

Privacy in Luxembourg: overview

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Country Q&A | [Law stated as at 01-Dec-2018](#) | Luxembourg

A Q&A guide to privacy in Luxembourg.

The Q&A guide gives a high-level overview of privacy rules and principles, including what national laws regulate the right to respect for private and family life and freedom of expression; to whom the rules apply and what privacy rights are granted and imposed. It also covers the jurisdictional scope of the privacy law rules and the remedies available to redress infringement.

To compare answers across multiple jurisdictions, visit the Privacy [Country Q&A tool](#).

This article is part of the global guide to data protection. For a full list of contents, please visit www.practicallaw.com/dataprotection-guide.

Legislation

1. What national laws (if any) regulate the right to respect for private and family life and freedom of expression?

At national level, the right to respect private and family life is guaranteed and regulated by:

- Article 11 of the Constitution.
- The Law of 11 August 1982 on the protection of private life (Privacy Law).

The Law of 2 August 2002 as amended (the Data Protection Law) implemented Directive 95/46/EC on data protection (Data Protection Directive) and protects individuals from the violation of their personal data. On 27 April 2016, the Commission adopted Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (GDPR). The GDPR will replace the Data Protection Directive and will be enforceable from 25 May 2018.

The freedom of expression is guaranteed and regulated by:

- Article 24 of the Constitution.
- Article 14(1) of the Law of 8 June 2004 on the freedom of expression in the media, which provides the right to respect for private life.

2. Who can commence proceedings to protect privacy?

Article 1 of the Privacy Law provides that everyone has a right to respect for their private life. Any natural person who considers himself the victim of a violation under the Privacy Law may introduce an action to:

- Claim compensation for damage.
- Seek an interim order from the President of the court to obtain an injunction.
- Bring any violation of the Privacy Law to the attention of the judicial authorities.

Under the Data Protection Law, the following persons/entities have the power to engage in legal proceedings:

- Any data subject (*Article 39(1)*).
- The supervisory authority, the National Data Protection Commission (*Commission National pour la Protection des Données*) (CNPD) (*Article 32(8) and Article 39(1)*).
- The State Prosecutor (*Article 39(1)*).
- Any injured party (*Article 39(1)*).

3. What privacy rights are granted and imposed?

Although the notion of privacy is not defined under Luxembourg law, case law of the European Court of Human Rights and Luxembourg courts have specified what should be considered as within the field of privacy. The notion of privacy covers activities outside public life that are carried out in both public and private places.

According to case law, the right to respect for privacy includes:

- Personal information including:
 - family/sexual/emotional life;
 - home;
 - medical treatments and health;
 - political and religious beliefs; and
 - hobbies.

- Secrecy of correspondence.
- Right to be forgotten.
- Access to personal data.
- Professional life.
- No harassment.

The right to privacy can be limited under certain circumstances (mainly when it conflicts with freedom of expression or freedom of the press), for example:

- An issue is a matter of public interest, and it is necessary to disclose the facts and the identities of the parties.
- The information is related to the notoriety of a public figure.

However, the infringement of the right to privacy must be necessary and proportionate.

The following actions are considered privacy infringements under the Privacy Law:

- Listening to or allowing the listening of, recording or allowing the recording of, transferring or allowing the transfer of, by mean of a device, statements made in a private sphere by a natural person without his/her consent.
- Watching or allowing the watching of, by mean of a device, a natural person in a location that is not accessible to the public without his/her consent, in stabilising or allowing the stabilising of, in transferring or allowing the transfer of, in the same conditions, the image of that person.
- The opening of sealed correspondence sent or received without the recipient/sender's consent, or, in reading, by mean of a device, the content of such correspondence or in deleting such correspondence.
- The placement or allowing the placement of, a device with a view to commit any of the above-mentioned violations.
- Knowingly keeping, bringing or allowing to be brought to the attention of the public or any third party, or in using, recordings or documents obtained through any of the above-mentioned violations.
- In publishing or allowing the publication of edited videos or images of a natural person without his/her consent, if such editing is not obvious or if it is the image or video is not referred to as having been edited.
- In harassing a natural person over the phone or in writing or by any other means.

4. What is the jurisdictional scope of the privacy law rules?

The Privacy Law applies to any infringement committed on the Luxembourg territory.

The Data Protection Law applies to processing operations performed by a controller established on the territory of the Grand-Duchy of Luxembourg and to any processing operations performed by a controller who is not established

in Luxembourg or the territory of any other member state of the EU, but is performed for the purposes of processing personal data and makes use of equipment, automated or otherwise, situated on the territory of Luxembourg, unless such equipment is used only for the purposes of transit through the territory of the EU.

5. What remedies are available to redress the infringement of those privacy rights?

In Luxembourg, a person whose privacy rights have been or are being infringed can claim damages before both criminal and civil courts and file a criminal complaint with the State Prosecutor or investigating judge.

A judge can, without prejudice to the right to compensation for damage suffered, prescribe all measures, such as sequestration or seizure to prevent or stop an invasion of privacy (*Article 1, Privacy Law*). These measures may be ordered, if urgent, in summary proceedings. Therefore, damages can be awarded together with the imposition of other measures to prevent infringement. The infringement of privacy may also give rise to criminal prosecution and be sanctioned by imprisonment up to two years and/or the levy of fines.

Under the Data Protection Law, data subjects can file a complaint with the National Data Protection Commission which can commence an investigation. If a data controller caused harm to a data subject in violation of the Data Protection Law, the data subject can claim damages for the harm caused, and exercise its right to the correction/erasure/blocking of data and its rights to object and enforce these in judicial proceedings.

6. Are there any other ways in which privacy rights can be enforced?

In 2006, Luxembourg members of the press created a Code of Ethics (*Code de déontologie*) to define the rights and duties of journalists and publishers, and to ensure its publication. Article 5(c) of this Code makes explicit reference to the protection of people's private life and dignity.

A Press Council was created in 1979. The Press Council is a self-regulated body with a complaints committee responsible for receiving and processing complaints of individuals concerning reports published in the media, without prejudice to the powers reserved to the National Data Protection Commission. Under certain circumstances, the Press Council can sanction journalists by withdrawing their professional credentials.

Contributor profile

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Professional qualifications. Admitted to the Luxembourg Bar, 1994; Université Nancy II, France, DESS en Droit des Affaires et Fiscalité - Diplôme de Juriste Conseil d'Entreprise (Post-Graduate Degree in Business Law and Tax Law), 1993; Université Nancy II, France/University of Saarbrücken, Germany, Maîtrise en Droit des Affaires (Master in Business Law), 1992

Areas of practice. Employment, compensations and benefits; general commercial; data protection.

Recent transactions

- Launch of a new product by a multinational company based in the US enabling its customers to set up a WIFI network that is hosted and managed via a local cloud.
- Setting up of a shared service centre in Malaysia for a client, with the aim to providing finance related services to regional subsidiaries.
- Implementation of a centre of information for our client including the personal data regarding the employees.
- Legal assistance in respect of the implementation of a mobile data communication services in a device incorporated into cars.
- Legal assistance in relation to the initiation of a cloud compliance project to identify and review all existing cloud services used by a client to ensure compliance with mandatory legislation.
- Legal assistance in relation to the implementation of a Data Centre in Luxembourg, and assistance in the filing of notifications with local authorities.
- Reviewed an EC Model Clause data transfer agreement and flagging any potential issues with any of the proposed data transfers. Provided an overview of the filings/authorisations/process needed to enable the client to transfer the relevant personal data to the US based on the model clause agreement. Completed any filings and authorisations necessary to enable the transfers.

Languages. English, French, German

Professional associations/memberships

- Employment Law Specialists Association, Luxembourg (ELSA).
- European Employment Lawyers Association (EELA).
- International Bar Association (IBA).
- Industrial Relations & Social Affairs Committee of The Luxembourg Bankers' Association (ABBL).
- Insol Europe (INSOL).
- Member of Bar Council, 2014-2015 & 2015-2016.

Publications

- *Maximale Prävention und vorherige Sperrung, Journal, July 2016.*
- *La cour d'appel rappelle les règles applicables aux centres d'affaires, Entreprises Magazine, March/April 2016.*
- *Workforce Restructuring in Europe, Bloomsbury Professional, 2015.*
- *The Anti-Bribery and Anti-Corruption Review Luxembourg, The Law Reviews Ltd, editions 2015, 2016, 2017.*
- *The Executive Remuneration Review Luxembourg, The Law Reviews, editions 2015, 2016, 2017.*
- *The Intellectual Property Review Luxembourg, The Law Reviews, editions 2015, 2016, 2017.*

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