

Sovereign Ordinance n° 2.230
Setting out the implementing conditions of Act n° 1.165
of 23 December 1993 regulating the processing
of personal data, as amended by Act n° 1.353
of 4 December 2008 on the protection of personal data

(19 June 2009)

Having regard to the Constitution;
Having regard to the Act 1.165 of 23 December 1993 regulating the processing of personal data, as amended by Act n° 1.353 of 4 December 2008 on the protection of personal data;
Having regard to Sovereign Ordinance n° 13.327 of 12 February 1998 implementing Act n° 1.165 of 23 December 1993, as amended, aforementioned;
Having regard to the deliberation of the Council of Government dated 3 June 2009 which has been communicated to Us by Our Minister of State;

Have Ordered and Order:

The appointment of the Members of the Commission de Contrôle des Informations Nominatives

Article 1. The proposals described in Article 4 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, shall be remitted to the Prince.

Article 2. The proposals for the appointment of new Members or the renewal of mandates for Members in office must be remitted within the six months preceding the expiry of the latter's mandates.

Article 3. If, during their mandate, a full Member ceases to be in office or is no longer able to perform his/her duties, the President of the Commission shall inform the interested proposing authority, in order to appoint a new full Member for the period in progress, until expiry of said mandate.

Article 4. The President and Vice President shall be elected for the duration of their mandates as Commission Members.

If the President should cease his/her activities or is no longer able to perform his/her duties, such duties shall, pursuant to Article 5-6 of Act N° 1.165 of 23 December 1993, as amended, aforementioned, be performed on a temporary basis by the Vice President until a new President and Vice President are elected in accordance with the first paragraph of Article 5 of the Act, without prejudice to the provisions of Article 3.

The same shall apply to temporary incapacity.

If the Vice President should cease his/her activities or is no longer able to perform his/her duties, a new Vice President shall be elected in accordance with the first paragraph of Article 5 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, without prejudice to the provisions of Article 3.

Article 5. The position as a Member of the Commission is incompatible with:

- that of Member of the Monegasque Parliament or Town Council
- that of Member of the Council of State,
- that of sitting judge, except for the Member proposed by the Director of Judicial Services (Minister of Justice);
- that of civil servant or State official, municipal official or an official of a public institution, who is currently in office;
- the performance of duties or shareholdings in Monegasque or foreign companies contributing to the manufacturing of equipment used in computers, telecommunications or the provision of IT or telecommunication services.

Sessions of the Commission de Contrôle des Informations Nominatives

Article 6. Commission Sessions shall take place at its headquarters or at any other place on Principality territory if it so decides.

The Commission shall meet when convened by its President.

The notice of the meeting shall give details of the agenda established by the President. It shall be sent by letter or by email to Commission Members at least ten days before the session, except in emergencies.

Article 7. A Commission resolution shall only be valid if at least half of its Members are present.

Article 8. Votes shall take place by means of a show of hands and resolutions shall be adopted by a majority of votes cast.

Abstentions shall be excluded when calculating the majority.

In the event of a tied vote, the President shall have the casting vote.

Article 9. The President shall invite, to attend all or part of the session, without entitlement to vote, any expert or advisor of his/her choice, or any person, whether belonging to Commission staff or not, whose presence at the meeting seems appropriate.

Article 10. The Secretary of the session shall be the Secretary General of the Commission or alternatively one of the Secretariat officials appointed by the President.

Minutes of each session shall be taken and signed by all Members having attended. The minutes shall be recorded in a register held for this purpose at the Commission headquarters. A decision of the President shall establish the conditions under which items of information relating to the sessions may, with the exception of those pertaining to public security, be consulted by interested parties. This decision shall be posted on the premises of the Commission Secretariat.

Article 11. Commission Members shall include the Secretary General, Secretariat officials, and the investigators described in Article 18 of Act n° 1.165 of 23 December 1993, as amended, aforementioned.

Article 12. The Secretary General and Secretariat officials shall be subject to the general rules applying to civil servants and State officials.

However, hierarchical and disciplinary powers shall be exercised by the President of the Commission.

Article 13. Persons proposed by the Commission for the purposes of carrying out the investigations laid down in Article 18 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, shall be appointed by the President for a period of five years, renewable once.

The President may, for a legitimate reason, refuse to appoint one or more of these persons. In such case, proposals for the appointment of other persons shall be submitted to him.

Such appointments shall be published in the Journal de Monaco.

Article 14. Each investigation shall be decided by a resolution of the Commission, stating:

- The name and address of the natural or legal person concerned;
- The name(s) of persons in charge of carrying out the investigation;
- The purpose and duration of the investigation;

The Commission resolution shall be stated in the letter of appointment described in Article 18 of Act n° 1.165 of 23 December 1993, as amended, aforementioned.

Article 15. Investigators shall receive, as remuneration for work carried out, emoluments the amount of which shall be calculated on the basis of a fixed tariff established by the Commission and approved by the President.

The tariff shall be published in the Journal de Monaco.

Article 16. The declarations laid down in Article 6 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, and the requests for opinions laid down in Articles 7 and 7-1 of the same Act, shall be submitted using a form, the model for which shall be established by the Commission, and appendices to supplement the information provided.

Forms may be obtained free of charge from the Commission as a printed version or by electronic means.

Article 17. Duly completed forms together with their appendices shall be sent to the Commission Secretariat by registered letter with return receipt or deposited at the Secretariat in return for a receipt.

The Commission Secretariat shall determine whether the application is complete within a maximum period of one month.

When the application is complete, the procedures established by the Act according to the regime that applies to such data processing or to the data controller shall be followed. If the procedure involves a declaration, the President shall issue a receipt without delay.

If the application is incomplete, a letter shall be sent, within the month following the date of receipt of the application, by the Secretary General of the Commission, to the declaring party or the applicant in order to inform them of the inadmissible nature of the declaration, request for an opinion or request for authorisation, indicating which documents or information need to be provided.

Article 18. Requests for opinions as laid down in Articles 7 and 7-1 of Act N° 1.165 of 23 December 1993, as amended, aforementioned, shall be signed, depending on the case, by the Minister of State, the Director of Judicial Services (Minister of Justice), the Mayor, the director of the public institution or person who is legally competent or having the capacity to bind the legal person governed by public law or private law concerned.

Requests for authorisation as laid down in Articles 11-1 and 20-1 of the aforementioned Act shall be signed by the data controller or their representative.

If such persons apply to the President, or if the President invites them to do so, their explanations shall be heard by the Commission during the investigation.

Article 19. The Commission shall issue an opinion as laid down in Articles 7 and 7-1 of Act N° 1.165 of 23 December 1993, as amended, aforementioned, within a period of two months as from receipt of all required documents. Such period may be renewed once for an identical period.

The decision to extend this period shall be taken and the applicant notified by registered letter with return receipt. Published in the Journal de Monaco - Official Gazette of the Principality – n° 7.918 of Friday 26 June 2009 S.O. 2.230 of 19 June 2009 4

However, for data processing falling under Article 7-1 of the same Act, the period of two months, extended where applicable, may be suspended, if appropriate, during the period of consultation of the competent public authority in the field of health.

Article 20. Applicants shall be notified of Commission opinions or authorisations by registered letter with return receipt.

If the Commission does not reply within the period described in the previous Article, renewed if applicable, such reply shall be considered as favourable.

Article 21. Except in the cases described in the second paragraph of Article 20, data processing shall be decided by the persons or authorities listed in Article 18, in the light of a favourable opinion of the Commission or, if applicable, the reasoned Ministerial Order described in Article 7 of Act N° 1.165 of 23 December 1993, as amended, aforementioned.

Article 22. The Data Processing Register described in Article 10 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, shall be made available at the Commission headquarters.

Article 23. The Commission Secretariat shall maintain and update the Data Processing Register.

Article 24. The days and times during which the Data Processing Register may be consulted shall be established by the decision of the President and posted on the premises of the Commission Secretariat.

Article 25. Applications relating to the processing of personal data shall, pursuant to item 7° of Article 2 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, be sent to the President, who will consider whether it is appropriate to refer the matter to the Commission.

If an application is submitted to the Commission for deliberation, the Commission may decide not to pursue the matter or to take all measures within its powers in relation to the subject of the application.

Article 26. If, pursuant to Article 3 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, a complaint is referred to the President, he/she will consider whether it is appropriate to refer the matter to the Commission.

If a complaint is submitted to the Commission for deliberation, the Commission may decide not to pursue the matter or to carry out the investigations described in Article 18 of said Act. In that case, the matter will go ahead as described in Article 14 hereinabove.

Article 27. Persons submitting applications or complaints as described in the two foregoing Articles shall be kept informed, by the President of the Commission, of actions to be taken as a result of their submissions.

Article 28. Pursuant to Article 5-4 of Act N° 1.165 of 23 December 1993, as amended, aforementioned, the President of the Commission de Contrôle des Informations Nominatives shall send the Minister of State the accounts when closed, in order that they may be audited by the Official Auditor.

On the communication of personal data of a medical nature

Article 29. When the communication of data of a medical nature, described in item 3 of Article 15 of Act n° 1.165 of 23 December 1993, as amended, aforementioned, shall be done through electronical means, the data controller or their representative is bound by the security and confidentiality rules set out by the first two paragraphs of Article 17 of Act n° 1.165 of 23 December 1993, as amended, aforementioned.

On security and confidentiality

Article 30. Data controllers pursuant to Articles 11 and 11-1 shall designate persons responsible for establishing authorisation profiles that are strictly in line with the purposes of the processing.

Authorisation shall be given, for each case of data processing, to a determined user or group of users. The latter shall be authenticated by a username and password.

Article 31. Sovereign Ordinance n° 13.327 of 12 February 1998, aforementioned, is hereby repealed, as are all provisions contrary to this Ordinance.

Article 32. Our Secretary of State, our Director of Judicial Services (Minister of Justice) and Our Minister of State shall be in charge of enforcing this Ordinance, each within their area of authority.