

# **08/12/1992 | Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data**

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## **Chapter I. Definitions, Principle and Scope**

**Art 1.** § 1. For the purposes of this Act "personal data" means any information relating to an identified or identifiable natural person, hereinafter the "data subject"; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

§ 2. "Processing" means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by means of transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of personal data.

§ 3. "Filing system" means any structured set of personal data which is accessible according to specific criteria, whether centralized, de-centralized, or dispersed on a functional or geographical basis.

§ 4. "Controller" means any natural or legal person, un-associated organization or public authority which alone or jointly with others determines the purposes and means of the processing of personal data. If the purposes and means of the processing are determined by or by virtue of an act, decree or ordinance, the controller is the natural person, legal person, un-associated organization or public authority that has been designated as such by or by virtue of that act, decree or ordinance.

§ 5. "Processor" means any natural person, legal person, un-associated organization or public authority which processes personal data on behalf of the controller, except for the persons who, under the direct authority of the controller, are authorized to process the data.

§ 6. "Third party" means any natural or legal person, un-associated organization or public authority other than the data subject, the controller, the processor and anyone who, under the direct authority of the controller or the processor, is authorized to process the data.

§ 7. "Recipient" means a natural or legal person, un-associated organization or public authority to whom data is disclosed, whether a third party or not; administrative or judicial authorities which can receive data in the framework of a special investigation are, however, not regarded as recipients.

§ 8. "The data subject's consent" means any freely given specific and informed indication of his wishes by which the data subject signifies his or his legal representative's agreement to the processing of personal data relating to the data subject.

§ 9. GND means the General National Database referred to in article 44/7 of the Belgian Act of 5 August 1992 on the office of police.

§ 10. "Basic databases" means the databases referred to in article 44/11/2 of the Belgian Act of 5 August 1992 on the office of police.

§ 11. "Special databases" means the special databases the police services can establish pursuant to article 44/11/3 of the Belgian Act of 5 August 1992 on the office of police.

§ 12. "Data and information" means the personal data and the information referred to in article 44/1 of the Belgian Act of 5 August 1992 on the office of police.

§ 13. "Authorities of administrative police" means the authorities referred to in article 5, paragraph 1 of the Belgian Act of 5 August 1992 on the office of police.

**Art 2.** Any natural person is entitled to protection of his fundamental rights and freedoms, especially the protection of his privacy, with regard to the processing of personal data relating to him.

**Art 3.** § 1. This Act applies to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which forms part of a filing system or is intended to form part of a filing system.

§ 2. This Act does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity.

§ 3. a) Articles 6, 7 and 8 do not apply to the processing of personal data solely for the purposes of journalism or the purposes of artistic or literary expression, if the processing relates to personal data

which has apparently been made public by the data subject or which is closely related to the public nature of the data subject or of the facts in which the data subject is involved.

b) Article 9, § 1, does not apply to the processing of personal data solely for journalistic purposes or the purpose of artistic or literary expression, if the application of this article would interfere with the collection of data from the data subject. Article 9, § 2, does not apply to the processing of personal data solely for the purposes of journalism or the purposes of artistic or literary expression, if the application of the article would have one or more of the following effects:

- the application interferes with the collection of the data;
- the application interferes with an intended publication;
- the application provides indications as to the sources of information.

c) Articles 10 and 12 do not apply to the processing of personal data solely for the purposes of journalism or for the purposes of artistic or literary expression, to the extent that the application of the articles would interfere with an intended publication or provide indications as to the sources of information.

d) Articles 17, § 3, 9° and 12°, § 4 and § 8, as well as articles 18, 21 and 22 do not apply to the processing of personal data solely for the purposes of journalism or the purposes of artistic or literary expression.

§ 4. Articles 6 to 10, 12, 14, 15, 17, 17 *bis*, paragraph one, 18, 20 and 31, §§ 1 to 3 do not apply to the processing of personal data by the State Security Service, the General Intelligence and Security Service of the Armed Forces, by the Authorities referred to in articles 15, 22 *ter* and 22 *quinquies* of the Act of 11 December 1998 *on classification and security clearances, security certificates and security recommendations* and the Appeal Board created by the Act of 11 December 1998 *creating an Appeal Board in respect of security authorizations, security certificates and security recommendations*, by the Security Officers and the Permanent Oversight Committee of the Intelligence Services and its Investigative Service, and the Coordinating Authority for Threat Analysis, if the processing is necessary for the fulfilment of their duties.

§ 5. Articles 9, 10, § 1 and 12 do not apply:

1° to the processing of personal data managed by public authorities with a view to the fulfilment of their judicial police duties;

2° to the processing of personal data managed by the police services referred to in article 3 of the Act of 18 July 1991 *regulating police and intelligence service supervision* with a view to the fulfilment of their administrative police duties;

3° to the processing of personal data managed by any other public authority that has been designated by Royal Decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, with a view to the fulfilment of that authority's administrative police duties;

4° to the processing of personal data that has become necessary as a result of the application of the Act of 11 January 1993 *preventing the use of the financial system for money laundering*;

5° to the processing of personal data managed by the Permanent Oversight Committee of the Police Services and its Investigative Service with a view to the fulfilment of their legal duties.

§ 6. Articles 6, 8, 9, 10, § 1, and 12 do not apply after royal authorization by decree after deliberation in the Council of Ministers of processing operations managed by the European Centre for Missing and Sexually Exploited Children, hereinafter "the Centre", an organization of public interest founded by deed on 25 June 1997 and recognized by Royal Decree on 10 July 1997 *on the collection, transmission to the judiciary and follow-up of data relating to persons who are under suspicion of a crime or misdemeanour in a specific dossier concerning a missing person or sexual abuse*. This decree establishes the duration and conditions of the authorization, having received the opinion of the Commission for the Protection of Privacy.

The Centre must not keep any file on persons suspected of a crime or misdemeanour or of convicted persons.

The Board of Directors of the Centre shall designate among the Centre's staff members a data protection officer in charge of data processing, who is familiar with personal data management and protection. The fulfilment of his duties must not result in any adverse effect on him. More particularly, he must not be dismissed or replaced as data protection officer on the grounds of the fulfilment of the duties that have been assigned to him. By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King shall lay down the duties of the data protection officer and the way in which they shall be fulfilled as well as the way in which the Centre shall report to the Commission for the Protection of Privacy on the processing of personal data in the context of the authorization granted.

The members of staff as well as the individuals processing personal data on behalf of the Centre are bound to secrecy.

Any violation of the obligation of secrecy is punished in accordance with the provisions of article 458 of the Belgian Criminal Code.

In the context of its supporting role during the search for children reported missing or abducted the Centre may only record telephone conversations if the caller is informed of the recording and to the extent that he has not objected thereto.

§ 7. Without prejudice to the application of specific legal provisions, article 10 does not apply to processing operations of personal data managed by the Federal Public Service of Finance for the period in which the data subject is subject to an inspection, an investigation or related preparatory activities carried out by the Federal Public Service of Finance in the context of the fulfilment of its legal missions, to

the extent that the application of this article would constitute a disadvantage for the inspection, the investigation or for the preparatory activities, and only for the duration of the inspection, the investigation or the preparatory activities.

The period in which article 10 is not applicable during these preparatory activities must, however, not exceed one year starting from the request submitted in application of this article 10.

When the Federal Public Service of Finance has made use of the exception described in the first paragraph, this exception shall immediately be cancelled upon termination of the inspection or the investigation or upon termination of the preparatory activities if these did not result in an inspection or an investigation. The Information Security and Privacy Protection Service shall inform data subjects of this cancellation without delay and will provide them with the full motivation as included in the decision of the controller who made use of the exception.

**Art 3 bis.** This Act applies:

1° to the processing of personal data carried out in the context of the effective and actual activities of any controller permanently established on Belgian territory or in a place where Belgian law applies by virtue of international public law;

2° to the processing of personal data by a controller who is not permanently established on European Community territory, if the means used, which can be automatic or other means located on Belgian territory, are not the same as the means used for processing personal data only for the purposes of transit of personal data through Belgian territory.

In the circumstances referred to in the previous paragraph under 2°, the controller shall designate a representative established on Belgian territory, without prejudice to legal proceedings that may be brought against the controller himself.

## **Chapter II. General rules on the lawfulness of the processing of personal data**

**Art 4.** § 1. Personal data must be:

1° processed fairly and lawfully;

2° collected for specified, explicit and legitimate purposes and, taking into account all relevant factors, especially the reasonable expectations of the data subject and the applicable legal and regulatory provisions and must not be further processed in a way incompatible with those purposes. Under the conditions established by the King, having received the opinion of the Commission for the Protection of Privacy, further processing of data for historical, statistical or scientific purposes is not considered incompatible;

3° adequate, relevant and not excessive in relation to the purposes for which it is collected or further processed;

4° accurate and, where necessary, kept up-to-date; every reasonable step must be taken to ensure that data which is inaccurate or incomplete with respect to the purposes for which it is collected or for which it is further processed, is erased or rectified;

5° kept in a form that allows for the identification of data subjects, for no longer than necessary with a view to the purposes for which the data is collected or further processed. Having received the opinion of the Commission for the Protection of Privacy, the King shall establish appropriate safeguards for personal data stored longer than stated above for historical, statistical or scientific purposes.

§2. The controller must ensure compliance with § 1.

**Art 5.** Personal data may only be processed in the following cases:

- a) the data subject has unambiguously given his consent;
- b) the processing is necessary for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject prior to entering into a contract;
- c) the processing is necessary for compliance with an obligation to which the controller is subject under or by virtue of an act, decree or ordinance;
- d) the processing is necessary in order to protect the vital interests of the data subject;
- e) the processing is necessary for the performance of a task carried out in the public interest or in the exercise of the official authority vested in the controller or in a third party to whom the data is disclosed;
- f) if the processing is necessary for the promotion of the legitimate interests of the controller or the third party to whom the data is disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject claiming protection under this Act.

By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King can specify the circumstances in which the condition stipulated under f) is considered as not having been met.

**Art 6.** § 1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership as well as the processing of data concerning sex life, is prohibited.

§ 2. The prohibition to process the data referred to in § 1 does not apply in the following cases:

- a) the data subject has given his consent in writing to such processing, on the understanding that this consent can be withdrawn by the data subject at any time; by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King may

determine the cases in which the prohibition to process the data referred to in this article cannot be lifted by the data subject's consent;

b) the processing is necessary to carry out the obligations and specific rights of the controller in the field of employment law;

c) the processing is necessary to protect the vital interests of the data subject or of another person, where the data subject is physically or legally incapable of giving his consent;

d) the processing is carried out in the course of its legitimate activities by a foundation, association or any other non-profit organization with a political, philosophical, religious, health-insurance or trade-union aim and on condition that the processing relates solely to the members of the organization or to persons who have regular contact with it in connection with its purposes and that the data is not disclosed to a third party without the data subjects' consent;

e) the processing relates to data which has apparently been made public by the data subject;

f) the processing is necessary for the establishment, exercise or defence of legal claims;

g) the processing is necessary for the purposes of scientific research and is carried out under the conditions established by the King by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy;

h) the processing is necessary to comply with social security laws;

i) the processing is carried out according to the Act of 4 July 1962 *on Public Statistics*;

j) the processing is necessary for the purposes of preventive medicine or medical diagnosis, the provision of care or treatment to the data subject or one of his relatives, or the management of health-care services provided in the interest of the data subject, and when the data is processed under the supervision of a health professional;

k) the processing is carried out by associations with a legal personality or organizations of public interest whose main objective is the protection and promotion of human rights and fundamental freedoms, with a view to achieving that objective, provided that the processing has been authorized by the King, by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy;

l) the processing of personal data referred to in § 1 is authorized by an act, decree or ordinance for another reason of substantial public interest.

In the case referred to in j), the health professional and his agents or assignees are subject to an obligation of secrecy.

§ 3. Without prejudice to the application of articles 7 and 8 of this Act, the processing of personal data relating to sex life is authorized if it is carried out by an association with a legal personality or by an organization of public interest whose main objective, according to its articles of association, is the

evaluation, guidance and treatment of persons whose sexual conduct can be qualified as an offence, and who has been recognized and subsidized for the achievement of that objective by the competent public authority; for such processing, the objective of which must consist of the evaluation, guidance and treatment of the persons referred to in this paragraph, and for which the processing of personal data, if it concerns sex life, only relates to the aforementioned persons, the King must grant a specific, individualized authorization by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy. The decree referred to in this paragraph specifies the duration of the authorization, the conditions for supervision of the authorized association or organization by the competent authority, and the way in which the authority must report to the Commission for the Protection of Privacy on the processing.

§ 4. By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King shall specify the conditions to be met for the processing of the personal data referred to in this article.

**Art 7.** § 1. The processing of health-related personal data is prohibited.

§ 2. The prohibition to process the data referred to in § 1 does not apply in the following cases:

- a) the data subject has given his written consent to such processing, with the understanding that the consent can be withdrawn by the data subject at any time; by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King can establish the cases in which the prohibition to process health-related data cannot be lifted by the written consent of the data subject;
- b) the processing is necessary to carry out the specific obligations and rights of the controller in the field of employment law;
- c) the processing is necessary to comply with social security laws;
- d) the processing is necessary for the promotion and protection of public health, including medical examination of the population;
- e) the processing is required by or by virtue of an act, decree or ordinance for reasons of substantial public interest;
- f) the processing is necessary to protect the vital interests of the data subject or another person, where the data subject is physically or legally incapable of giving his consent;
- g) the processing is necessary for the prevention of imminent danger or the mitigation of a specific criminal offence;
- h) the processing relates to data which has apparently been made public by the data subject;
- i) the processing is necessary for the establishment, exercise or defence of legal rights;

j) the processing is necessary for the purposes of preventive medicine or medical diagnosis, the provision of care or treatment to the data subject or to one of his relatives, or the management of health-care services in the interest of the data subject, and the data is processed under the supervision of a health professional;

k) the processing is required for the purposes of scientific research and carried out under the conditions established by the King by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy.

§ 3. By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy the King shall lay down the specific conditions to be met when processing the personal data referred to in this article.

§ 4. Health-related personal data may only be processed under the responsibility of a health-care professional, except if the data subject has given his written consent or if the processing is necessary for the prevention of imminent danger or for the mitigation of a specific criminal offence.

By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King can establish the categories of persons who are considered health-care professionals for the purposes of this Act.

The health-care professional and his agents or assignees are subject to an obligation of secrecy with regard to the processing of personal data referred to in this article.

§ 5. Health-related personal data must be collected from the data subject.

It may only be collected from other sources if paragraphs 3 and 4 of this article are complied with, and if such is necessary for the purposes of the processing, or if the data subject is incapable of providing the data.

**Art 8.** § 1. The processing of personal data relating to litigation that has been submitted to courts and tribunals as well as to administrative judicial bodies, relating to suspicions, prosecutions or convictions in matters of crime, administrative sanctions or security measures, is prohibited.

§ 2. The prohibition to process the personal data referred to in § 1 does not apply to processing operations:

a) under the supervision of a public authority or ministerial civil servant as defined by the Belgian Code of Civil Proceedings, if the processing is necessary for the fulfilment of their duties;

b) by other persons, if the processing is necessary to achieve purposes that have been established by or by virtue of an act, decree or ordinance;

- c) by natural persons, private or public legal persons, to the extent that the processing is necessary to manage their litigations;
- d) by lawyers or other legal advisors, to the extent that the processing is necessary for the protection of their clients' interests;
- e) if the processing is required for scientific research and carried out under the conditions established by the King by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy.

§ 3. Persons authorized under § 2 to process the personal data referred to in § 1 are subject to an obligation of secrecy.

§ 4. By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King shall establish the specific conditions to be met when processing the personal data referred to in § 1.

### **Chapter III - Rights of the data subject**

**Art 9.** § 1. If personal data relating to the data subject is obtained directly from the data subject, the controller or his representative shall provide the data subject with at least the following information, no later than the moment the data is obtained, unless the data subject has already received such information:

- a) the name and address of the controller and of his representative, if any;
- b) the purposes of the processing;
- c) the existence of the right to object, by request and free of charge, to the intended processing of personal data relating to him, if it is obtained for the purposes of direct marketing;
- d) other additional information, in particular:
  - the recipients or categories of recipients of the data,
  - whether it is compulsory to reply, and what the possible consequences of the failure to reply are;
  - the existence of the right to access and rectify the personal data relating to him; except where such additional information, taking into account the specific circumstances in which the data is collected, is not necessary to guarantee correct processing in respect to the data subject.
- e) other information dependent on the specific nature of the processing, as specified by the King, having received the opinion of the Commission for the Protection of Privacy.

§ 2. If the personal data is not collected from the data subject, the controller or his representative must provide the data subject with at least the information below when recording the personal data or when

considering communication to a third party, and at the very latest when the data is first disclosed, unless the data subject has already received such information:

- a) the name and address of the controller and of his representative, if any;
- b) the purposes of the processing;
- c) the existence of a right to object, by request and free of charge, to the intended processing of personal data relating to him, if it is obtained for the purposes of direct marketing; in that case, the data subject must be informed prior to the first disclosure of the personal data to a third party or prior to the first use of the data for the purposes of direct marketing on behalf of third parties;
- d) other additional information, in particular:
  - the categories of data concerned;
  - the recipients or categories of recipients of the data;
  - whether compliance with the request for information is compulsory or not, as well as what the consequences of the failure to comply are;
  - the existence of the right to access and rectify the personal data relating to him, unless such additional information, taking into account the specific circumstances in which the data is provided, is not necessary to guarantee fair processing with respect to the data subject.
- e) other information dependent on the specific nature of the processing, which is specified by the King, having received the opinion of the Commission for the Protection of Privacy.

The controller is exempt from the duty of information under this paragraph where:

- a) informing the data subject proves impossible or would involve a disproportionate effort, in particular for statistical purposes or for the purpose of historical or scientific research, or for the purpose of medical examination of the population with a view to protecting and promoting public health;
- b) personal data is recorded or provided with a view to the application of a provision laid down by or by virtue of an act, decree or ordinance. By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King shall establish the conditions for the application of the previous paragraph.

If the first disclosure of the data took place before this provision took effect, the data subject must be informed, by way of derogation from the first paragraph, at the very latest within 3 years of the enforcement date of this provision. The data subject does not have to be informed, however, if the controller was exempt from the duty to inform the data subject of the recording of the data by virtue of legal and regulatory provisions applicable on the day preceding the date this stipulation took effect.

**Art 10.** § 1. Any data subject who proves his identity has the right to obtain from the controller:

- a) information on whether or not data relating to him is being processed, as well as information regarding the purposes of the processing, the categories of data the processing relates to, and the categories of recipients the data is disclosed to;
- b) communication of the data being processed in an intelligible form, as well as of any available source information;
- c) information about the basic logic involved in any automatic processing of data relating to him in case of automated decision making as defined by article 12*bis*;
- d) information regarding his appeal rights under articles 12 and 14 and his right to consult the public register referred to in article 18, if necessary.

To obtain such information the data subject shall submit a signed and dated request to the controller or to any other person designated by the King. The information shall be communicated without delay, at the very latest forty-five days after receipt of the request. The King can specify further rules relating to the exercise of the right referred to in paragraph one.

§ 2. Without prejudice to the provisions of article 9, § 2 of the Act of 22 August 2002 *on Patient Rights*, any person has the right to be informed of the personal data that is processed in relation to his health, either directly or through a healthcare professional.

Without prejudice to the provisions of article 9, § 2 of the above-mentioned Act, such data may be provided at the controller's or the data subject's request, through the intervention of a healthcare professional designated by the data subject.

If there is no evident risk of infringing on the data subject's right to protection of his privacy and if the data is not used in order to take measures and decisions with regard to an individual data subject, informing the data subject may be postponed at the latest until the moment the research is ended if the health-related data is processed for the purposes of medical-scientific research, but only to the extent that informing the data subject would seriously compromise the research.

In that case the data subject must have given the controller his previous written consent to the processing of personal data relating to him for medical-scientific purposes and to postponing, for that reason, the moment at which he is informed.

§ 3. The requests referred to in § 1 and § 2 do not have to be complied with before the expiration of a reasonable period of time, starting from the date mentioned on a prior request from the same person that was complied with, or starting from the date the data was officially provided to this person.

**Art 11.** [...] Repealed.

**Art 12.** § 1. Any person is entitled to the rectification of incorrect personal data relating to him free of charge.

In addition, any person has the right to object to the processing of data relating to him, for substantial and legitimate reasons related to his particular situation, unless the lawfulness of the processing is based on the reasons referred to in article 5, b) and c). If personal data is obtained for the purposes of direct marketing, the data subject may object to the intended processing of personal data relating to him, free of charge and without reason.

In case of legitimate objection, the controller must stop processing the personal data.

Any person also has the right to obtain free of charge the erasure of or the prohibition to use all personal data relating to him that is incomplete or irrelevant with a view to the purpose of the processing, or where the recording, disclosure or storage of the data is prohibited, or where it has been stored for longer than the authorized period of time.

§ 2. In order to exercise the rights referred to in § 1, the data subject must submit a signed and dated request to the controller or to any other person the King shall designate.

§ 3. Within a period of one month starting from the submission of the request referred to in § 2, the controller shall communicate the rectifications or erasures of data, in accordance with § 1, to the data subject as well as to all recipients of the incorrect, incomplete or irrelevant data, to the extent that he still knows the recipients of the information and that informing these recipients does not prove impossible or involve a disproportionate effort.

If the data subject objects to the processing or the intended processing of personal data relating to him on the basis of § 1, paragraphs two and three, the controller shall inform the data subject within the same period of time of the action he has undertaken to comply with the request.

§ 4. [...]

**Art 12bis.** A decision having legal effects on a person or significantly affecting him, must not be taken purely on the basis of automatic data processing with the aim of assessing certain aspects of his personality.

The prohibition referred to in the first paragraph is not applicable if the decision is taken in the context of an agreement or if it is based on a provision established by or by virtue of an Act, decree or ordinance. That agreement or provision must contain suitable measures to safeguard the legitimate interests of the data subject. The latter must be given at least the chance to defend his point of view efficiently.

**Art 13.** Anyone proving his identity has the right to address the Commission for the Protection of Privacy free of charge, in order to exercise the rights referred to in articles 10 and 12 in relation to the processing operations of personal data mentioned in article 3, §§ 4, 5, 6 and 7.

By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King shall establish the manner in which these rights are to be exercised.

The Commission for the Protection of Privacy shall only inform the data subject of the fact that the necessary verifications have been carried out.

If the data subject's request, however, relates to the processing of personal data by the police services with a view to an identity check, then the King shall establish the information the Commission may disclose to the data subject by decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy.

**Art 14.** § 1. The President of the Court of First Instance, in summary proceedings, shall familiarize himself with claims relating to the right of access to personal data granted by the law, as well as with claims regarding the rectification of, erasure of or prohibition to use incorrect personal data or personal data that is incomplete or irrelevant with a view to the purposes of the processing, or regarding personal data that must not be recorded, communicated or stored, or personal data to the processing of which the data subject has objected, or that have been stored for longer than the authorized period of time.

§ 2. The President of the Court in the complainant's place of residence is competent for the claims referred to in § 1. If the complainant has no place of residence in Belgium, the President of the Court in the controller's place of residence is competent if the controller is a natural person. If the controller is a legal person, the President of the Court where the legal person's registered or administrative offices are located, is competent.

The court order shall be issued in an open session. It shall be immediately enforceable notwithstanding higher appeal or opposition.

§ 3. The claim shall be submitted in the form of an application *inter partes*.

The application must contain the following information or it shall be null and void:

1° the day, month and year;

2° the surname, first name, profession and place of residence of the complainant;

3° the surname, first name and place of residence of the person to be summoned;

4° the object of the claim and a brief summary of the legal arguments to support the claim;

5° the complainant's signature or that of his lawyer.

§ 4. The application shall be sent to the Court Registrar by registered letter or deposited at the Registrar's Office.

Following the payment of the court fees, if necessary, the Court Registrar shall summon the parties by court letter to appear in court for a hearing, at a date and time determined by the judge. The summons shall be sent with an enclosed copy of the application.

§ 5. The claim made in accordance with § 1 shall only be admissible if the request referred to in article 10, § 1, or in article 12, § 2 has been rejected or if no effect has been given to it within the period of time prescribed in article 10, § 1, paragraph two or, according to the case, article 12, § 3, paragraph one.

§ 6. If incorrect, incomplete or irrelevant data or data that must not be stored has been disclosed to third parties, or if the disclosure took place after the authorized data retention period expired, the President of the Court can order the controller to inform the third parties concerned of the rectification or erasure of the data.

§ 7. If due to compelling reasons the fear arises that evidence which may be produced for a claim referred to in § 1, might be concealed or disappear, the President of the Court of First Instance, upon receipt of an *ex parte* application signed and submitted by the party or its lawyer, shall order that every measure be taken in order to prevent such concealment or disappearance.

§ 8. The provisions of §§ 6 and 7 do not limit the general jurisdiction of the President of the Court of First Instance in summary proceedings.

**Art 15.** When the controller receives the request for rectification of, erasure of, or prohibition of the use or disclosure of personal data, or when he is informed of the initiation of the proceedings referred to in article 14, and until a decision has become final, the controller, when disclosing a personal datum, shall immediately and clearly indicate that the datum concerned is contested.

**Art 15bis.** If the data subject incurs damage from an action in violation of the provisions of this Act, paragraphs two and three shall apply, without prejudice to claims made on other legal grounds.

The controller shall be held liable for any damage as a result of an action in violation of the provisions of this Act.

He shall be exempt from liability if he proves that the fact which caused the damage cannot be ascribed to him.

## **Chapter IV - Confidentiality and Security of the Processing**

**Art 16.** § 1. If a processor is entrusted with the processing, the controller or his representative in Belgium, if any, must:

- 1° select a processor providing sufficient safeguards in respect of the technical and organizational measures for the intended processing;
- 2° ensure compliance with these measures, in particular by contractual stipulations;
- 3° lay down the processor's liability towards the controller in that contract;
- 4° agree with the processor that the processor shall only act on behalf of the controller and that he is bound by the same duties as the controller pursuant to paragraph 3;
- 5° establish, in writing or on an electronic medium, the elements of the contract with regard to the protection of data and the requirements with regard to the measures referred to in paragraph 3.

§ 2. The controller or his representative in Belgium, if any, must:

- 1° ensure with due care that the data is kept up-to-date, and that incorrect, incomplete and irrelevant data, as well as data that was obtained or further processed in violation of articles 4 to 8, is rectified or erased;
- 2° ensure that the number of individuals acting under his authority, as well as access to the data and the possible operations carried out on it, are limited to what is necessary for these individuals to fulfil their obligations or to whatever is necessary for the requirements of the service;
- 3° inform all individuals acting under his authority of the provisions of this Act and its implementing decrees, and of all relevant provisions in respect to the protection of privacy in relation to the processing of personal data;
- 4° ensure that the programmes used for the automatic processing of personal data correspond to the information provided in the notification referred to in article 17, and that they are not used unlawfully.

§ 3. Any person having access to the personal data and acting under the authority of the controller or of the processor, as well as the processor himself, may fulfil this obligation only as instructed by the controller, without prejudice to any duty imposed by or by virtue of an act, decree or ordinance.

§ 4. In order to safeguard the security of the personal data, the controller or his representative in Belgium, if any, as well as the processor, must take the appropriate technical and organizational measures that are necessary to protect the personal data from accidental or unauthorized destruction, accidental loss, as well as from alteration, access and any other unauthorized processing of the personal data.

These measures must ensure an appropriate level of security taking into account the state of technological development in this field and the cost of implementing the measures on the one hand, and the nature of the data to be protected and the potential risks on the other.

Having received the opinion of the Commission for the Protection of Privacy the King may issue appropriate standards relating to information security for all or certain categories of processing.

## **Chapter V - Prior Notification and Publicity of the Processing.**

**Art 17.** § 1. Prior to any wholly or partly automatic operation or set of operations intended to serve a single purpose or several related purposes, the controller or his representative, if any, must notify the Commission for the Protection of Privacy.

The previous paragraph does not apply to operations having the sole purpose of keeping a register that is intended to provide information to the public by virtue of an act, decree or ordinance and that is open to consultation either by the general public or by any person demonstrating a legitimate interest.

§ 2. The Commission shall provide a receipt of the notification within three working days. If the notification is incomplete, the Commission must inform the person having submitted the notification of this fact.

§ 3. The notification must mention:

- 1° the date of notification and the act, decree, ordinance or regulatory instrument regarding the automatic processing, if any;
- 2° the surname, first names and complete address or the name and registered offices of the controller and of his representative in Belgium, if any;
- 3° [...](repealed);
- 4° the name of the automatic processing;
- 5° the purpose or the set of related purposes of the automatic processing;
- 6° the categories of personal data being processed and a detailed description of the data referred to in articles 6 to 8;
- 7° the categories of recipients the data can be disclosed to;
- 8° the safeguards that must be linked to the disclosure of the data to third parties;
- 9° the manner in which the data subjects are informed, the service providing for the exercise of the right to access and the measures taken to facilitate the exercise of that right;
- 10° the period of time after the expiration of which, if necessary, the data may no longer be stored, used or disclosed;

11° a general description allowing for a preliminary assessment of whether the security measures taken pursuant to article 16 of this Act are adequate;

12° the grounds supporting the controller's application of article 3, § 3 of this Act, if any.

§ 4. In the context of its powers of supervision and investigation referred to in articles 31 and 32, the Commission for the Protection of Privacy is authorized to demand other information, in particular the origin of the personal data, the choice of automation technology and the security measures that are in place.

§ 5. Notification is required for any purpose or set of related purposes for which wholly or partly automatic operations are carried out.

The Commission shall determine the nature and structure of the notification.

§ 6. If the data being processed is intended, even on an occasional basis, to be transferred to a foreign country, the notification must also mention the following elements, regardless of the medium that has been used:

1° the categories of data being transferred;

2° for each category of data, the country of final destination.

§ 7. If the automatic processing is terminated or if any item of information referred to in § 3 is modified, notification is also required.

§ 8. Having received the opinion of the Commission for the Protection of Privacy, the King can exempt certain categories from notification under this article if, taking into account the data being processed, there is no apparent risk of infringement on the data subjects' rights and freedoms, and if the purposes of the processing, the categories of data being processed, the categories of data subjects, the categories of recipients and the data retention period are specified.

If exemption from the duty of notification has been granted for automatic processing in accordance with the previous paragraph, the controller must disclose the items of information mentioned in §§ 3 and 6 to any person requesting them.

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§ 9. Upon submission of the notification, the controller shall pay a fee to the person designated as the accountable party at the Commission for the Protection of Privacy, in accordance with the Acts on Public Accounts. The King shall determine the amount for this fee, which must not exceed ten thousand francs. [...] He shall also establish the terms of payment.

**Art 17 bis.** Having received the opinion of the Commission for the Protection of Privacy, the King shall determine the categories of processing that imply specific risks with regard to the data subjects' personal rights and freedoms, and establish the specific conditions for these processing operations, safeguarding the data subjects' rights and freedoms, once again having received the proposal of the Commission for the Protection of Privacy.

He can lay down in particular that the controller, alone or jointly with other controllers, shall designate a data protection officer independently ensuring the application of this Act and of its implementing measures.

By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King shall lay down the status of the data protection officer.

**Art 18.** The Commission for the Protection of Privacy shall keep a register of all automatic processing operations of personal data.

Any entry in the register must include the information mentioned in article 17, §§ 3 and 6.

The register shall be open to consultation by all members of the public, in the manner determined by the King.

**Art 19.** If the Commission for the Protection of Privacy is of the opinion that the non-automatic processing of personal data that forms part of or is intended to form part of a filing system, possibly infringes upon privacy, it may, either by virtue of its office or at the data subject's request, impose upon the controller the obligation to disclose to the data subject all or part of the information mentioned in article 17.

**Art 20.** If a specific system of prior authorization or notification of data processing has been provided for by virtue of an act prescribing the disclosure of the information referred to in article 17, §§ 3 and 6 to a special oversight committee as well as the entry into a public register of the information referred to in article 17 §§ 3 and 6, the duties laid down in articles 17, 18 and 19 are considered to have been complied with if all of this information is permanently kept at the disposal of the Commission for the Protection of Privacy.

Article 17, § 9 is applicable accordingly.

## **Chapter VI - Transfer of Personal Data to Countries outside the European Community**

**Art 21.** § 1. Personal data being processed after it has been transferred to a country outside the European Community may only be transferred if the country in question ensures an adequate level of protection and if the other provisions of this Act and its implementing decrees have been complied with. The adequacy of the level of protection is assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations; particular consideration is given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third party country in question and the professional rules and security measures which are complied with in that country.

§ 2. Having received the opinion of the Commission for the Protection of Privacy and pursuant to article 25 of Directive 95/46/EC *on the protection of individuals with regard to the processing of personal data and on the free movement of such data*, the King shall lay down the categories of processing operations for which and the circumstances in which the transfer of personal data to countries outside the European Community is not authorized.

**Art 22.** § 1. By way of derogation from article 21, a transfer or a set of transfers of personal data to a country outside the European Community which does not ensure an adequate level of protection may take place in one of the following cases:

1° the data subject has unambiguously given his consent to the proposed transfer;

2° the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of precontractual measures taken in response to the data subject's request;

3° the transfer is necessary for the conclusion or performance of a contract concluded or to be concluded between the controller and a third party in the interest of the data subject;

4° the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims;

5° the transfer is necessary in order to protect the vital interests of the data subject;

6° the transfer is made from a register which, according to acts or regulations, 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 demonstrate a legitimate interest, to the extent that the conditions laid down in law for consultation are fulfilled in the case at hand.

Without prejudice to the provisions of the previous paragraph, having received the opinion of the Commission for the Protection of Privacy, the King may authorize a transfer or a set of transfers of personal data to a country outside the European Community which does not ensure an adequate level of protection, if the controller ensures adequate safeguards with respect to the protection of privacy and

fundamental rights and freedoms of individuals, and regarding the exercise of the corresponding rights; such safeguards can result from appropriate contractual clauses in particular.

## **Chapter VII - The Commission for the Protection of Privacy**

**Art 23.** An independent Commission shall be established under the auspices of the Belgian House of Representatives, called "Commission for the Protection of Privacy", composed of members appointed by the House of Representatives, including the President and the Vice-President.

The seat of the Commission shall be located in the administrative district of the Belgian capital of Brussels.

**Art 24.** § 1. The Commission shall consist of eight permanent members, at least one of whom is a magistrate acting as President, and of eight substitute members, at least one of whom is a magistrate.

§ 2. The Commission shall consist of an equal number of Dutch native speakers and French native speakers.

§ 3. [...] (repealed)

§ 4. Commissioners shall be elected for a renewable six-year term from lists submitted by the Council of Ministers, which proposes two candidates for each vacant mandate. They may be removed from office by the Belgian House of Representatives for shortcomings in the fulfilment of their duties or for insufficient respect for the dignity of their office.

Commissioners must offer all possible guarantees with a view to the independent discharge of their functions and be experts in the field of data protection.

The Commission shall be composed in such a manner that there is a socio-economic balance among its members.

In addition to the President, the Commission's permanent and substitute members include at least one legal expert, one IT specialist, one private sector expert in personal data management and one public sector expert in personal data management.

§ 5. To be appointed as permanent member or substitute member of the Commission and to maintain such mandate, candidates must meet the following conditions:

1° have Belgian nationality;

2° have civil and political rights;

3° not be a member of the European Parliament, of the Federal Parliament nor of a Community or Regional Parliament.

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§ 6. Within the limits of their competences, commissioners shall not be instructed by anyone. They cannot be removed from office for any opinion they have expressed or any action they have performed in the fulfilment of their duties.

§ 7. Commissioners are not allowed to attend any deliberation on matters in which they, their relatives or in-laws to the fourth degree have a personal interest.

**Art 25.** When a permanent member is excused, absent, or when his mandate becomes vacant, this commissioner is replaced by his substitute.

The previous paragraph applies to the calculation of the quorum of attendance and to the vote referred to in article 28, paragraph two, if any. The Commission may meet in a group of permanent and/or substitute members.

Any permanent or substitute member whose mandate becomes vacant before the expiration of the six-year term, shall be replaced by a permanent or substitute member to be elected for the remainder of the term, in accordance with the procedures referred to in article 24.

**Art 26. § 1.** The President of the Commission fulfils his duties on a full-time basis. His Court of Law must transfer him by law. He is in charge of the day-to-day management of the Commission, supervises the secretariat, presides over the meetings of the Commission in its various sections or authorizes another member of the Commission to do so, and represents the Commission. He regularly reports to the Commission during its Board meetings.

For the duration of his mandate, he must not exercise any other professional activity. The House that has appointed him may authorize derogations from this incompatibility, provided that they do not interfere with the proper fulfilment of his duties.

His replacement as magistrate takes place through supernumerary appointment. If the President is the head of the Public Prosecution office or of any other court, he is replaced through the supernumerary appointment of a magistrate from the next lower rank.

He shall enjoy a salary equal to that of the Deputy-Attorney General of the Supreme Court, as well as the corresponding pay raises and benefits.

He shall return to his position at the moment his mandate ends.

§ 2. The President is assisted in the discharge of his functions by a Vice-President appointed by the House of Representatives among the permanent members mentioned in article 24, § 1, who belongs to a native linguistic group different from that of the President.

The Vice-President fulfils his duties on a full-time basis and the provisions of § 1, paragraphs two and four, are applicable to him.

Section 1, paragraphs three and five are applicable to the Vice-President if he is a magistrate. Whenever the President has other engagements, the Vice-President takes over his duties.

**Art 27.** Prior to accepting their mandate, the President, the Vice-President, the other permanent members and the substitute members take the following oath administered by the President of the House of Representatives: "I swear to fulfil the duties of my mission conscientiously and impartially."

**Art 28.** The Commission for the Protection of Privacy must draw up its Rules of Procedure within a one-month term following its establishment. The Rules shall be transmitted to the Federal Parliament.

The Commission's deliberations are only legitimate when at least a majority of commissioners is present during its meetings. It takes decisions by absolute majority. In case of a tie, the President, or in his absence his substitute, has the casting vote.

**Art 29.** § 1. The Commission issues its opinion either of its own accord, or at the request of the Government, the Federal Parliament, the Community or Regional Governments, the Community or Regional Parliaments, the United Board or the United Assembly referred to in article 60 of the special Act of 12 January 1989 *on the Brussels Institutions*, or an oversight committee, on any matter relating to the application of the fundamental principles of the protection of privacy, in the context of this Act and any act containing provisions relating to the protection of privacy in relation to the processing of personal data.

§ 2. Any request shall be submitted to the Commission by registered letter.

Unless otherwise prescribed by law, the Commission shall issue its opinion within a period of sixty days following the communication of all necessary information to the Commission.

§ 3. In cases requiring the Commission's opinion by virtue of an act, decree or ordinance, this requirement may be waived if the opinion was not issued within the period of time referred to in section 2. In cases requiring the Commission's opinion by a provision of this Act, except for article 11, the period of time referred to in § 2 is reduced to a minimum of fifteen days in cases involving special urgent grounds.

§ 4. The Commission's opinions are supported with reasons.

§ 5. The Commission shall communicate its opinion to the requesting public authority.

A copy of the opinion is transmitted to the Minister of Justice.

In cases requiring the Commission's opinion, it shall be published in the Belgian Official Journal along with the regulatory provision to which it relates.

**Art 30.** § 1. The Commission may make recommendations either of its own accord, or at the request of the Government, the Federal Parliament, the Community or Regional Governments, the Community or Regional Parliaments, the United Board or the United Assembly referred to in article 60 of the special Act of 12 January 1989 *on the Brussels Institutions*, or an oversight committee, on any matter relating to the application of the fundamental principles of the protection of privacy, in the context of this Act and any laws containing provisions regarding the protection of privacy in relation to the processing of personal data.

§ 2. Prior to making a recommendation to a specific controller, the Commission shall provide the controller with the opportunity to explain his point of view.

§ 3. The Commission's recommendations are supported with reasons. A copy of each recommendation is transmitted to the Minister of Justice.

**Art 31.** § 1. Without prejudice to any claim brought before a court and unless otherwise prescribed by law, the Commission investigates the signed and dated complaints it receives. These complaints may concern its duties regarding the protection of privacy in relation to the processing of personal data, or other duties that have been conferred upon it by law.

§ 2. Proceedings are regulated in the Rules of Procedure. These rules provide for the exercise of a right of defence.

§ 3. The Commission examines the admissibility of the complaint. If the complaint is admissible, the Commission shall fulfil any mission of mediation it sees fit. If an amicable settlement between parties is reached respecting privacy, the Commission drafts a report explaining the solution that has been reached. If the parties concerned cannot settle, the Commission shall issue an opinion on the legitimacy of the complaint. It may decide to add recommendations for the controller to the opinion.

§ 4. The Commission's decisions, opinions and recommendations are supported with reasons.

§ 5. The Commission communicates its decision, opinion or recommendation to the complainant, the controller and any other party involved in the proceedings. A copy of the decision, opinion or recommendation is transmitted to the Minister of Justice.

**Art 31bis.** § 1. The law establishes Sector Committees within the Commission. These committees are authorized to examine requests concerning the processing or the disclosure of data subject to special laws, and to come to a decision on the case in question within the legally determined boundaries.

§ 2. Without prejudice to article 37 of the Act of 15 January 1990 *establishing and organizing a Crossroads Bank of Social Security*, every Sector Committee consists of three permanent or substitute members of the Commission, among them the President or a member appointed as President by the Commission, as well as three external members appointed by the House of Representatives in accordance with the conditions and further rules stipulated by the special legislation organizing the Committee in question. In case of a tie, the President has the casting vote.

The highest-ranked civil servant of the managing institution for the sector in question may be invited to take part in the meetings of the Committee with an advisory vote.

§ 3. The Commission shall send the requests it has received concerning the processing or the communication of data regulated by special legislation, to the competent Sector Committee, if any such committee has been established, and to the managing institution of the sector concerned. To the extent the dossier is complete, the latter shall transmit a technical and legal opinion to the Committee within fifteen days of receipt of the request. Under the same reservations, the Committee shall decide within thirty days of receipt of the opinion or when the fifteen-day term has expired. Otherwise its decision shall be considered as corresponding with the technical and legal opinion of the managing institution.

In case a request as described in the previous paragraph has to be treated for urgent reasons and within a shorter period of time than the one stipulated in that paragraph, the President shall transmit the request, the technical and legal opinion, and the draft decision to the members as soon as possible. The members are then requested to inform the President of their views concerning the draft decision within such period as determined by the President.

The draft decision shall only be final if none of the members raise an objection with regard to the essential elements of the decree, within the period determined by the President. If necessary, the President shall convene an extraordinary meeting of the Sector Committee. In consultation with the highest-ranked civil servant of the institution concerned, the President shall verify the existence of urgent reasons justifying the application of the two previous paragraphs. Without prejudice to article 44 of the Act of 15 January 1990, the President of the Committee may suspend the examination of the dossier in order to transmit it to the Commission, which shall come to a decision within one month.

§ 4. Any person assuming the Presidency of a section is entitled to a double attendance fee, except if that person is the President or the Vice-President of the Commission.

§ 5. Without prejudice to article 41 of the Act of 15 January 1990, the Sector Committees are located at the Commission's main offices, where their meetings take place, except if the managing institution in question requests for the committee it works under to be located and to meet at its own offices.

The Commission may grant this request, on the condition that the managing institution ensures in advance that the offices and office equipment necessary for the proper functioning of the committee and its Presidency, as well as a Secretary selected by the Presidency in consultation with the highest-ranked civil servant of the institution in question, and specialized staff, notably legal advisors and IT specialists, are made available to the President, to the extent that this is necessary for the proper fulfilment of the Sector Committee's duties. The President of the Sector Committee is responsible for staff performance for this Committee.

**Art 32.** § 1 The Commission may call upon the assistance of experts to carry out its functions. It may instruct one or more of its members, accompanied by an expert if necessary, to carry out on-site investigations.

In that case commissioners shall have the status of Officers of Judicial Police – Assistant Officers of the Public Prosecutor.

They may demand, among other things, the disclosure of any documents that may be of use for their investigation.

They shall also have access to all places they may reasonably suppose to be the location for activities relating to the application of this Act.

§ 2. Unless otherwise described by law, the Commission shall inform the Public Prosecutor of any offence it is aware of.

The Commission shall submit an annual activity report to the Federal Parliament.

This report, which is public, shall contain general information on the application of this Act and on the Commission's activities, as well as specific information on the application of articles 3, §§ 3 and 6, 13, 17 and 18.

§ 3. Without prejudice to the competence of regular courts and tribunals regarding the application of the general principles concerning the protection of privacy, the President of the Commission may submit any dispute relating to the application of this Act and its corresponding measures to the Court of First Instance.

**Art 32bis.** § 1. With a view to the application of international treaties, the King may appoint the Commission for the Protection of Privacy by decree after deliberation in the Council of Ministers, to carry out, by virtue of those treaties, functions identical to those assigned to the Commission by this Act.

§ 2. With a view to the application of international treaties the Commission for the Protection of Privacy is authorized to appoint some of its commissioners or members of staff as representatives for international authorities who are in charge of functions identical to those assigned to the Commission by this Act.

The King shall establish specific rules relating to such representation, having received the opinion of the Commission for the Protection of Privacy.

**Art 33.** Without prejudice to article 32, § 2, commissioners and members of staff, as well as experts whose assistance has been requested, are bound to secrecy regarding the nature of the facts, the actions or the information they have become aware of in the discharge of their functions.

**Art 34.** Without prejudice to the competence of the House of Representatives to examine and approve the detailed budget of the Commission for the Protection of Privacy, and to supervise its execution as well as to verify and approve detailed accounts, the credits for such budget shall be allocated from the general state budget.

In addition to its budget proposal the Commission shall submit a summary management plan, the form and content of which it shall determine without prejudice to the observations of the House of Representatives; the annual activity report referred to in article 32, § 2, paragraph two, shall include a section describing the follow-up of such plan.

[...] (repealed)

**Art 35.** § 1. The Commission shall have a secretariat at its disposal, the level of staffing, the statute and the recruitment of which are prescribed by the House of Representatives, by the proposal of the Commission. The level of staffing shall allow for the possibility to hire employees with a fixed-term contract, to a restricted and reasonably justified extent.

Secretariat staff shall be subject to the legal and statutory provisions applicable to appointed civil servants, unless the Commission, with a view to the proper functioning of its services, decides otherwise by an order approved by the House of Representatives.

§ 2. Members of staff employed by the Commission at the time the Act of 26 February 2003 *amending the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data* and the Act of 15 January 1990 *establishing and organizing a Crossroads Bank of Social Security*, which modifies the status of the Commission for the Protection of Privacy and increases its competences, come

into force, shall retain their function and statute until the measures taken pursuant to § 1 are approved. If the civil servants, as a result of the designations in accordance with these measures, are not transferred, they shall return by law to the services of the Federal Public Service of Justice, with according statutes applicable.

**Art 36.** The President shall be entitled to a remuneration equal to the salary of an investigating magistrate with nine years of seniority in a Court having jurisdiction over a district of at least 500,000 inhabitants.

The substitute President, the substitute Vice-President and the permanent or substitute members shall be entitled to an attendance fee that shall amount to EUR 223.18 (index 1.2682). The amount shall be linked to the evolution of the consumer price index.

They shall be entitled to allowances for travel and accommodation in accordance with the provisions applicable to the staff of the ministries. Any person who does not belong to the administration or whose grade has not been ranked shall be regarded as a civil servant of rank 13.

The President shall be regarded as a civil servant of rank 17.

Experts whose assistance has been demanded by the Commission or who assist commissioners in their on-site investigations, can be remunerated in the manner determined by the Minister of Justice in deliberation with the Ministers of the Civil Service and the Budget.

The remuneration referred to in paragraph one shall be linked to the mobility regulations applicable to the salary of civil servants on active duty.

## **Chapter VII*bis* - Sector Committees**

**Art 36*bis*.** Within the Commission for the Protection of Privacy a Sector Committee for the Federal Government shall be established within the meaning of article 31*bis*. The Federal Public Service for Information and Communication Technology shall be considered as the managing institution for the Sector Committee for the Federal Government referred to in article 31*bis*.

By decree after deliberation in the Council of Ministers the King shall determine the conditions and further rules with which the three external members of the Sector Committee for the Federal Government must comply.

Except for cases determined by the King, any electronic disclosure of personal data by a Federal Public Service or a public institution with a legal personality that is under the jurisdiction of the Federal Government, shall require an authorization of principle by this Sector Committee, unless the disclosure is already subject to an authorization of principle of another Sector Committee established within the Commission for the Protection of Privacy.

Prior to granting its authorization, the Sector Committee for the Federal Government shall check whether the disclosure complies with legal and regulatory provisions.

Once the authorizations granted by the Sector Committee for the Federal Government have become final, they shall be public. They shall be published on the website of the Commission for the Protection of Privacy.

The highest-ranked civil servant of the Federal Public Service or of the public institution with a legal personality that is under the jurisdiction the Federal Government, or a member of staff designated by him, can take part in the meetings of the Sector Committee for the Federal Government with an advisory vote.

### **Chapter VIIter – Supervisory body for police information management**

**Art. 36ter.** § 1. A supervisory body for police information management, in charge of supervising the processing of the information and data referred to in article 44/1 of the Belgian Act on the office of police, including the information and data in the databases referred to in article 44/2, shall be established at the Commission for the Protection of Privacy.

§ 2. For the performance of its duties this body shall be independent of the Commission for the Protection of Privacy. It shall share its secretariat with that of the Commission for the Protection of Privacy.

§ 3. The functioning of the supervisory body shall be subject to rules of procedure which must be approved by the Belgian House of Representatives.

§ 4. The supervisory body shall not deal with the requests referred to in article 13, but serious or recurring shortcomings observed in the context of the processing of these requests can be submitted to the supervisory body by the Commission for the Protection of Privacy.

**Art. 36ter/1.** § 1. The supervisory body shall be chaired by a magistrate of the courts and tribunals appointed by the Belgian House of Representatives.

Moreover, the supervisory body shall be composed of a member of the Commission for the Protection of Privacy, one or more members of the local police services and of the federal police services, as well as one or more experts.

The number of experts must not exceed the number of members of the police services.

The members of the supervisory body shall be appointed for a once renewable six-year term by the Belgian House of Representatives, based on their knowledge regarding the management of police information. Upon expiry of this term the members shall remain in office until their successor has taken the oath.

§ 2. The appointment of the supervisory body's chair shall take place after this person has taken the oath prescribed by article 2 of the Belgian Decree of 30 July 1831 before the chair of the Belgian House of Representatives. The appointment of the other members of the supervisory body shall take place after they have taken the same oath before the chair of the supervisory body.

§ 3. The provisions of article 323*bis* of the Judicial Code shall apply to the chair of the supervisory body.

The chair shall enjoy a salary equal to that of a chair of a court of first instance with a jurisdiction of less than two hundred and fifty inhabitants, as well as the corresponding rises and benefits, without this salary being lower than that which he enjoyed in his office of magistrate.

§ 4. At the time of their appointment the members of the supervisory body must meet the following conditions:

1° have Belgian nationality;

2° have civil and political rights;

3° be of irreproachable behaviour;

4° prove their expertise in the processing of information or the protection of data;

5° have a security clearance of "top secret" level, which was granted in compliance with the Act of 11 December 1998 on classification and security clearances, security certificates and security recommendations.

§ 5. Moreover, at the time of their appointment, the following conditions must have been met for the members of staff of the police services who are a member of the supervisory body:

1° have at least one year of seniority and at least the rank of Chief of Police or of level 1;

2° not have had a final "insufficient" assessment during the five years preceding their candidacy, nor have been subject to a severe disciplinary sanction;

3° have a minimum of 1 year of experience in the processing of information or the protection of data.

§ 6. Moreover, at the time of their appointment, the experts must meet the following specific conditions:

1° have five years of experience as an expert in the area of the processing of information or the protection of data;

2° hold a degree granting access to the positions of level one in Belgian national administrations, or have held an office of level 1 in Belgian national administrations for at least five years.

§ 7. The chair and the members of the supervisory body can be removed from office by the Belgian House of Representatives if they no longer meet the conditions referred to in §§ 3, 4 and 5 and in article 36*ter*/2 or based on serious grounds.

§ 8. Members must not hold a public office granted following elections. They must not hold a public or private position or perform an activity that could jeopardize the independence or the dignity of the office.

**Art. 36*ter*/2.** The members of the supervisory body shall perform their duties fulltime, except for the member of the Commission for the Protection of Privacy who can perform his duties as member of the supervisory body on a part-time basis.

**Art. 36*ter*/3.** The exercise of the office of member of the supervisory body is incompatible with:

1° the capacity of member of the general inspection of the federal police services and the local police services;

2° the capacity of member of the Standing Police Monitoring Committee or its Investigation Department; of the Standing Intelligence Agencies Review Committee or its Investigation Service, of an intelligence service or of the Coordination Unit for Threat Assessment.

**Art. 36*ter*/4.** Subject to the provisions of this chapter, the status of the members of the supervisory body who are a member of the police services shall be established in compliance with article 21, § 1 of the Belgian Royal Decree of 26 March 2005 on the regulation of structural secondments of members of staff of the police services and of similar situations and on the introduction of several measures.

Members of staff of the local police services will be financed in compliance with article 20 of the same Royal Decree.

**Art. 36*ter*/5.** Upon termination of their mandate at the supervisory body members of staff of the police services will be transferred in compliance with the provisions of the Belgian Royal Decree of 30 March 2001 on the legal position of the members of staff of the police services.

**Art. 36ter/6.** Members of staff of the police services who are a member of the supervisory body and who are also found apt for another position with the police services shall have precedence over all other candidates in relation to the assignment of the office, even if the latter have legal precedence.

The precedence referred to in the first paragraph shall hold during the last year of the six years at the supervisory body.

Under the same conditions a two-year term of precedence is granted at the beginning of the tenth year one is in office at the supervisory body.

**Art. 36ter/7.** Leave for a mission of general interest can be granted to a civil servant of a federal public authority in order to perform the duties of expert at the supervisory body. The King shall stipulate further rules for this leave.

**Art. 36ter/8.** The supervisory body shall intervene officially at the request of the Commission for the Protection of Privacy, of the judicial or administrative authorities, of the Minister of Justice or the Minister of Home Affairs, or of the House of Representatives.

When the supervisory body carries out official interventions it shall immediately make this known to the House of Representatives.

When an inspection has taken place at a local police service, the supervisory body shall make this known to the mayor or the police board and it shall send them its report.

When the inspection relates to information and data regarding the performance of duties of judicial police, the report drawn up by the supervisory body in this context shall also be sent to the competent magistrate of the public prosecution.

**Art. 36ter/9.** More in particular, the supervisory body is in charge of supervising respect of the rules on direct access to the GND and direct queries of this database, and respect of the obligation referred to in article 44/7, third paragraph, of the Belgian Act of 5 August 1992 on the office of police, which applies to all members of the police services in order to feed the database.

**Art. 36ter/10.** § 1. With an investigation of the operation of the GND, the supervisory body shall verify whether the contents of the database and the procedure for the processing of the data and information it

contains comply with what has been stipulated in articles 44/1 to 44/11/13 of the Act of 5 August 1992 on the office of police and these articles' implementing measures.

§ 2. More in particular, the supervisory body shall verify the legitimacy of the following processing operations in the general database and in basic databases:

- 1° the evaluation of the data and information;
- 2° the registration of the collected data and information;
- 3° the validation of data and information by authorised bodies;
- 4° the capture of registered data and information based on its concrete nature or reliability;
- 5° the deletion and the archiving of data and information after its retention term has expired.

§ 3. More in particular, the supervisory body shall verify the real nature of the following features and processing operations prescribed by authorised police authorities:

- 1° relationships between the categories of registered data and information at the time they were captured;
- 2° reception of the data and information by the authorities and services legally authorised to consult them;
- 3° communication of the data and information to legally authorised authorities and services;
- 4° connection with other information processing systems;
- 5° special rules on the capture of data and information based on its concrete reliability.

With an investigation of the operation of special databases, the supervisory body shall verify whether the contents of the databases and the procedure for the processing of the data and information registered and retained in the databases comply with what has been stipulated in articles 44/1 to 44/5 and 44/11/3 of the Act of 5 August 1992 on the office of police and these articles' implementing measures.

More in particular, the supervisory body shall verify whether the conditions are met for direct access to and communication of the information and data in the special databases which are included in the central directory of special databases mentioned in article 44/11/3, § 5 of the Act of 5 August 1992 on the office of police.

**Art. 36ter/11.** The supervisory body has an unlimited right to access all the information and data processed by the police services pursuant to article 44/1 of the Act of 5 August 1992 on the office of police, including the data and information in the GND, basic databases and special databases.

In the context of its supervisory missions, the supervisory body can direct one or more of its members to conduct an on-site investigation. To do so, members of the supervisory body have an unlimited access right to the rooms where and during the term the information and data mentioned in the first paragraph are processed.

**Art. 36ter/12.** § 1. At the latest two weeks after receiving a request the supervisory body shall provide the competent authority with an elaborate opinion on the designation, the promotion, the appointment or the transfer of the members of staff of the police services in charge of managing the GND.

§ 2. Within two weeks after receiving the request the supervisory body shall provide the competent minister with an elaborate opinion on the advisability of a disciplinary procedure in respect of the head of the service managing the GND or in respect of his deputy.

**Art. 36ter/13.** The supervisory body shall report to the Belgian House of Representatives in the following cases:

1° annually, by means of a general activity report which, if necessary, contains general conclusions and proposals and relates to the period from 1 January to 31 December of the preceding year. This report shall be sent to the chair of the Belgian House of Representatives and to the competent ministers at the latest on 1 June;

2° every time it considers a report useful, or at the request of the House of Representatives, by means of an intermediary activity report relating to a specific case under investigation which, if necessary, can contain general conclusions and proposals. This report shall be sent to the chair of the Belgian House of Representatives and to the competent ministers;

3° when the Belgian House of Representatives has formulated a request to intervene;

4° when the supervisory authority observes that, upon expiry of a term it deems reasonable, its decisions have not been carried out or if the measures taken are inappropriate or insufficient. This term shall not be shorter than sixty days.

**Art. 36ter/14.** Until their present mandate ends, the members of the supervisory body who are in office at the time this article enters into force can decide to stay subject to the provisions of the statute that applied to the members of the supervisory body before the latter was placed under the authority of the

Belgian House of Representatives. Upon termination of their mandate they will officially be subject to the provisions on their statute stipulated in this act.

## **Chapter VIII – Penalties**

**Art 37.** Any commissioner or member of staff of the Commission for the Protection of Privacy or any expert who has violated the obligation of secrecy referred to in article 33 shall be punished with a fine of two hundred euros to ten thousand euros.

**Art 38.** Any controller, his representative in Belgium, agent or assignee who does not comply with the obligations laid down in articles 15 or 16, § 1 shall be punished with a fine of one hundred euros to twenty thousand euros.

**Art 39.** A fine of one hundred euros to one hundred thousand euros shall be imposed on:

1° any controller, his representative in Belgium, agent or assignee processing personal data in violation of the conditions imposed by article 4 § 1;

2° any controller, his representative in Belgium, agent or assignee processing personal data in cases other than those in article 5;

3° any controller, his representative in Belgium, agent or assignee processing personal data in violation of articles 6, 7 and 8;

4° any controller, his representative in Belgium, agent or assignee having failed to comply with the duties imposed by article 9;

5° any controller, his representative in Belgium, agent or assignee having failed to communicate the information referred to in article 10, § 1 within forty-five days of receipt of the request, or who knowingly communicates incorrect or incomplete information;

6° any person who resorts to acts of violence, force, threats, donations or promises with the purpose of forcing another person into disclosing information that was obtained through the exercise of the right defined in article 10, § 1, or with the purpose of obtaining the other person's consent for the processing of personal data relating to that person;

7° any controller, his representative in Belgium, agent or assignee having started, managed, continued to manage or terminated the automatic processing of personal data without meeting the requirements of article 17;

8° any controller, his representative in Belgium, agent or assignee having communicated incomplete or incorrect information in the notifications imposed by article 17;

9° [...] (repealed)

10° any controller, his representative in Belgium, agent or assignee who, in violation of article 19, refuses to communicate to the Commission information relating to a non-automatic processing operation of personal data that forms part of a filing system or that is intended to form part thereof;

11° [...] (repealed)

12° any person who transfers personal data or has personal data transferred to a country outside the European Community included in the list referred to in article 21, § 2, or any person who authorizes such transfers despite the requirements of article 22;

13° any person who prevents the Commission, its commissioners or its experts from proceeding with the investigation referred to in article 32.

**Art 40.** Upon conviction for any of the offences described in articles 38 or 39, the court can order the entire or partial publication of the judgment in one or more newspapers in the manner it shall determine, and at the expense of the convicted person.

**Art 41.** § 1. Upon conviction for any of the offences described in article 39, the judge can pronounce the seizure of the media containing the personal data to which the offence relates, such as manual filing systems, magnetic discs or magnetic tapes, except for computers or any other equipment, or he can order the erasure of the data.

Seizure or erasure can also be ordered even if the media containing the personal data do not belong to the person convicted.

Article 8, § 1 of the Act of 29 June 1964 *on suspension, postponement and probation*, applies neither to the seizure, nor to the erasure ordered in accordance with paragraphs one and two.

The objects seized shall be destroyed when the judgment has become final.

§ 2. Without prejudice to the revocation of competences laid down in particular provisions, the Court can, upon conviction for an offence mentioned in article 39, impose a prohibition to manage any processing of personal data, directly or through an intermediary, for a maximum of two years.

§ 3. Any violation of the prohibition laid down in § 2 or any recidivism relating to the offences referred to in articles 37, 38 and 39, shall be punished with a three-month to two-year imprisonment and/or with a fine of one hundred euros to one hundred thousand euros.

**Art 42.** The controller or his representative in Belgium shall be liable under civil law for the payment of the fines incurred by his agent or assignee.

**Art 43.** All provisions of Book I of the Belgian Criminal Code, including Chapter VII and article 85, apply to the offences described by this Act or its implementing decrees.

## **Chapter IX - Final provisions**

**Art 44.** By decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy, the King can establish further rules with regard to the application of the provisions of this Act, in order to take into account the specifics of different sectors.

Professional associations and other organizations representing categories of controllers who have drawn up draft codes of conduct or who intend to modify or extend existing codes of conduct, can submit these codes to the Commission for the Protection of Privacy.

More specifically, the Commission shall verify that the drafts submitted to it are in accordance with this Act and its implementing decrees, and investigate the points of view of the parties concerned or of their representatives to the extent that it is practical.

**Art 45.** The King can appoint the public authorities that shall order, in times of war or in times that are regarded as equivalent thereto in accordance with article 7 of the Act of 12 May 1927 *on Military Claims*, as well as during the occupation of the Belgian territory by the enemy, the destruction of the data processed, or order the public authorities to destroy the data themselves.

The King can also determine the amounts of the compensation for the destruction referred to in the previous paragraph.

Any person violating or making unlawful use of the decrees implementing the first paragraph, or abusing the right of destruction laid down in it, shall be punished with a fine of one hundred euros to one hundred thousand euros.

**Art 46.** In article 580, 14° of the Belgian Code of Civil Proceedings, for "and those referred to in article 587, 3°" there is substituted "and those referred to in article 14 of the Act of... on the protection of privacy in relation to the processing of personal data."

**Art 47.** In article 587 of this Code the following amendments have been made:

(...)

**Art 48.** In article 5, paragraph two of the Act of 8 August 1983 *establishing a national register of natural persons*, amended by the Acts of 15 January 1990 and 19 July 1991, for "having received the opinion of the Commission referred to in article 12" there is substituted "having received the opinion of the

Commission for the Protection of Privacy established by the Act of ... on the protection of privacy with regard to the processing of personal data."

**Art 49.** In the Belgian Act of 15 January 1990 *establishing and organizing a Crossroads Bank of Social Security* the following is amended:

(...)

**Art 50.** Article 25 of the Act coordinated on 16 March 1968 *on the road traffic police*, cancelled by the Act of 9 July 1976 and reintroduced by the Act of 18 July 1990, is amended as follows:

(...)

**Art 51.** In the Act of 12 June 1991 *on consumer credit*, the following amendments have been made:

(...)

**Art 52.** Every provision of this Act shall enter into force on the date established by the King and at the latest on the first day of the twenty-fourth month following the publication of this Act in the Belgian Official Journal.

The King shall determine the period of time for the person keeping a filing system to comply with the provisions of this Act for data processing operations in place at the moment the provisions of the Act enter into force.