.
- 2) The data subject must be provided with the following information at the least:
  - a) the identity of the file controller, and the latter's representative if applicable;
  - b) the purpose of the processing;
  - c) the categories of data recipients, if a disclosure of the data is intended;
  - d) the categories of the data, if the data is not collected from the data subject;

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<sup>6</sup> Article 4(1) amended by LGBL 2009 No. 46.

<sup>7</sup> Article 4(3) amended by LGBL 2009 No. 46.

<sup>8</sup> Article 4(4) inserted by LGBL 2009 No. 46.

<sup>9</sup> Article 5 amended by LGBL 2012 No. 28.

- e) the right to rectification pursuant to Article 7 and the right to information pursuant to Article 11;
- f) the consequences of any refusal of the data subject to provide the personal data requested.

3) If the data was not collected from the data subject, the latter must be informed at the latest with the storage of the data or, if the data is not stored, with its first disclosure to third parties.

4) The obligation to inform shall not apply where the data subject has already been informed or, in the cases of paragraph 3, where:

- a) the storage or disclosure of the data is expressly required by law; or
- b) providing the information is impossible or would involve disproportionate efforts.

5) Under the requirements of Article 12(1) and (2), the file controller may refuse, limit, or delay the providing of information. As soon as the reason for refusing, limiting, or delaying no longer applies, the obligation to inform shall apply without limitation, except where fulfilling that obligation is impossible or would involve disproportionate efforts.

6) The competent authority shall not inform the data subject if this is expressly requested by the State bound by the Schengen Acquis (Schengen State) that has transferred or provided the data.

7) Paragraphs 1 through 3 do not apply where data is processed for the purposes of statistics or historical or scientific research if providing the information to the data subject is impossible, would involve disproportionate effort, or if the storage or forwarding of data is expressly required by law.

## Article 6

### *Automated decisions*

1) Decisions which are made exclusively on the basis of automated data processing for the purpose of evaluating individual aspects of a person, such as the person's professional ability, creditworthiness, reliability, or conduct constitute a breach of the data subject's privacy provided such decisions have legal consequences and result in substantial impairments.

- 2) Decisions pursuant to paragraph 1 are lawful if:
- a) such decisions are made as part of the conclusion or performance of a contract, at the request of the data subject or after the data subject was given opportunity to comment; or
  - b) such decisions are allowed by a law.

#### Article 6a

##### *Use of devices for the recording and transfer of images in public places*<sup>10</sup>

1) The use of devices for the recording and transfer of images in public places (video surveillance) shall only be admissible where it is necessary:

- a) for authorities to fulfil their legal duties;
- b) to safeguard domestic authority; or
- c) to safeguard justified interests for specifically regulated purposes.<sup>11</sup>

2) The processing of the data collected under paragraph 1 shall only be admissible if such processing is necessary to achieve the purpose pursued and if there are no indications that interests warranting protection of the data subject prevail. They may only be processed for other purposes if this is necessary:

- a) to avert danger to public safety or to the safety of the State;
- b) to avert serious danger to life, limb, freedom, or property; or
- c) to prosecute criminal offences and to secure evidence.

In the event of sentence 2, the Liechtenstein National Police may demand that data collected be disclosed.<sup>12</sup>

3) The use of video surveillance must be approved by the Data Protection Office before installation. Approval shall not be required for the real-time transfer of images without the option of recording or of other ways of processing. The decision on approval may be appealed within 14 days to the Data Protection Commission. The Data Protection Office may lodge a complaint against the decision of the Data Protection Commission. The Government shall regulate further details by ordinance.<sup>13</sup>

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<sup>10</sup> Article 6a heading inserted by LGBl. 2009 No. 46.

<sup>11</sup> Article 6a(1) inserted by LGBl. 2009 No. 46.

<sup>12</sup> Article 6a(2) inserted by LGBl. 2009 No. 46.

<sup>13</sup> Article 6a(3) amended by LGBl. 2012 No. 28.

4) The fact that video surveillance is being conducted and the person responsible shall be shown by suitable means.<sup>14</sup>

5) If data collected through video surveillance are related to a specific person, such person shall be informed about any processing in accordance with Article 5(3).<sup>15</sup>

6) The person responsible for using video surveillance shall take all measures necessary to ensure the safety of the data. In this, it must be ensured depending on the type of the data collected and the amount and purpose of processing, as well as in consideration of what is technically possible and economically feasible, that:

- a) processing happens duly and in a purpose-oriented way;
- b) the data is protected from random or unlawful destruction and from loss; and
- c) the data is inaccessible by unauthorized third parties.

The Government shall regulate further details by ordinance.<sup>16</sup>

7) The data shall be deleted immediately, but no later than within 30 days, if:

- a) they are no longer necessary to achieve the purpose; or
- b) interests warranting protection of the data subjects stand against further storing of the data.<sup>17</sup>

#### Article 7

##### *Accuracy of data*

1) Whoever processes personal data must verify that the information is accurate.

2) Any data subject may request the rectification of inaccurate data.

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<sup>14</sup> Article 6a(4) inserted by LGBl. 2009 No. 46.

<sup>15</sup> Article 6a(5) inserted by LGBl. 2009 No. 46.

<sup>16</sup> Article 6a(6) inserted by LGBl. 2009 No. 46.

<sup>17</sup> Article 6a(7) inserted by LGBl. 2009 No. 46.



Article 8<sup>18</sup>*Cross-border data flows*

1) No personal data may be transferred abroad if the personal privacy of the data subjects could be seriously endangered, in particular where there is no legislation that provides adequate protection. This shall not apply to States which are EEA Member States.

2) If there is no legislation offering adequate protection, personal data may only be transferred abroad if:

- a) the person responsible for processing provides –in particular by contractual clauses – sufficient guarantees concerning the protection of privacy, the basic rights and fundamental freedoms, and the exercising of the rights connected with them;
- b) the data subject has given consent in the specific case;
- c) processing is in direct connection with entering into or performing an agreement and the data in question are data of the contracting party;
- d) disclosure in the specific case is indispensable in particular for the safeguarding of an overriding public interest or for the declaration, exercising, or enforcement of legal claims in court;
- e) disclosure is necessary in the specific case to protect the life or the physical integrity of the data subject;
- f) the data subject has made the data publicly available and has not expressly prohibited processing; or
- g) disclosure happens within the same legal person or company or between legal persons or companies that are under the same leadership, provided that the participants are subject to common data protection rules that ensure adequate protection.

3) The disclosure of data under paragraph (2)(a) and (g) shall require approval from the Government. Prior to such approval, the Data Protection Office shall make a recommendation as to whether the guarantees or common data protection rules ensure adequate protection. The Government shall regulate more specific details by ordinance.

4) The adequacy of the level of protection shall be assessed in consideration of all circumstances that are of importance concerning the transfer of data or concerning a category of data transfers; in particular, the type of data, the purpose of processing, the duration of the planned processing, the country of origin and the country of final destination, the

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<sup>18</sup> Article 8 amended by LGBl. 2009 No. 46.

legal rules applying to the recipient in question, and the professional rules and security measures applying to such recipient may be taken into account.

5) The Government shall by ordinance and on the basis of resolutions by the EEA Joint Committee issue a list of the non-EEA countries whose data protection legislation offers an adequate level of protection.

#### Article 9

##### *Data security*

1) Appropriate organisational and technical means shall be employed to ensure the protection of personal data against unauthorized processing.

2) The Government shall by ordinance issue more detailed rules on the minimum requirements for data security.

#### Article 10

##### *Confidentiality of data*

Whoever processes data or has data processed must keep data from applications entrusted to him or made accessible to him based on his professional activities secret, notwithstanding other legal confidentiality obligations, unless lawful grounds exist for the transmission of the data entrusted or made accessible to him.

#### Article 11

##### *Right of access*

1) Anyone may ask a file controller if data relating to him is being processed. The Government shall enact an ordinance establishing a period within which the information must generally be provided.

2) The file controller must provide information on:

- a) all data relating to the data subject that is contained in the file and its origin;
- b) the purpose and if necessary the legal basis for the processing, the categories of processed data, the individuals participating in the collection of the data, and the individuals designated to receive the file;

- c) the logical structure of the automated processing of the data relating to the data subject in the event of automated decisions in accordance with Article 6; and
  - d) the correction, destruction, or restriction on communication of data whose processing does not comply with the provisions of this Act, in particular if such data is incomplete or inaccurate.
- 3) The file controller may disclose data relating to the health of the data subject via a doctor designated by the person.
- 4) In the event the file controller has the personal data processed by a third party, the file controller shall remain responsible for providing the information that is requested. The third party shall be obliged to provide information in the event that it does not disclose the name of the file controller or in the event the controller is not resident in Liechtenstein.
- 5) The information should, as a general rule, be submitted in writing in printed form or as a photocopy and be provided free of charge. The Government shall regulate exemptions from the foregoing by ordinance. The Government may in particular provide for a participation in costs if the providing of the information necessitates an unreasonable expense.
- 6) Nobody may waive their right of information in advance.

*Restrictions on the right of access*

Article 12

*a) General*

- 1) A file controller may refuse to provide, or restrict or defer the providing of the requested information in cases where:
- a) a law so provides;
  - b) disclosure of the requested information is prohibited by order of the courts or an authority; or
  - c) the file controller is required to do so due to the overriding interest of a third party.
- 2) In addition, an authority may refuse to provide, or restrict or defer the providing of the requested information in cases where:
- a) it is required to do so due to overriding public interests, and in particular in the interests of the internal or external security of the State; or

b) the communication of the information may compromise criminal proceedings or other investigative processes.

2a) As soon as the reason for refusing, limiting, or delaying the right of access no longer applies, the authority shall provide the information, except where this is impossible or only possible with disproportionate efforts.<sup>19</sup>

3) A private file controller may additionally refuse to provide, restrict, or defer the providing of the requested information when it is in the file controller's own overriding interest and on the condition that the data is not passed on to a third party.

4) The file controller must indicate the reason why he is refusing, restricting, or deferring access to the information.

#### Article 13

##### *b) Concerning media employees*

1) A file controller who uses a file for the sole purpose of publication in the editorially-controlled section of a periodically published media organ may refuse, restrict, or defer the providing of the requested information if:

- a) the personal data provides information as to its source;
- b) access to drafts of publications would have to be granted; or
- c) the public's freedom to form an opinion would be compromised.

2) Journalists may additionally refuse, restrict, or defer communication of the requested information if a file is being used exclusively as a personal work aid.

#### Article 14

##### *Right to object*

1) Unless the use of data is required by a law, each data subject may raise an objection to the use of his data with the file controller on the grounds of violation of his overriding interests warranting protection as a result of his specific situation.

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<sup>19</sup> Article 12(2a) inserted by LGBL 2012 No. 28.

2) In the event of a legitimate objection, the data processing conducted by the file controller may no longer relate to such data.

3) In the event data is processed for the purpose of direct advertising, the data subject is to be notified in advance (Article 5) and is to be informed of the no-cost and immediately effective right to object to which he is entitled.

#### Article 14a<sup>20</sup>

##### *Certification procedure*

1) In order to increase the protection and safety of data, the manufacturers of systems or programs for data processing as well as private individuals or authorities processing personal data may have their products, systems, procedures, and organization assessed by recognized independent certification bodies.

2) The Government shall by way of ordinance issue rules on the accreditation of certification procedures and on the introduction of a data protection quality label. In this, it shall take into account international law and the internationally recognized technical standards.

#### Article 15

##### *File register*

1) The Data Protection Office shall keep a file register which shall be accessible in particular via the internet. Anyone may inspect the register.<sup>21</sup>

2) Subject to paragraph 6, file controllers must declare all files to the Data Protection Office for registration.<sup>22</sup>

3) Repealed<sup>23</sup>

3a) Repealed<sup>24</sup>

4) Files must be registered prior to opening.

<sup>20</sup> Article 14a inserted by LGBL 2009 No. 46.

<sup>21</sup> Article 15(1) amended by LGBL 2004 No. 174 and LGBL 2008 No. 273.

<sup>22</sup> Article 15(2) amended by LGBL 2012 No. 28.

<sup>23</sup> Article 15(3) repealed by LGBL 2012 No. 28.

<sup>24</sup> Article 15(3a) repealed by LGBL 2012 No. 28.

5) The application for registration must contain the following information:

- a) the name and address of the file controller;
- b) the name and complete designation of the file;
- c) the person with whom the right of information can be exercised;
- d) the purpose of the file;
- e) the categories of the personal data being processed;
- f) the categories of the recipients of the data;
- g) the categories of persons dealing with the file, i.e. third parties entering data into the file and authorized to modify the data;
- h) a general discussion allowing a preliminary assessment as to whether the measures in accordance with Article 9 are sufficient to guarantee the security of data processing.

6) The Government shall regulate by ordinance the registration and updating of files in detail, as well as the maintenance and publication of the register. For specific kinds of files, the Government may provide for a simplified obligation to register or for exemption from the obligation to register, provided such processing does not infringe on the privacy of the data subjects.<sup>25</sup>

## B. Processing of personal data by private individuals

### Article 16

#### *Breach of privacy*

- 1) Any person who processes personal data may not unlawfully breach the privacy of the data subjects.
- 2) In particular, the person must not, without lawful justification:
  - a) process personal data in violation of the principles set out in Article 4, Article 7(1), Article 8(1), and Article 9(1);
  - b) process data relating to a person against the express will of that person;
  - c) process sensitive data or personal profiles.

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<sup>25</sup> Article 15(6) amended by LGBL 2012 No. 28.

3) Normally, if the data subject has made the data accessible to the public and has not expressly prohibited the processing of the data, processing shall not constitute a breach of privacy.

*Lawful justification*

Article 17

*a) Personal data*

1) An infringement of privacy in the processing of personal data shall be unlawful unless it is justified by:

- a) the consent of the data subject;
- b) an overriding public or private interest; or
- c) the law.

2) The overriding interests of the processing person shall in particular be taken into account where the processing person:

- a) in direct connection with the conclusion or performance of a contract, processes personal data about his contractual partner;
- b) is in or wishes to enter into commercial competition with another person and processes personal data for this purpose, without disclosing the personal data to a third party;
- c) processes personal data for the purpose of evaluating the creditworthiness of another person, provided the data is neither sensitive nor constitutes a personal profile, and provided that the processing person only discloses such data to a third party in the event that it is required for the conclusion or performance of a contract with the data subject;
- d) processes data on a professional basis for the sole purpose of publication in the editorially-controlled section of a periodically published media organ;
- e) processes data for non-personal purposes, and in particular in the context of research, planning, or statistics, and publishes the results in such a manner that the identity of the data subjects cannot be established;
- f) processes data that are accessible by the general public;<sup>26</sup>
- g) gathers data relating to a public person, provided the data concerns his public life.

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<sup>26</sup> Article 17(2)(f) amended by LGBI. 2009 No. 46.

## Article 18

*b) Sensitive data and personal profiles*

An infringement of privacy in the processing of sensitive data and personal profiles shall not be unlawful where:

- a) a law expressly provides for such processing;
- b) such processing is indispensable for the fulfilment of a task clearly defined in a law;
- c) the data subject in the specific case has authorized such processing or has personally made the data accessible to the public;
- d) the processing of the data is necessary to protect interests essential to the life of the data subject or a third party, provided the data subject is incapable of granting consent for physical or legal reasons;
- e) the processing of the data is conducted by non-profit organisations, under the condition that the processing only relates to members of such organisations or persons who maintain regular contact with such organisations in connection with their functions, and provided that the data is not passed on to third parties without the consent of the data subject;
- f) the processing of the data is necessary for the assertion, exercise, or defence of legal claims before a court; or
- g) the processing of the data is necessary for the purpose of health care, medical diagnosis, medical care or treatment, or the administration of health services, and is conducted by persons subject to professional secrecy obligations.

## Article 19

*Data processing by a third party*

1) The processing of personal data may be entrusted to a third party provided:

- a) the mandating party ensures that no processing occurs that he would not be permitted to carry out himself; and
- b) the processing is not prohibited by any legal or contractual duty of confidentiality.

2) The third party shall be subject to the same duties and may assert the same grounds of lawful justification as the mandating party.



3) For the purpose of securing evidence, the elements of the contract relating to data protection provisions and the requirements with respect to measures in accordance with paragraphs 1 and 2 shall be documented in written or another form.

#### Article 19a<sup>27</sup>

##### *Anonymizing and destruction of personal data*

1) Private individuals shall anonymize or destroy personal data if such data is no longer needed to achieve the purpose for which they were processed.

2) There need be no anonymizing or destruction if the personal data is kept beyond the original processing for historical, statistical, or scientific purposes. In this case, the holder shall ensure the safe storage of the personal data by suitable organizational and technical means. The Government shall regulate further details by ordinance.

### C. Processing of personal data by authorities

#### Article 20

##### *Responsible authority*

1) Any authority that processes personal data or has such data processed in the execution of its legal duties shall be responsible for ensuring the protection of such data.

2) In the event that an authority processes personal data jointly with other authorities or with private persons, the Government may regulate the specific responsibilities with regard to data protection.

#### Article 21

##### *Legal principles*

1) Authorities may process personal data only if there is a legal basis for doing so.

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<sup>27</sup> Article 19a inserted by LGBL 2009 No. 46.

2) Sensitive data or personal profiles may be processed only if a law expressly provides therefor or if, as an exception:

- a) such processing is indispensable for the fulfilment of a task clearly defined in a law;
- b) the Government has authorized such processing because the rights of the data subjects are not jeopardized; or<sup>28</sup>
- c) the data subject in the specific case has granted his consent, or if his data is accessible by the general public and processing has not been forbidden.<sup>29</sup>

#### Article 22

##### *Collection of personal data*

1) Any authority that systematically collects data, in particular through the use of questionnaires, must specify the objective of and the legal basis for the processing, the categories of persons dealing with the file, and the recipients of the data.

2) The collection of sensitive data or of personal profiles must be carried out in a manner that is visible to the data subjects.

#### Article 23

##### *Disclosure of personal data*

1) Authorities may disclose personal data provided they have legal grounds for doing so in terms of Article 21 or if:

- a) the data is indispensable for the recipient in the specific case in order to fulfil his legal duties;
- b) the data subject has given his consent in the specific case or the circumstances imply such consent;
- c) the data of the data subject are accessible by the general public; or<sup>30</sup>
- d) the recipient credibly asserts that the data subject is refusing to give consent or prohibiting disclosure in order to prevent the recipient from asserting legal rights or from safeguarding other interests

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<sup>28</sup> Article 21(2)(b) amended by LGBL 2009 No. 46.

<sup>29</sup> Article 21(2)(c) amended by LGBL 2009 No. 46.

<sup>30</sup> Article 23(1)(c) amended by LGBL 2009 No. 46.

warranting protection; whenever possible, the data subject must be allowed the opportunity to State his case before disclosure.

2) Authorities may, on request, disclose the last name, first name, the address, and the date of birth of a person even if the conditions set forth in paragraph 1 are not fulfilled.

3) Authorities may make personal data available via remote access, provided express provision is made for this. Sensitive data or personal profiles may only be made available via remote access if a law expressly provides for it.

4) The authority shall refuse to disclose data, or restrict such disclosure or make it subject to conditions if:

- a) essential public interests or interests clearly warranting protection of a data subject so require, or if
- b) a statutory duty of confidentiality or a specific data protection rule so requires.

#### Article 23a<sup>31</sup>

##### *Disclosure of personal data from a Schengen State to a third country or to an international body*

1) Where personal data has been transferred or provided by a Schengen State, the competent authorities may disclose such data to the competent authority of a third country or to an international body if:

- a) disclosure is necessary to prevent, ascertain, or prosecute a criminal offence or to execute a criminal penalty;
- b) the recipient body is competent for the prevention, ascertainment, or prosecution of offences or to execute a criminal penalty;
- c) the Schengen State which has transferred or provided the personal data has agreed to the disclosure in advance; and
- d) the third country or the international body guarantees the adequate protection of the data.

2) In deviation from paragraph 1(c), personal data may be disclosed on a case-by-case basis if:

- a) the prior consent of the Schengen State cannot be obtained in time; and

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<sup>31</sup> Article 23a inserted by LGBl. 2012 No. 28.

b) disclosure is indispensable to defend against an imminent serious danger to the public security of a Schengen State or a third country or for safeguarding the essential interests of a Schengen State.

3) The competent authority shall inform the Schengen State that has transferred or provided the personal data forthwith about any disclosure of personal data under paragraph 2.

4) In deviation from paragraph 1 (d), personal data may be disclosed on a case-by-case basis if:

- a) this is necessary for the safeguarding of overriding interests warranting protection of the data subject or of a third party;
- b) this is necessary for the safeguarding of an overriding public interest;  
or
- c) sufficient guarantees ensure the adequate protection of the data.

#### Article 23b<sup>32</sup>

##### *Disclosure of personal data from a Schengen State to an individual or to a legal person*

1) Where personal data has been transferred or provided by a Schengen State, the competent authorities may disclose such data to individuals or legal entities in Schengen States on a case-by-case basis if:

- a) this is provided for by a law or by an international treaty;
- b) the Schengen State which has transferred or provided the personal data has agreed to the disclosure in advance;
- c) overriding interests warranting protection of the data subject do not stand against such disclosure; and
- d) disclosure is indispensable for:
  1. the fulfilment of a legal duty of the individual or legal person;
  2. the prevention, ascertainment, or prosecution of an offence or the execution of a criminal penalty;
  3. defending against an imminent serious danger to public security;  
or
  4. defending against a grave violation of the rights of third parties.

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<sup>32</sup> Article 23b inserted by LGBL 2012 No. 28.

2) The competent authority shall disclose the data to the individual or legal person under the express condition that the data must only be used for the purpose Stated by the authority.

#### Article 24

##### *Right to block disclosure*

1) A data subject who credibly asserts an interest warranting protection may request the responsible authority to prohibit the disclosure of certain personal data.

2) The authority may refuse to prohibit disclosure or revoke any such prohibition if:

- a) there is a legal duty of disclosure; or
- b) the performance of its duties would be compromised otherwise.

#### Article 25

##### *Archiving and destroying of personal data*<sup>33</sup>

1) Authorities shall offer all personal data that they no longer require to the Office of Cultural Affairs in accordance with the Archives Act.<sup>34</sup>

2) Authorities shall destroy all personal data not considered worthy of archiving by the Office of Cultural Affairs unless the data:<sup>35</sup>

- a) has been anonymized; or<sup>36</sup>
- b) is to be retained as evidence or for security purposes.<sup>37</sup>

#### Article 26

##### *Processing for the purposes of research, planning, and statistics*

1) Personal data may be processed for reasons not related to the data subjects, and in particular for the purposes of research, planning, and statistics, provided that:

<sup>33</sup> Article 25 heading amended by LGBL 2009 No. 46.

<sup>34</sup> Article 25(1) amended by LGBL 2009 No. 46 and LGBL 2012 No. 361.

<sup>35</sup> Article 25(2) introductory sentence amended by LGBL 2009 No. 46 and LGBL 2012 No. 361.

<sup>36</sup> Article 25(2)(a) amended by LGBL 2009 No. 46.

<sup>37</sup> Article 25(2)(b) amended by LGBL 2009 No. 46.

- a) the data is anonymized as soon as the objective of data processing allows it;
  - b) the recipient shall only pass on the data to a third party with the consent of the controller; and
  - c) the results of the data processing are published in a form that does not allow identification of the data subjects.
- 2) The requirements of the following provisions need not be met:
- a) Article 4(3) on the purpose of the data processing;
  - b) Articles 18 and 21 on the legal basis for the processing of sensitive data and personal profiles; and
  - c) Article 23(1) on the disclosure of personal data.

#### Article 27

##### *Private law activities of the authorities*

1) In the event that an authority acts on the basis of private law, the provisions on the processing of personal data by private persons shall apply.

2) Supervision shall be conducted in accordance with the provisions applicable to authorities.

### **III. Data Protection Office and Data Protection Commission<sup>38</sup>**

#### **A. Data Protection Office<sup>39</sup>**

##### Article 28<sup>40</sup>

##### *Appointment and status*

1) A Data Protection Office shall be installed, which shall be organizationally attached to Parliament.

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<sup>38</sup> Title preceding Article 28 amended by LGBL 2008 No. 273.

<sup>39</sup> Title preceding Article 28 amended by LGBL 2008 No. 273.

<sup>40</sup> Article 28 amended by LGBL 2008 No. 273.

2) The Data Protection Office shall consist of the Data Protection Commissioner as its head and of the other personnel.

3) The Data Protection Office shall perform its duties independently and shall not be bound by any instructions.

4) The Data Protection Office shall enter into an agreement with the Government on the handling of organizational and administrative matters.

#### Article 28a

##### *Data Protection Commissioner*<sup>41</sup>

1) The Data Protection Commissioner shall be elected by Parliament for a term of office of eight years on the basis of a proposal by the Government and after hearing the Bureau of the Parliament. Reelection shall be possible.<sup>42</sup>

2) The Data Protection Commissioner must not be a member of Parliament, the Government, a court, or an administrative authority, nor may he be the head of a Liechtenstein municipality or sit on a Liechtenstein municipal council. He shall lose such offices upon being appointed Data Protection Commissioner.<sup>43</sup>

3) Parliament may remove the Data Protection Commissioner after hearing the Government in the event of a grave breach of duty, of conduct damaging the country's reputation, or for other important reasons, before his term of office is complete.<sup>44</sup>

4) The Data Protection Commissioner shall issue organisational regulations after hearing the Audit Commission of Parliament.<sup>45</sup>

5) The State Employees Act shall apply *mutatis mutandis* to the Data Protection Commissioner.<sup>46</sup>

<sup>41</sup> Article 28a heading inserted by LGBL 2008 No. 273.

<sup>42</sup> Article 28a(1) amended by LGBL 2012 No. 28.

<sup>43</sup> Article 28a(2) inserted by LGBL 2008 No. 273.

<sup>44</sup> Article 28a(3) inserted by LGBL 2008 No. 273.

<sup>45</sup> Article 28a(4) inserted by LGBL 2008 No. 273.

<sup>46</sup> Article 28a(5) amended by LGBL 2013 No. 336.

## Article 28b

*Other personnel*<sup>47</sup>

1) The other personnel of the Data Protection Office shall be employed by the Bureau of the Parliament in agreement with the Data Protection Commissioner within the framework of the budget approved by Parliament; Article 28a(2) shall apply *mutatis mutandis*.<sup>48</sup>

2) The following entities shall have competence to take decisions under employment law concerning the other personnel of the Data Protection Office:<sup>49</sup>

- a) the Data Protection Commissioner as far as matters are concerned that under the legislation on civil servants are up to the head of an office for independent decision;<sup>50</sup>
- b) the Bureau of the Parliament in agreement with the Data Protection Commissioner in all other matters.<sup>51</sup>

3) The State Employees Act shall apply *mutatis mutandis* to the employment relationship of the other personnel of the Data Protection Office.<sup>52</sup>

Article 28c<sup>53</sup>*Budget and accounting*

1) The Data Protection Office shall submit the draft of its annual budget to the Government after such draft has been preliminarily discussed by the Audit Committee of Parliament. The Government shall forward the draft budget without changes to Parliament for discussion and decision.

2) The Data Protection Office shall keep its own accounts. Accounting shall be audited by the National Audit Office within the framework of its legal powers and on instruction of the Audit Committee of Parliament.

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<sup>47</sup> Article 28b heading inserted by LGBl. 2008 No. 273.

<sup>48</sup> Article 28b(1) amended by LGBl. 2012 No. 28.

<sup>49</sup> Article 28b(2) introductory sentence inserted by LGBl. 2008 No. 273.

<sup>50</sup> Article 28b(2)(a) inserted by LGBl. 2008 No. 273.

<sup>51</sup> Article 28b(2)(b) amended by LGBl. 2012 No. 28.

<sup>52</sup> Article 28b(3) amended by LGBl. 2013 No. 336.

<sup>53</sup> Article 28c inserted by LGBl. 2008 No. 273.



## Article 29

*Supervision of authorities*

1) The Data Protection Office shall supervise compliance by authorities with this Act and other regulations relating to data protection. The Government shall be exempt from such supervision.<sup>54</sup>

2) The Data Protection Office shall investigate cases on its own initiative or as a result of reports by third parties.<sup>55</sup>

3) In order to investigate cases, the Data Protection Office may request the production of documents, obtain information, and have data processing activities demonstrated to it. The authorities shall be obligated to cooperate in the investigation of any case. The right to refuse to give evidence in accordance with § 108 of the Code of Criminal Procedure shall apply *mutatis mutandis*.<sup>56</sup>

4) In the event that an investigation reveals that data protection provisions have been infringed, the Data Protection Office shall recommend that the responsible authority modify or cease data processing activities. It shall inform the Government of its recommendation.<sup>57</sup>

5) In the event that a recommendation is not complied with or is rejected, the Data Protection Office may refer the matter to the Data Protection Commission for decision. Notice of the decision shall be given to the data subject. The Data Protection Office may appeal against the decision of the Data Protection Commission.<sup>58</sup>

## Article 30

*Investigations and recommendations in the private sector*

1) The Data Protection Office shall conduct investigations on its own initiative or as a result of a report by a third party if:<sup>59</sup>

- a) the methods of processing are capable of infringing the privacy of one or more persons;<sup>60</sup>
- b) files must be registered (Article 15);

<sup>54</sup> Article 29(1) amended by LGBL 2008 No. 273.

<sup>55</sup> Article 29(2) amended by LGBL 2008 No. 273.

<sup>56</sup> Article 29(3) amended by LGBL 2008 No. 273.

<sup>57</sup> Article 29(4) amended by LGBL 2008 No. 273.

<sup>58</sup> Article 29(5) amended by LGBL 2008 No. 273.

<sup>59</sup> Article 30(1) introductory sentence amended by LGBL 2008 No. 273.

<sup>60</sup> Article 30(1)(a) amended by LGBL 2009 No. 46.

c) the disclosure of data abroad must be reported (Article 8).

2) During such investigation, it may request the production of documents, obtain information, and have data processing activities demonstrated to it. The right to refuse testimony in accordance with § 108 of the Code of Criminal Procedure shall apply *mutatis mutandis*.<sup>61</sup>

3) On the basis of its investigation, the Data Protection Office may recommend the modification or cessation of the data processing activities.<sup>62</sup>

4) In the event that a recommendation given by the Data Protection Office is not complied with or is rejected, it may refer the matter to the Data Protection Commission for decision. It may appeal against the decision of the Data Protection Commission.<sup>63</sup>

#### Article 31

##### *Reporting; information*

1) The Data Protection Office shall annually submit a report to Parliament and to the Government, in which report it shall provide information on the scope and emphases of its activities as well as on findings and recommendations as well as their implementation. These reports shall be published.<sup>64</sup>

2) In cases of public interest, the Data Protection Office may inform the public of its findings and recommendations. Personal data that are subject to official secrecy may only be published by the Data Protection Office if it has the consent of the competent authority. In the event such consent is withheld by the authority, the Data Protection Commission shall take a decision, which shall be final.<sup>65</sup>

#### Article 32

##### *Other duties*

1) The Data Protection Office shall in particular have the following additional duties:

<sup>61</sup> Article 30(2) amended by LGBL 2008 No. 273.

<sup>62</sup> Article 30(3) amended by LGBL 2008 No. 273.

<sup>63</sup> Article 30(4) amended by LGBL 2008 No. 273.

<sup>64</sup> Article 31(1) amended by LGBL 2008 No. 273.

<sup>65</sup> Article 31(2) amended by LGBL 2008 No. 273.

- a) it shall support private individuals and authorities by giving a general introduction and providing individual consulting services;
- b) it shall submit opinions on questions of data protection in pending cases at the request of the decision-making bodies or appellate authorities;
- c) it shall certify the extent to which foreign data protection laws offer adequate protection;<sup>66</sup>
- d) it shall comment on proposals and enactments of significance for data protection and shall in particular review their compliance with the provisions of Directive 95/46/EC;
- e) it shall cooperate with data protection authorities both within and outside Liechtenstein;
- f) it shall represent the Principality of Liechtenstein in the Working Party on the Protection of Individuals with regard to the Processing of Personal Data pursuant to Article 29 of Directive 95/46/EC;<sup>67</sup>
- g) it shall examine the guarantees and data protection rules reported to it pursuant to Article 8(3);<sup>68</sup>
- h) it shall examine the certification procedures pursuant to Article 14a and may issue statements in accordance with Article 29(4) or Article 30(3). It may also be given the duties of an accreditation body.<sup>69</sup>

2) It may consult authorities even where this Act is not applicable in accordance with Article 2 (3)(c) through (f). Such authorities may allow the Data Protection Office to inspect their papers.<sup>70</sup>

## B. Data Protection Commission

### Article 33

#### *Data Protection Commission*

1) The Data Protection Commission shall consist of three members which shall be elected by Parliament for a term of four years together

<sup>66</sup> Article 32(1)(c) amended by LGBL. 2009 No. 46.

<sup>67</sup> Article 32(1) amended by LGBL. 2008 No. 273.

<sup>68</sup> Article 32(1)(g) inserted by LGBL. 2009 No. 46.

<sup>69</sup> Article 32(1)(h) inserted by LGBL. 2009 No. 46.

<sup>70</sup> Article 32(2) amended by LGBL. 2008 No. 273.

with two substitute members. Parliament shall designate the president and vice president of the Commission.

2) Members of the Data Protection Commission shall be subject to the provisions of the National Administration Act on recusal, responsibilities, and the prohibition on reporting. Such members must take the oath of office prior to taking office.

#### Article 34

##### *Duties*

The Data Protection Commission makes decisions on:

- a) the recommendations of the Data Protection Office (Article 29(5); Article 30(4)) that are laid before it;<sup>71</sup>
- b) appeals against decisions made by the authorities relating to data protection matters with the exception of decisions made by the Government or judicial acts;<sup>72</sup>
- c) appeals against decisions of the Data Protection Office pursuant to Article 6a(3).<sup>73</sup>

#### Article 35

##### *Interim injunctions*

1) Upon the request of a party or the Data Protection Office, the president of the Data Protection Commission may take interim injunctions which appear necessary for the interim regulation of an existing State of affairs or to guarantee legal relations which are at risk.<sup>74</sup>

2) Appeals against interim injunctions shall not have a suspensive effect.

3) The Data Protection Commission shall decide on appeals against measures taken by the president. The appeals period shall be 14 days.

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<sup>71</sup> Article 34(a) amended by LGBL 2008 No. 273.

<sup>72</sup> Article 34(b) amended by LGBL 2012 No. 28.

<sup>73</sup> Article 34(c) inserted by LGBL 2009 No. 46.

<sup>74</sup> Article 35(1) amended by LGBL 2008 No. 273.

Article 36<sup>75</sup>*Compensation*

Members of the Data Protection Commission shall be compensated for their activities pursuant to the provisions of the Law on the Remuneration of Government Ministers and Members of Commissions as well as Part-Time Judges and Ad Hoc Judges.

**IV. Legal safeguards****A. Processing of personal data by private individuals**

## Article 37

*Claims and legal procedures*

1) Legal proceedings or interim injunctions (protective measures) relating to the protection of privacy are governed by Articles 39 through 41 of the Law on Persons and Companies. The plaintiff in any legal proceedings may specifically request that the personal data be corrected or destroyed, or that its disclosure to third parties be prohibited.

2) If neither the accuracy nor the inaccuracy of personal data can be established, the plaintiff may request that the particular data be marked accordingly.

3) The plaintiff may request the notification of third parties or the publication of the judgment relating to the data or its correction, destruction, prohibition of communication, or the marking of the data as to its litigious character.

4) The procedural provisions on non-contentious matters shall apply in the event of actions for the assertion of the right for information.<sup>76</sup>

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<sup>75</sup> Article 36 amended by LGBL 2014 No. 347.

<sup>76</sup> Article 37(4) amended by LGBL 2010 No. 454.

## B. Processing of personal data by authorities

### Article 38

#### *Claims and procedures*

1) Anyone with an interest warranting protection may request that the responsible authority:

- a) refrain from proceeding with unlawful data processing;
- b) nullify the effects of unlawful data processing;
- c) declare the unlawful nature of the data processing.

2) If neither the accuracy nor the inaccuracy of personal data can be established, the authority shall be required to mark the data with a note to this effect.

3) The person making the request may in particular request that the authority:

- a) correct or destroy the data or ensure that it is not disclosed to a third party;
- b) publish or communicate to third parties its decision, namely to correct or destroy the personal data or prohibit its disclosure or to mark it as being of contentious nature.

4) The Procedure shall be governed by the National Administration Act.

5) Decisions and decrees of authorities may be appealed by way of complaint to the Data Protection Commission within 14 days of service. Decisions of the Commission may be appealed by way of complaint to the Administrative Court within 14 days of service.<sup>77</sup>

6) Decisions of the Government may be appealed by way of complaint to the Administrative Court within 14 days of service.<sup>78</sup>

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<sup>77</sup> Article 38(5) amended by LGBL 2004 No. 33.

<sup>78</sup> Article 38(6) amended by LGBL 2004 No. 33.

## V. Penal provisions

### Article 39

#### *Unauthorized collection of personal data*

Any person who collects sensitive personal data without authorization from a file which is not freely accessible shall at the request of the injured party be convicted by the Court of Justice of a misdemeanour and sentenced to imprisonment of up to one year or to a monetary penalty of up to 360 daily penalty units.

### Article 40

#### *Breach of duties to provide information, to register data, and to cooperate*

1) Private individuals who fail to fulfil their duties as set out in Article 5 and Article 11 to 13 by wilfully providing inaccurate or incomplete information shall at the request of the injured party be convicted by the Court of Justice of a contravention and sentenced to a fine of up to 20,000 Swiss francs, or to imprisonment of up to three months if the fine cannot be collected.<sup>79</sup>

2) The same punishment shall apply to private individuals who wilfully:

- a) fail to report files in accordance with Article 15 or who provide false information in their report;<sup>80</sup>
- b) in the investigation of a case (Article 30) provide false information to the Data Protection Office or refuse to cooperate;<sup>81</sup>
- c) transfers data abroad without permission in accordance with Article 8(3).<sup>82</sup>

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<sup>79</sup> Article 40(1) amended by LGBl. 2009 No. 46.

<sup>80</sup> Article 40(2)(a) amended by LGBl. 2009 No. 46.

<sup>81</sup> Article 40(2)(b) amended by LGBl. 2008 No. 273.

<sup>82</sup> Article 40(2)(c) inserted by LGBl. 2009 No. 46.

## Article 41

*Breach of data secrecy*

1) Any person who wilfully and without authorization discloses confidential sensitive data or personal profiles that have come to his knowledge in the course of professional activities that require that he has knowledge of such data shall at the request of the injured party be convicted by the Court of Justice of a misdemeanour and sentenced to imprisonment of up to one year or to a monetary penalty of up to 360 daily penalty units.

2) The same punishment shall apply to any person who wilfully and without authorization discloses confidential sensitive data or personal profiles that have come to his knowledge in the course of his activities for persons who are subject to a duty of professional secrecy or in the course of his vocational training with such persons.

3) The unauthorized communication of confidential sensitive data or personal profiles shall remain punishable also after the person has ceased to practice his profession or has completed his vocational training.

**VI. Transitional and final provisions**

## Article 42

*Implementing ordinances*

1) The Government shall issue the ordinances necessary for implementing this Act, in particular relating to:

- a) exceptions to Article 11(5) on information and Article 21(2)(b) on the processing of sensitive data and personal profiles;
- b) the categories of files which require processing regulations;
- c) the requirements under which an authority may process personal data for third parties or have such data processed by third parties;
- d) the disclosure of data pursuant to Article 23(2) and remote access pursuant to Article 23(3);
- e) the use of means to identify individual persons;
- f) data security.



2) The Government may provide for exceptions to Articles 12 and 13 for the provision of information through embassies and consulates of the Principality of Liechtenstein abroad.

3) The Government shall regulate how files are to be secured whose data can result in a danger to the life and limb of the data subjects in the event of a crisis or war.

#### Article 43

##### *Processing of personal data in specific cases involving crime fighting and State security*

1) Concerning the processing of personal data for fighting terrorism, violent extremism, organized crime, and illicit intelligence gathering and to guarantee State security, the Government may, until an Act comes into force regulating these matters:

- a) provide for exceptions to the provisions on the purpose of data processing (Article 4(3)), the disclosure of data abroad (Article 8), the obligation to report and register (Article 15), and the collection of personal data (Article 22);
- b) approve the processing of sensitive data and personal profiles even if the requirements of Article 21(2) are not met.

2) Voting, petition, and statistical secrecy shall be preserved.

3) The Government shall make its decision after consulting with the Data Protection Office in lieu of the Data Protection Commission or its president. Decisions of the Government may be appealed by way of complaint to the Administrative Court within 14 days of service.<sup>83</sup>

#### Article 44

##### *Transitional provisions*

1) File controllers must register any existing files that must be registered under Article 15 within one year of the date on which this Act comes into force.

2) Within one year of the date on which this Act comes into force, they must take the measures required to allow them to disclose information under Article 11.

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<sup>83</sup> Article 43(3) amended by LGBl. 2004 No. 33 and LGBl. 2008 No. 273.

3) File controllers may continue to use existing files that contain sensitive personal data or personal profiles until 1 August 2007 without having to fulfil the requirements of Article 18 and 21.<sup>84</sup>

Article 45

*Entry into force*

1) This Act shall enter into force on 1 August 2002, subject to paragraph 2.

2) Articles 28 and 33 shall enter into force on the date of promulgation.

signed *Hans-Adam*

signed *Otmar Hasler*  
Prime Minister

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<sup>84</sup> Article 44(3) amended by LGBL 2004 No. 174.

235.1

## Transitional provisions

235.1 Data Protection Act

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**Law**  
of 17 September 2008  
**amending the Data Protection Action**

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**III.**  
**Transitional provisions**

1) At the time this Act enters into force,<sup>85</sup> the current Data Protection Commissioner shall become the head of the Data Protection Office and shall hold this position until 31 December 2016. Before this time period expires, Parliament shall elect the Data Protection Commissioner in accordance with Article 28a.

2) The existing employment relationships of the other personnel shall remain in force after this Act has entered into force.

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<sup>85</sup> Entry into force: 1 January 2009.

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**Law**

of 11 December 2008

**amending the Data Protection Act**

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**II.****Transitional provision**

For existing video surveillance, approval under Article 6a(3) shall be obtained immediately, but no later than within six months from the date this Act enters into force<sup>86</sup>.

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<sup>86</sup> Entry into force: 1 July 2009.