

[LU] Transposition of Directive 2009/136/EC on Electronic Communications Completed

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In the Grand Duchy of Luxembourg, the important changes in the framework of European legislation on electronic services and communications contained in Directive 2009/136/EC (“the Directive”) and Directive 2009/140/EC have been transposed into national legislation by an amount of legislation; some of it is new, and some amends previous legislation (see also IRIS 2012-1/32). Most of these changes were promulgated between June 2010 and February 2011. When the deadline for transposition (25 May 2011) was reached, the European Commission initiated proceedings against twenty member States, including Luxembourg, for failing to transpose the Directive fully into their national legislation.

To avoid any further Commission proceedings, the Chamber of Deputies has adopted the final amending legislation (Law of 28 July 2011 amending 1) the amended Law of 30 May 2005 on the protection of privacy in the electronic communications sector; 2) the amended Law of 2 August 2002 on the processing of personal data in the electronic communications sector; 3) the amended Law of 22 June 1963 laying down the system for the salaries of State employees; 4) the Consumer Code), which came into force on 1 September 2011 (“the Law”).

By focusing on the rules on protecting the individual and the processing of personal data in the electronic communications sector, this now completes the transposition of the Directive into national law. The Law amends previous legislation on data protection, both in general and with specific reference to the communications sector.

The main innovation of the Law is that it creates an obligation to report immediately any violations of security and confidentiality in respect of personal data to the national Commission for Data Protection (*Commission Nationale pour la Protection des Données*) (Article 3 of the Law). If an incident is likely to have an unfavourable effect on subscribers in terms of the protection of their privacy and personal data, they must also be notified. The Law also reinforces the protection of transparency and the fair use of Internet cookies by making it possible for the user to either accept or refuse them (Article 4 (3) (e) of the Law). Lastly, the Law amends the Law of 30 May 2005 to enable the police and emergency call centres to gain access to caller identification and localisation data.

As a faithful transposition of Directive 2009/136/EC, the changes keep very close to the elements and terms it contains.

Law of 28 July 2011 amending 1) the amended Law of 30 May 2005 concerning the protection of privacy in the electronic communications sector; 2) the amended law of 2 August 2002 with regard to the processing of personal data in the electronic communications sector; 3) the amended law of 22 June 1963 laying down the system on salaries for state employees; 4) the Consumer Code, gazetted in Mémorial A, no. 172 of 10 August 2011 (p. 2938)

