

# **Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data<sup>1</sup>**

## **Unofficial English translation – Consolidated version<sup>2</sup>**

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<sup>1</sup> Although the date and title of the initial act remain, its corpus has been largely replaced as a consequence of the implementation of Directive 95/46/EC by the Act of 11 December 1998, which was published in the Belgian State Gazette on 3 February 1999 and entered into force on 1 September 2001.

<sup>2</sup> This version is consolidated to 1 October 2008. Bibliographical information can be found at the end of this document.

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## CHAPTER I. - Definitions, principle and scope.

### Article 1.

§ 1. In this Act "personal data" means any information relating to an identified or identifiable natural person, hereafter referred to as "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 that is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, as well as blocking, erasure or destruction of personal data.

§ 3. "Filing system" means any structured set of personal data which are accessible in accordance with specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis.<sup>4</sup>

§ 4. "Data controller" means the natural or legal person, the association without legal personality or the public authority which alone or jointly with others determines the purpose and means of the processing of personal data.

Where the purpose and means of processing are determined by or by virtue of a law, a decree or an ordinance, the data controller is the natural or legal person, the association without legal personality or the public authority designated as such by or by virtue of the law, the decree or the ordinance.<sup>5</sup>

§ 5. "Data processor" means the natural person, the legal person, the association without legal personality or the public authority which processes personal data on behalf of the data controller, other than the persons who, under the direct authority of the data controller, are authorized to process the data.

§ 6. "Third party" means the natural person, the legal person, the association without legal personality or the public authority other than the data subject, the data controller, the data processor and the persons who, under the direct authority of the data controller or the data processor, are authorized to process the data.

§ 7. "Recipient" means the natural person or the legal person, the association without legal personality or the public authority to whom data are disclosed, whether a third party or not; however, regulatory or judicial authorities to whom personal data may be communicated in the course of a special investigation shall not be 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 or his legal representative signifies his agreement to personal data relating to him being processed.

### Article 2.

Every natural person has the right, with regard to the processing of personal data relating to him, to respect for his fundamental rights and freedoms, in particular the right for the protection of his privacy.

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<sup>4</sup> In its decision of 16 May 1997, the Belgian Supreme Court (*Hof van Cassatie / Cour de Cassation*) held: "There can only be a filing system within the meaning of Article 1, §2 (old reference), if a systematical access to the set of personal data is enabled through the logically structured manner in which it is assembled and stored. A set of personal data that does not enable in any way to process, modify, erase or disseminate the data it contains, nor to store these personal data in a durable manner, in view of the systematic access thereto is not a filing system, even though it may be logically structured."

<sup>5</sup> The words "decree" and "ordinance" are used not in their usual English meaning, by default of a better translation. In this translation, they relate to the legislative acts of the Communities and the Regions. Hierarchically, they have the same force as an act, but their territorial scope is more limited.

The word "royal decree" refers to statutory instruments issued by the government to implement legislative acts within the boundaries set out in that act. Hierarchically, they have a lower rank than the legislative acts they implement.

### Article 3.

§ 1. This Act applies to the processing of personal data wholly or partly by automatic means, as well as to the processing otherwise than by automatic means of personal data which form part or are 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 purposes of journalism, or artistic or literary expression, provided that the processing concerns personal data which have manifestly been rendered public by the data subject or which are closely connected with the public nature of the data subject or with the fact with which the data subject is involved.

b) Article 9, §1, does not apply to the processing of personal data solely for the purposes of journalism, or artistic or literary expression, provided that the application thereof would hinder the collection of data with the data subject.

Article 9, §2 does not apply to the processing of personal data solely for the purposes of journalism, or artistic or literary expression, provided that the application thereof would result in one or more of the following consequences:

- the collection of data would be hindered by the application;
- an intended publication would be hindered by the application;
- the application would provide indications as to the sources of the information.

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

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

§ 4. Articles 6 to 10, 12, 14, 15, 17, 17bis, section one<sup>6</sup>, 18, 20 and 31, §§ 1 to 3, do not apply to the processing of personal data by the Administration of State Security, by the General Intelligence and Security Service, by the authorities indicated in articles 15, 22ter and 22quinquies of the Act of 11 December 1998 concerning the classification and the security clearances, security attestations and security advice and the appeal board created by Act of 11 December 1998 creating an appeal board concerning security clearances, security attestations and security advice, by the security officers and by the Permanent Committee for the Control of Intelligence Services and its Investigation Service, and by the Coordination Service for Threat Analysis, provided the data processing is necessary to carry out their respective missions.

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

1° the processing of personal data managed by the public authorities in the performance of their judicial police duties;<sup>7</sup>

2° the processing of personal data managed by the police services referred to in article 3 of the Act of 18 July 1991 regulating the supervision of police and intelligence services, in view of performing their duty as administrative police;<sup>8</sup>

3° the processing of personal data managed by other public authorities designated by royal decree, deliberated in the Council of Ministers after having obtained advice from the Commission for the protection of privacy, in view of performing their duty as administrative police;

4° the processing of personal data that has become necessary as a consequence of the application the Act of 11 January 1993 on the prevention of the use of the financial system for the purpose of money laundering;

5° the processing of personal data managed by the Permanent Committee for the Control of Police Services and its Investigation Service in view of performing their legal duties.

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<sup>6</sup> For the sake of consistency, an article is divided in "paragraph(s)" and "subparagraph(s)" when the original text mentions the sign "§". Otherwise, an article is divided in "sections".

<sup>7</sup> See on judicial police: <[http://www.polfed-fedpol.be/org/org\\_dgi\\_en.php](http://www.polfed-fedpol.be/org/org_dgi_en.php)>.

<sup>8</sup> See on administrative police: <[http://www.polfed-fedpol.be/org/org\\_dga\\_en.php](http://www.polfed-fedpol.be/org/org_dga_en.php)>.

§ 6. Articles 6, 8, 9, 10, §1 and 12 do not apply, after authorization by the King by a royal decree deliberated in the Council of Ministers, to the processing of personal data managed by the European Centre for missing and sexually exploited children, hereafter referred to as “the Centre”, a foundation of public utility founded by Charter of 25 June 1997 and recognized by Royal Decree of 10 July 1997 for the reception, the communication to the judicial authority and the follow-up of information on persons suspected, in a specific file on the disappearance or sexual exploitation, from having committed a crime or misdemeanour. This royal decree fixes the duration and the conditions of the authorization after having taken advice from the Commission for the protection of privacy.

The Centre is not authorized to keep a file of persons suspected of having committed a crime or misdemeanour or of convicted persons.

The board of directors of the Centre appoints, from among the staff of the Centre, a data protection officer knowledgeable about the management and protection of personal data. The performance of his tasks may not have any detrimental consequence for the data protection officer. In particular, he may not be dismissed or replaced as the data protection officer as a result of the performance of the tasks entrusted to him. The King is to determine by royal decree deliberated in the Council of Ministers and after having taken advice from the Commission for the protection of privacy, the tasks of the data protection officer and the manner in which the tasks must be performed, as well as the manner in which the Centre must report to the Commission for the protection of privacy on the processing of personal data in the context of the authorization.

The staff and the persons processing personal data on behalf of the Centre are bound by conditions of secrecy.

Any violation of the obligation of secrecy shall be punished in accordance with Article 458 of the Criminal Code.

The Centre may only record telephone conversations in the context of its supporting role in the investigation of children reported missing or abducted, if the caller has been informed thereof and did not object thereto.

### **Article 3bis.**

This Act applies to:

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

2° the processing of personal data by the data controller who is not permanently established on European Community territory and, for the purposes of processing personal data makes use of equipment, automated or otherwise, situated on Belgian territory, unless such equipment is only used for the purposes of transit of personal data through Belgian territory.

In the circumstances referred to in the previous section under 2°, the data controller must nominate a representative established in the Belgian territory, without prejudice to legal actions that could be initiated against the data controller himself.

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

### **Article 4.**

§ 1. Personal data shall be:

1° processed fairly and lawfully;

2° collected for specified, explicit and legitimate purposes and, taking into account all relevant factors, in particular the reasonable expectations of the data subject and the applicable legal and regulatory provisions, not further processed in a way incompatible with those purposes.

The King is to determine, after having taken advice from the Commission for the protection of privacy, the conditions under which the further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible;

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

4° accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;

5° kept in a form which permits the identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The King is to determine, after having taken advice from the Commission for the protection of privacy, appropriate safeguards for personal data stored for historical, statistical or scientific purposes for longer periods than mentioned before.

§ 2. It shall be for the data controller to ensure that the provisions of §1 are complied with.

### **Article 5.**

Personal data may be processed only if:

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 the compliance with an obligation to which the data controller is subject by or by virtue of law, decree or ordinance;

d) the processing is necessary in order to protect a vital interest 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 official authority vested in the data controller or in a third party to whom the data are disclosed;

f) the processing is necessary for the purposes of the legitimate interests pursued by the data controller or by the third party to whom the data are disclosed, except where such interests are overridden by the fundamental rights and freedoms of the data subject.

The King may specify, by royal decree deliberated upon in the Council of Ministers and after having taken advice from the Commission for the protection of privacy, in such cases the conditions under f) shall not be considered fulfilled.

### **Article 6.**

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

§ 2. The prohibition on the processing of personal data referred to in § 1 of this Article shall not apply where:

a) the data subject has given his consent to the processing of those data in writing, such consent can be withdrawn by the data subject at all times; the King may determine, by royal decree deliberated upon in the Council of Ministers and after having taken advice from the Commission for the protection of privacy, in such cases the prohibition referred to in this Article may not be lifted by the data subject giving his consent in writing;<sup>9</sup>

b) the processing is necessary for the purposes of carrying out the specific obligations and rights of the data controller in the field of labour 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-seeking body with a political, philosophical, religious, mutual benefit or trade-union aim and on the condition that the processing relates solely to the members of the foundation, association or other non-profit-seeking body or to persons who have maintained regular contacts with it in connection with its aims and that the data are not disclosed to a third party without the consent of the data subjects;

e) the processing relates to data which have manifestly 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 laid down by the King by royal decree deliberated upon in the Council of Ministers and after having taken advice of the Commission for the protection of privacy;

h) the processing is necessary for the fulfilment of a purpose determined by or by virtue of a law for the application of social security;

i) the processing is undertaken in pursuance of the Act of 4 July 1962 concerning public statistics;

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

k) the processing is undertaken by associations with legal personality or public interest entities having as their main objective the protection of human rights and fundamental freedoms, for the purpose of achieving that objective, on the condition that the processing is authorised by the King by a royal decree deliberated upon in the Council of Ministers after having taken advice of the Commission for the protection of privacy;

l) the processing of personal data referred to in § 1 is permitted by a law, a decree or an ordinance for another significant reason of public interest.

In the case referred to under j), the health professional and his agents and authorized representatives are bound by secrecy.

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<sup>9</sup> Compare with Article 8.2 (a) of Directive 95/46/EC, which imposes an explicit consent rather than a written consent.

§ 3. Without prejudice to the application of the provisions of Articles 7 and 8 of this Act, the processing of personal data concerning sex life is permitted if the processing is carried out by an association with legal personality or a public interest entity having as the main statutory objective the evaluation, guidance and the treatment of persons whose sexual behaviour can be qualified as an offence and which is approved and subsidised by the competent public authority for the purpose of that objective; for such processing, whose purpose must consist in the evaluation, guidance and the treatment of the persons indicated 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 provide a specific and individual authorization by royal decree deliberated upon in the Council of Ministers, after having taken advice of the Commission for the protection of privacy. The decree referred to in this paragraph shall specify the duration of the authorization, the rules concerning the supervision of the authorised association or public interest entity by the competent authority and the manner in which this authority must report to the Commission for the protection of privacy in the context of the authorization issued.

§ 4. The King is to determine, by royal decree deliberated upon in the Council of Ministers and after having taken advice from the Commission for the protection of privacy, specific conditions to which the processing of the personal data referred to in this Article must comply.

#### **Article 7.**

§ 1. The processing of personal data concerning health is prohibited.

§ 2. The prohibition on the processing of personal data referred to in § 1 shall not apply where:

- a) the data subject has given his consent to the processing of those data in writing, such consent can be withdrawn by the data subject at any time; the King may determine, by royal decree deliberated upon in the Council of Ministers and after having taken advice from the Commission for the protection of privacy, in such cases the prohibition on the processing of personal data concerning health may not be lifted by the data subject by giving his consent in writing;<sup>10</sup>
- b) the processing is necessary for the purposes of carrying out the specific obligations and rights of the data controller in the field of labour law;
- c) the processing is necessary for the fulfilment of an objective determined by or by virtue of a law for the application of social security;
- d) the processing is necessary for the promotion and the protection of public health, including population surveys;
- e) the processing is legally required on important public interest grounds by or by virtue of a law, a decree or an ordinance;
- f) 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;
- g) the processing is necessary for the prevention of imminent danger or for the pursuit of a specific offence;
- h) the processing relates to data which have manifestly been made public by the data subject;
- i) the processing is necessary for the establishment, exercise or defence of legal claims;
- j) the processing of the data is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment to the data subject or a relative or the management of health-care services acting in the interest of the data subject, and where those data are processed under the supervision of a health professional;
- k) the processing is necessary for purposes of scientific research and is carried out under the conditions laid down by the King by royal decree deliberated upon in the Council of Ministers and after having taken advice of the Commission for the protection of privacy.

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<sup>10</sup> Compare with Article 8.2 (a) of Directive 95/46/EC, which imposes an explicit consent rather than a written consent.

§ 3. The King is to determine, by royal decree deliberated upon in the Council of Ministers and after having taken advice of the Commission for the protection of privacy, the specific conditions which the processing of the personal data referred to in this Article must comply with.

§ 4. Personal data concerning health may, except where the data subject has given their written consent or where the processing is necessary for the prevention of imminent danger or the pursuit of an offence, only be processed under the responsibility of a healthcare professional.

The King may determine, by royal decree deliberated upon in the Council of Ministers and after having taken advice of the Commission for the protection of privacy, which categories of persons can be considered as healthcare professionals for the purposes of this Act.

The health professional and his agents and authorized representatives are bound by secrecy in relation to the processing of the personal data referred to in this Article.

§ 5. Personal data concerning health must be collected directly from the data subject.

These data can only be collected from other sources on the condition that this complies with paragraphs 3 and 4 of this Article and that this is necessary for the purposes of the processing or that the data subject is incapable of providing these data.

#### **Article 8.**

§ 1. The processing of personal data relating to cases filed in the courts, as well as in regulatory courts, or in relation to suspicions, prosecutions or convictions for offences, or relating to regulatory sanctions or security measures is prohibited.

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

- a) under the control of an official authority or of a ministerial officer as determined in the Code of Civil Proceedings, provided the processing is necessary to carry out their duties;
- b) by other persons, provided the processing is necessary for the fulfilment of purposes determined by or by virtue of a law, a decree or an ordinance;
- c) by natural or by public or private legal persons, to the extent necessary for the management of their own disputes;
- d) by lawyers or other legal advisors, to the extent necessary for the defence of their clients' interests;
- e) necessary for scientific research and carried out under the conditions laid down by the King by royal decree deliberated upon in the Council of Ministers and after having taken advice of the Commission for the protection of privacy.

§ 3. The persons authorised under §2 to process the personal data referred to in §1 are bound by secrecy.

§ 4. The King is to determine, by royal decree deliberated upon in the Council of Ministers and after having taken advice of the Commission for the protection of privacy, the specific conditions which the processing of the personal data referred to in §1 must comply with.



## **CHAPTER III – Rights of the data subject.**

### **Article 9.**

§ 1. Where personal data relating to the data subject are obtained from the data subject himself, the data controller or his representative must provide the data subject no later than the time when the data are obtained with at least the following information, except where he is already in possession of it:

- a) the identity and address of the data controller and of his representative, if any;
- b) the purposes of the processing;
- c) the existence of the right to object free of charge and without reason to the intended processing of personal data related to him, where the processing is carried out for purposes of direct marketing;
- d) any further information such as:
  - the recipients or categories of recipients of the data,
  - whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply,
  - the existence of the right to obtain access to and the right to rectify the data concerning him;except where such further information is not necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject;
- e) any further information that is imposed by the King, after having taken advice from the Commission for the protection of privacy, depending on the specific nature of the processing.

§ 2. Where the personal data have not been obtained from the data subject, the data controller or his representative must, at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed, provide the data subject with at least the following information, except where the data subject is already in possession of it:

- a) the identity 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 free of charge and without reason to the intended processing of personal data related to him, where the processing is carried out for purposes of direct marketing; in this case the data subject must be informed prior to the first disclosure of personal data to a third party or prior to the first use of personal data on behalf of third parties for purposes of direct marketing;
- d) any further information such as:
  - the categories of data concerned;
  - the recipients or categories of recipients;
  - the existence of the right of access to and the right to rectify the personal data concerning him;except where such further information is not necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject;
- e) any further information that is imposed by the King, after having taken advice from the Commission for the protection of privacy, depending on the specific nature of the processing.

The data controller shall be exempted from the notification referred to in this paragraph, where:

- a) in particular for processing for statistical purposes or for purposes of historical or scientific research or for population surveys in view of protecting or promoting public health, the provision of such information proves impossible or would involve a disproportionate effort;
- b) recording or disclosure of personal data is undertaken with a view to applying a provision laid down by or by virtue of a law, a decree or an ordinance.

The King is to determine, in a royal decree deliberated upon in the Council of Ministers and after having taken advice of the Commission for the protection of privacy, the conditions for the application of the previous subparagraph.

As a derogation to the first subparagraph, where the first disclosure was made before the entry into force of this provision, the information must be provided no later than within a period of three years starting from the date of entry into force of this provision. The information must however not be provided if the data controller was exempted from the obligation to inform the data subject of the recording of the data by virtue of legal or regulatory provisions applicable prior to the entry into force of this provision.

#### **Article 10.**

§ 1. The data subject, who proves his identity, shall have the right to obtain from the data controller:

- a) confirmation as to whether or not data relating to him are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;
- b) communication to him in an intelligible form of the data undergoing processing and of any available information as to their source;
- c) knowledge of the logic involved in any automatic processing of data concerning him in the case of the automated decisions referred to in Article 12bis;
- d) knowledge of the possibility of initiating the legal actions indicated in Articles 12 and 14 and to consult the public register referred to in Article 18.

The data subject shall send to this end a dated and signed request to the data controller or to any other person designated thereto by the King.

The information shall be communicated without delay and at the latest within 45 days after receipt of the request.

The King may lay down further rules for exercising the rights set out in the first paragraph.

§ 2. Without prejudice to the provisions of Article 9, §2 of the Act of 22 August 2002 concerning patient's rights, each person has the right, directly or indirectly with the assistance of a health professional, to obtain information about the personal data that are processed in relation to his health.

Without prejudice to the provisions of Article 9, § 2, of the aforementioned act, the disclosure may be carried out at the request of the data controller or at the request of the data subject, through the intermediation of a healthcare professional chosen by the data subject.

Where there is manifestly no danger of infringements to the protection of the privacy of the data subject and the data are not being used to take measures and decisions vis-à-vis an individual data subject, the provision of information may be postponed at the latest until the moment the research is concluded, if the personal data concerning health are processed for medical-scientific research, but only to the extent that the provision of information would seriously prejudice that research.

In such case, the data subject must have provided to the data controller his prior written consent for the processing of personal data related to him for medical-scientific purposes and that the provision of information relating to these personal data may be postponed for that reason.

§ 3. No effect must be given to a request referred to in § 1 and § 2 prior to the lapse of a reasonable period, starting from the date of an earlier request of the same person that has been answered or starting from the date on which the information has been disclosed to him of his own motion.

#### **Article 11.**

(Repealed)

## **Article 12.**

§ 1. Any person is entitled, free of charge, to the rectification of all incorrect personal data relating to him.

Moreover, any person is entitled to object on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where the lawfulness of the processing is based on the reasons referred to in Article 5, b) and c).

Where the personal data are obtained for the processing for the purposes of direct marketing, the data subject is entitled to object free of charge and without reason to the intended processing of personal data related to him.

Where there is a justified objection, the processing instigated by the data controller may no longer involve those data.

Any person is also entitled, free of charge, to the erasure or blocking of personal data relating to him that, taking into account the purposes of the processing, are incomplete, irrelevant, or the registration, disclosure or conservation of which is prohibited or which have been conserved longer than allowed.

§ 2. To exercise the rights referred to in §1, the data subject must file a dated and signed request with the data controller or with any other person designated by the King.

§ 3. Within a month starting from the filing of the request on the grounds of § 2, the data controller is to inform the data subject about the rectifications or erasures of data performed on the basis of §1, as well as the persons to whom the incorrect, incomplete or irrelevant data were disclosed, provided he still has knowledge of the recipients of the data and that the notification does not prove impossible or involve a disproportionate effort.

Where the data subject objects to the processing or the intended processing of personal data relating to him on the basis of §1, second and third subparagraph, the data controller is to inform the data subject within the same period which action he has taken following the request.

§ 4. (Repealed)

## **Article 12bis.**

A decision which produces legal effects concerning a person or which significantly affects him, may not be based solely on the automated processing of data intended to evaluate certain personal aspects relating to him.

The prohibition determined in the first section does not apply if the decision is taken in the context of an agreement or is authorized by a provision imposed by or by virtue of a law, a decree or an ordinance. This agreement or provision must provide suitable measures to safeguard the legitimate interests of the data subject. The data subject should at least be allowed the possibility of providing his views on the matter.

## **Article 13.**

Any person who proves his identity shall have the right to apply to the Commission for the protection of privacy to exercise the rights referred to in Articles 10 and 12 in relation to the processing of personal data referred to in Article 3, paragraphs 4, 5 and 6.

The King is to determine by royal decree deliberated upon in the Council of Ministers, after having taken advice from the Commission for the protection of privacy, the manner in which these rights are exercised.

The Commission for the protection of privacy shall only inform the data subject that the necessary verifications were carried out.

The King, however, is to determine by royal decree deliberated upon in the Council of Ministers, after having taken advice from the Commission for the protection of privacy, the information the Commission may disclose to the data subject where the the data subject makes a request that relates to the processing of personal data by the police authorities for the purpose of verifying identity.

#### **Article 14.**

§ 1. The president of the court of first instance, sitting as in summary proceedings, is competent to try claims regarding the right to the disclosure of personal data by or by virtue of law, as well as claims regarding the rectification, the erasure, or the blocking of incorrect personal data or personal data that, taking into account the purpose of processing, is incomplete or irrelevant, or the registration, disclosure or conservation of which is prohibited, to the processing of which the data subject has objected or which have been conserved longer than permitted.<sup>11</sup>

§ 2. The president of the court of first instance of the domicile of the applicant is competent to try the claims referred to in §1.

Where the applicant has no domicile in Belgium, the president of the court of the domicile of the data controller, if a natural person, is competent. Where the data controller is a legal person, the president of the registered or administrative offices is competent.

The court order is pronounced in public. It is enforceable pending an appeal or opposition.

§ 3. The claim is filed by means of an inter partes application.

The application indicates, on penalty of being null and void:

1° the day, the month and the year;

2° the surname, the first name, the profession and the domicile of the applicant;

3° the surname, the first name and the domicile of the person that is to be summoned;

4° the subject of the claim and a short summary of the pleas in law on which the application is based;

5° the signature of the applicant or of his lawyer.

§ 4. The application is sent by registered letter to the Court Registrar or is filed with the Registrars Office.

After the payment of the court fees, as the case may be, the parties are summoned by the Court Registrar by court letter to appear at the hearing scheduled by the judge. A copy of the application is joined to the summoning letter.

§ 5. The claim initiated on the basis of §1 shall only be admissible if the request referred to in Article 10, §1, or referred to in Article 12, §2, has been rejected or if, depending on the case, the request has not been complied with within the period imposed by Article 10, §1 second subparagraph or Article 12, §3, first subparagraph.

§ 6. Where incorrect, incomplete or irrelevant data or data of which the storage is prohibited has been disclosed to third parties, or where the disclosure has taken place after the lapse of the period during which storage was permitted, the president of the court may order that the data controller informs such third parties about the rectification or erasure of the personal data.

§ 7. Where compelling reasons indicate that evidence that can be adduced for a claim under §1 might be concealed or might be lost, the president of the court of first instance shall impose any measure to prevent such concealment or loss following an ex parte application, signed and filed by a party or its lawyer.

§ 8. The provisions of §§6 and 7 do not constitute any limitation of the general competence in these matters of the president of the court of first instance, sitting in summary proceedings.

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<sup>11</sup> The notion "sitting as in summary proceedings" refers to proceedings that take place as if they were summary proceedings, but that concern the merits of the case. The judge is therefore not limited to interim measures, as would be a judge in summary proceedings.

### **Article 15.**

The data controller shall clearly indicate on any disclosure of personal data, immediately upon receipt of the request for rectification, erasure or interdiction of the use or disclosure of the personal data, or upon notification of the initiation of a claim referred to in Article 14 and until the decision has become final, that such personal data is contested.

### **Article 15bis.**

Where a data subject suffers damages due to a violation relating to him of the provisions laid down by or by virtue of this Act, the following second and third section shall apply without prejudice to the claims on the basis of any other legal rule.

The data controller shall be liable for any damage resulting from a violation of the provisions laid down by or by virtue of this Act.

He shall be exempted from this liability if he proves that the act that has caused the damage cannot be attributed to him.

## **CHAPTER IV – Confidentiality and security of processing.**

### **Article 16.**

§ 1. Where the processing is entrusted to a data processor, the data controller or his representative in Belgium, if any, must:

1° choose a data processor providing sufficient guarantees in respect of the technical and organizational security measures governing the processing to be carried out;

2° ensure compliance with those measures, in particular by incorporating them in contractual dispositions;

3° determine the liability of the data processor towards the data controller in the contractual dispositions;

4° agree with the data processor that the data processor shall act only on behalf of the data controller and that the data processor shall be bound by the same obligations to which the data controller is bound pursuant to paragraph 3;

5° lay down the elements of the agreement concerning the security of the data and the requirements referred to in paragraph 3 in writing or on an electronic medium.

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

1° carefully guard that the data are kept up-to-date, that incorrect, incomplete and irrelevant data, as well as the data that are collected or further processed in violation of the Article 4 until 8, are rectified or erased;

2° ensure that the methods of obtaining access to the data and the possibilities for processing are limited, in respect of the persons acting under his authority, to what the person needs to carry out their duties or to what is necessary for the requirements of the service;

3° inform all persons acting under his authority about the provisions of this Act and its implementing decrees, as well as all relevant provision concerning the protection of privacy applying to the processing of personal data;

4° ascertain that the software for automated processing of personal data is compliant with the information provided in the notification referred to in Article 17 and that no unlawful use is being made thereof.

§ 3. Any person acting under the authority of the data controller or of the data processor, as well as the data processor itself and having access to the personal data, is entitled to process the data solely on the instructions of the data controller, except for an obligation imposed by or by virtue of a law, a decree or an ordinance.

§ 4. To guarantee the security of the personal data, the data controller or his representative in Belgium, if any, as well as the data processor, must implement appropriate technical and organizational measures necessary for the protection of personal data against accidental or unlawful destruction or accidental loss, as well as against alteration, unauthorized access and against all other unlawful forms of processing.

These measures must ensure an appropriate level of security, having regard, on the one hand, to the state of the art and the cost of their implementation and, on the other hand, to the nature of the data to be protected and the potential risks.

The King may determine appropriate standards on information security for all or for certain categories of processing, based on the advice of the Commission for the protection of the privacy.

## **CHAPTER V – Prior notification and publicity of processing.**

### **Article 17.**

§ 1. Before carrying out one or more wholly or partly automatic processing of personal data intended to serve a single purpose or several related purposes, the data controller or his representative, if any, must notify the Commission for the protection of privacy.

The previous subparagraph does not apply to processing whose sole purpose is the keeping of a register which by or by virtue of a law, a decree or an ordinance is intended to provide information to the public and which is open to consultation either by the public in general or by any person demonstrating a legitimate interest.

§ 2. The Commission for the protection of privacy is to provide a receipt notice for the notification within three business days.

If the notification is incomplete, the Commission for the protection of privacy must inform the person having filed the notification thereof.

§ 3. This notification must mention:

1° the date of the notification and the law, the decree or the ordinance authorizing the automatic processing, if any;

2° the surname, the first names and the complete address or the name and registered offices of the data controller and 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 personal data referred to in the articles 6 to 8;

7° the categories of recipients to whom the data may be disclosed;

8° the guarantees that must be offered in connection with the disclosure of personal data to third parties;

9° the manner in which the persons, to whom the data relate, are informed thereof, the service with which the right to obtain access can be exercised and the measures implemented to facilitate the exercise of that right;

10° the period, if any, after which the data may no longer be stored, used or published;

11° a general description allowing a preliminary assessment of the appropriateness of the security measures implemented pursuant to Article 16 of this Act;

12° the reasons invoked by the data controller for the application of Article 3, §3 of this Act, as the case may be.

§ 4. In the context of its supervision and investigation powers pursuant to Article 31 and 32, the Commission for the protection of privacy is authorised to demand other information, in particular the origin of the personal data, the technology chosen to automate the processing, and the security measures that have been implemented.

§ 5. A notification is required for each purpose or set of related purposes for which one or more wholly or partly automatic processing operations is carried out.

The Commission establishes the nature and the structure of the notification.

§ 6. Where the processed data are intended to be transferred to a foreign country, even if only occasionally and irrespective of the medium being used, the notification must also indicate:

1° the categories of data being transferred;

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

§ 7. A notification must also be performed, if the automatic processing is terminated or if any of the information referred to in § 3 changes.

§ 8. After having taken advice from the Commission for the protection of privacy, the King may exempt certain categories from the notification referred to in this Article, when, having regard to the processed data, there is manifestly no risk of the infringement of the rights and freedoms of the data subjects and the purposes for the processing, the categories of the processed data, the categories of data subjects, the categories of recipients and the period during which the data are stored, are determined.

The data controller must disclose the information referred to in §§3 and 6 to any person requesting this, if an exemption to the notification duty is provided for sets of automatic processing pursuant to the previous subparagraph.

§ 9. The data controller must pay a fee to the designated person with the Commission for the protection of privacy at the moment of performing a notification, in correspondence with the provisions of the acts on State Treasury. The King is to establish the amount of this fee, which may not exceed ten thousand Belgian Francs. He is also to determine the methods of payment.<sup>12</sup>

#### **Article 17bis.**

After having taken the advice from the Commission for the protection of privacy, the King shall provide the categories of processing operations that entail specific risks for the personal rights and freedoms of the data subjects and shall provide for these processing operations, also upon a proposal of the Commission for the protection of privacy, specific conditions to guarantee the rights and freedoms of the data subjects.

He may determine in particular that the data controller must designate, separately or jointly with other data controllers, a data protection officer ensuring, in an independent manner, the application of this Act and its implementing decrees.

The King shall provide, by royal decree deliberated upon in the Council of Ministers and after having taken the advice of the Commission for the protection of privacy, the status of the data protection officer.

#### **Article 18.**

The Commission for the protection of privacy shall manage a register of automatic processing operations of personal data.

On registration in that register, the information referred to in Article 17, §§ 3 and 6 must be included.

That register is open for consultation to any person, in the manner established by the King.

(Section 4 is repealed)

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<sup>12</sup> This amount has not been formally converted to euro. According to the official conversion rate, one euro corresponds to 40,3399 Belgian Francs. The amount should therefore be read as 247,89 euros.

### **Article 19.**

Where the Commission for the protection of privacy is of the opinion that a non-automatic processing of personal data which form part or are intended to form part of a filing system may possibly infringe upon privacy, it may either of its own motion or at the request of the data subject, impose on the data controller the obligation to communicate all or part of the information listed in Article 17.

### **Article 20.**

If a specific system of prior authorizations or notifications of data processing operations, established by or by virtue of law, provides for the communication of the information referred to in Article 17, §§ 3 and 6 to a special supervision committee and for the registration in a public register of the information referred to in Article 17, §§ 3 and 6, the obligations under Articles 17, 18 and 19 are considered to be complied with when the entirety of this information is permanently kept at the disposal of the Commission for the protection of privacy.

Article 17, § 9 applies correspondingly.

## **CHAPTER VI – Transfer of personal data to countries outside the European Community.**

### **Article 21.**

§ 1. Personal data which are undergoing processing after transfer to a country outside the European Community may only be transferred, if the country in question ensures an adequate level of protection and the other provisions of this Act or its implementing decrees are complied with.

The adequacy of the level of protection afforded by a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be 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 country in question and the professional rules and security measures that are complied with in that country.

§ 2. The King determines, after having taken advice from the Commission for the protection of privacy and pursuant to Article 25 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, which categories of data processing operations and in which conditions the transfer of personal data to countries outside the European Union is not permitted.

### **Article 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 given his consent unambiguously thereto;

2° the transfer is necessary for the performance of a contract between the data subject and the data controller or the implementation of pre-contractual 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 in the interests of the data subject between the data controller and a third party;

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 public register which by virtue of legal or regulatory provisions 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 particular case.

Without prejudice to the provisions of the previous subparagraph, the King may authorize, after having taken the advice from the Commission for the protection of privacy, 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, where the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

## **CHAPTER VII – Commission for the protection of privacy.**

### **Article 23.**

A Commission for the protection of privacy shall be constituted under the auspices of the House of Representatives, composed of members designated by the House of Representatives, among which shall be the chairman and the vice-chairman.

The seat of the Commission shall be located in the district Brussels-Capital.

### **Article 24.**

§ 1. The Commission shall consist of eight permanent members, amongst whom will be a magistrate who shall act as chairman, and eight substitute members, amongst whom will be a magistrate.

§ 2. The Commission shall consist of an equal number of Dutch speaking and French speaking members.

§ 3. (Repealed)

§ 4. The members of the Commission shall be elected for a renewable term of 6 years from lists proposed by the Council of Ministers providing two candidates for each open mandate. They can be discharged from their post by the House of Representatives for a breach of their duties or the dignity of their office.

The members must offer guarantees to exercise their duties in an independent manner, as well as being expert in the field of data protection.

Membership of the Commission shall be composed in such a manner as to provide a balance between the different social-economic groups.

Besides the chairman, the Commission shall have among its permanent members and under its substitute members, at least one legal expert, one computer scientist, one person capable of demonstrating professional experience in the management of personal data in the private sector and one person capable of demonstrating professional experience in the management of personal data in the public sector.

§ 5. The candidates must meet the following conditions to be appointed and to remain a permanent or substitute member of the Commission:

1° have Belgian nationality;

2° have civil and political rights;

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

§ 6. Within the limits of their competences, the members of the Commission are instructed by no person. They cannot be discharged from their office for opinions they manifest or acts they pose as part of the fulfilment of their mandate.

§ 7. The members of the Commission are prohibited from participating in a deliberation on a matter in which they or their relatives or in-laws to the fourth degree have a personal interest.

**Article 25.**

When a permanent member is excused or absent, as well as in case his mandate falls vacant, the member is replaced by his substitute.

The previous section is applicable to the calculation of the quorum in relation to presence and, as the case may be, the vote, referred to in Article 28, second section. It does not prevent the Commission from meeting in a formation that comprises both the permanent and the substitute members.

The permanent or substitute member whose mandate falls vacant prior to the expiry of the six-year term shall be replaced by a permanent or substitute member chosen for the remaining duration of term in accordance with the procedures referred to in Article 24.

**Article 26.**

§ 1. The chairman of the Commission shall exercise his mandate full-time. He shall be detached by operation of law by his jurisdictional body. He is charged with the daily management of the Commission, shall supervise the secretariat, shall preside over the meetings of the different departments of the Commission or shall authorize another member thereto and represents the Commission. He shall regularly report to the Commission in management meetings.

He may not exercise any other professional activity for the duration of his mandate. The House that has appointed him may allow derogations from the incompatibilities on the condition that they do not prevent him from duly fulfilling his mission.

His replacement as magistrate is foreseen by supernumerary appointment. Where it concerns a head of the Public Prosecution Office, his replacement is foreseen by supernumerary appointment of a magistrate of the next lower rank.

He enjoys an income equal to that of the first advocate-general of the Supreme Court, as well as the increases and advantages attached thereto.

He shall retake his place in the rank at the moment his mandate ends.

§ 2. The chairman is supported in his functions by a vice-chairman, appointed by the House of Representatives among the permanent members referred to in Article 24, § 1 and shall belong to another linguistic group other than the chairman. The vice-chairman exercises his mandate full-time and the provisions of § 1, second and fourth subparagraph, apply to him.

Paragraph 1, third and fifth subparagraph, apply to the vice-chairman where they are a magistrate. Where the chairman is prevented from fulfilling his role, the vice-chairman shall assume the function of his office.

**Article 27.**

Prior to accepting their mandate, the chairman, the vice-chairman, the other permanent members and the substitute members shall take the following oath at the hands of the chairman of the House of Representatives:

"I swear to fulfil the obligations of my mission conscientiously and impartially."

**Article 28.**

The Commission for the protection of privacy must draft by-rules within one month after its installment. The by-rules are to be communicated to the Parliament.

The Commission may only deliberate in a valid manner, when the majority of its members are present. Decisions are by absolute majority. In case of a tie, the vote of the chairman, or in case of his absence the vote of his substitute, is decisive.

## **Article 29.**

§ 1. The Commission shall provide expert opinion, either of its own accord, or on the request of the Government, the Parliament, the Community or Regional governments, the Community or Regional Parliaments, the United College of the Joint Community Commission or the United Assembly of the Joint Community Commission referred to in Article 60 of the Special Act of 12 January 1989 concerning the institutions of Brussels or of a supervisory committee, concerning any matter relating to the application of the principles of the protection of privacy within the context of this Act and of acts containing provisions in relation to the protection of privacy in relation to the processing of personal data.<sup>13</sup>

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

Unless the law provides otherwise, the Commission shall provide its opinion within a period of 60 days following the provision of all necessary information to the Commission.

§ 3. In those cases where the opinion of the Commission is required by or by virtue of law, decree or ordinance, this requirement may be waived when the opinion was not provided within the period referred to in paragraph 2.

In those cases where the opinion of the Commission is required by virtue of a provision of this Act, except Article 11, the period referred to in § 2 is reduced to at least 15 days in urgent matters. The specific urgency that is invoked must be reasoned.

§ 4. The opinions of the Commission must be reasoned.

§ 5. The Commission is to communicate its opinion to the concerned public authority.

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

In those cases where the opinion of the Commission is required, it shall be published in the Belgian State Gazette together with the regulatory provisions to which it relates.

## **Article 30.**

§ 1. The Commission can address recommendations either of its own accord, or at the request of the Government, the Parliament, the Community or Regional governments, the Community or Regional parliaments, the United College of the Joint Community Commission or the United Assembly of the Joint Community Commission referred to in Article 60 of the Special Act of 12 January 1989 concerning the institutions of Brussels or of a supervisory committee, concerning any matter relating to the application of the principles of the protection of privacy within the context of this Act and of acts containing provisions in relation to the protection of privacy in relation to the processing of personal data.

§ 2. Prior to addressing a recommendation to a specific data controller, the Commission shall provide the data controller the opportunity to present its views.

§ 3. The recommendations of the Commission must be reasoned. A copy of each recommendation is communicated to the Minister of Justice.

## **Article 31.**

§ 1. Without prejudice to any claim before the courts and unless the law provides otherwise, the Commission shall investigate signed and dated complaints that are sent to it. The complaints can relate to its mission concerning the protection of privacy in relation to the processing of personal data or to other duties conferred upon it by law.

§ 2. The rules of procedure are determined in the by-rules. The by-rules provide for the exercise of the right of defence.

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<sup>13</sup> The Assembly of the Flemish Community Commission has published an information brochure in English, giving some information on the institutional structure of Belgium: <[http://www.raadvgc.be/documenten/brochure\\_EN.pdf](http://www.raadvgc.be/documenten/brochure_EN.pdf)>.

§ 3. The Commission shall investigate the admissibility of the complaint. In relation to admissible complaints, the Commission is required to fulfil the mediation role it deems appropriate. Where a settlement is reached between the parties, on the basis of the respect for privacy, it will draw up minutes setting out the solution that has been reached. Where a settlement is not reached, the Commission shall provide an opinion on the merits of the complaint. It can formulate recommendations to the data controller together with the opinion.

§ 4. The decisions, opinions and recommendations of the Commission must be reasoned.

§ 5. The Commission is to communicate its decision, opinion or recommendation to the plaintiff, the data controller and all other parties involved in the proceedings.

A copy of the decision, opinion or recommendation is communicated to the Minister of Justice.

### **Article 31bis.**

§ 1. The law establishes within the Commission sectoral committees competent to investigate and decide, within the legally determined boundaries, upon requests in relation to the processing or communication of personal data to which specific legislation applies.

§ 2. Without prejudice to Article 37 of the Law of 15 January 1990 establishing and organizing a Crossroads Bank for Social Security, any sectoral committee consists of three permanent or substitute members of the Commission, among which the chairman or a member appointed as chairman by the Commission, as well as three external members appointed by the House of Representatives in accordance with the conditions and rules determined by or by virtue of the specific legislation organizing the specific committee. In case of a tie of votes, the vote of the chairman decides the matter.

The leading civil servant of the managing institution of the interested sector can be invited to participate with an advisory vote in the meetings of the committee.

§ 3. The Commission is to transmit the requests filed with it concerning the processing or the communication of personal data governed by specific legislation, to the competent sectoral committee, if it has been instituted, and to the managing institution of the interested sector. The managing institution of the interested sector must send, within 15 days following the receipt of the request and provided the file is complete, to the sectoral committee a technical and legal opinion. Under the same reservations, the sectoral committee pronounces itself within thirty days after receipt of the advice or, as the case may be, after expiry of the aforementioned period of 15 days. If not, its decision is considered to correspond with the technical and legal opinion.

If a request as referred to in the previous subparagraph must be treated for urgent reasons within a shorter period than the one determined in that subparagraph, the chairman will transmit the request, the technical and legal opinion and the draft decision as soon as possible to the members, who are invited to provide their views on the draft decision to the chairman within the period he has determined.

The draft decision becomes final when no member has objected to the essential elements of the draft within the period imposed by the chairman. If necessary, the chairman will convene an extraordinary meeting of the sectoral committee. In consultation with the leading civil servant of the concerned institution, the chairman verifies whether urgent reasons exist to justify the application of the previous two subparagraphs. Without prejudice to Article 44 of the aforementioned Act of 15 January 1990, the chairman of the sectoral committee can suspend the investigation of a file, in order to transmit it to the Commission, which shall decide within a month.

§ 4. The chairmanship of a section gives right to double attendance remuneration, except where it is assumed by the chairman or vice-chairman of the Commission.

§ 5. Without prejudice to Article 41 of the aforementioned Act of 15 January 1990, the sectoral committees are instituted and meetings take place at the offices of the Commission, except where the governing institution requests that the sectoral committee under which it resorts is instituted and meets at its offices.

The Commission may grant the request, on the condition that the managing institution offers the chairman of the sectoral committee in advance the offices and equipment necessary for the functioning of the sectoral committee and his chairmanship, as well as a secretary that is chosen by the chairman in consultation with the leading civil servant of the managing institution, and specialised personnel, more particularly legal counsel and information technology specialists, insofar as this is needed for the correct fulfilment of the mission of the sectoral committee. The chairman of the sectoral committee is responsible for such personnel when performing tasks for the sectoral committee.

### **Article 32.**

§ 1. For the purposes of fulfilling its mission, the Commission may use the assistance of experts. It can charge its members, assisted by experts as the case may be, with an investigation on the premises.

The members of the Commission shall have the status of an officer of the judicial police, assistant officer of the prosecutor.

They can, amongst other things, demand the production of any document that may be useful for their investigation.

They also have access to all places which they reasonably presume to be used in connection with activities in relation to this Act.

§ 2. Unless the Act provides otherwise, the Commission shall report offences of which it has knowledge to the prosecutor.

Every year, the Commission is to submit an activity report to the Parliament.

This report, which is public, contains general information about the application of this Act and the activities of the Commission, as well as specific information about the application of the Articles 3, §§ 3 and 6, 13, 17 and 18.

§ 3. Without prejudice to the competence of the courts in view of the application of the general principles concerning the protection of privacy, the chairman of the Commission can submit any dispute concerning the application of this Act and its implementing decrees to the Court of First Instance.

### **Article 32bis.**

§ 1. In view of the application of international treaties, the King can designate, by royal decree deliberated upon in the Council of Ministers, the Commission for the protection of privacy to execute missions, by virtue of these treaties, identical to those assigned to the Commission by this Act.

§ 2. In view of the application of international treaties, the Commission for the protection of privacy is authorised to designate some of its members or staff as representatives to international authorities, charged with missions identical to those assigned to the Commission by this Act.

The King is to establish the specific rules of representation, after having taken the advice from the Commission for the protection of privacy.

### **Article 33.**

Without prejudice to Article 32, § 2, the members and the staff of the Commission and the experts whose assistance is requested, are bound to respect the confidential nature of the facts, act and information they have obtained due to their function.

#### **Article 34.**

Without prejudice to the competence of the House of Representatives to investigate and approve the detailed budget of the Commission for the protection of privacy, and to control the execution thereof as well as verify and approve the detailed accounts, the allocations for this budget are issued as an allocation to the general state budget.

The Commission is to attach to its budget proposal a summary governance plan, of which it determines, without prejudice to the comments of the House of Representatives, the content and form; the yearly activity report referred to in Article 32, § 2, second subparagraph, contains a section describing how the plan has been implemented.

#### **Article 35.**

§ 1. The Commission shall dispose of a secretariat, of which the level of staffing, the status and the selection rules are determined by the House of Representatives, upon a proposal made by the Commission. The level of staffing may provide, in a limited and a duly justified manner, the possibility of engaging employees with an employee contract of determined duration.

Except where the Commission shall decide otherwise by ordinance, approved by the House of Representatives, in view of the good functioning of its services, the personnel of the secretariat are subject to the legal and statutory provisions applicable to appointed State Servants.

§ 2. The personnel that, on the moment of entry into force of the Act of of 26 February 2003 modifying the Act of 8 December 1992 on the protection of the privacy in relation to the processing of personal data and of the Act of 15 January 1990 creating and organizing a Crossroads Bank for Social Security modifying the statute of the Commission for the protection of privacy and increasing its competences, are engaged by the Commission, retain their function and their status until the measures taken pursuant to § 1 are approved. If the servants are not transferred on the occasion of the designations pursuant to the aforementioned measures, they return by operation of law to the services of the Ministry of Justice, with the status that applies thereto.

#### **Article 36.**

The chairman is entitled to a remuneration equal to the remuneration awarded to an investigation judge with 9 years experience in a court in an area with at least 500.000 inhabitants.

The vice-chairman, the substitute vice-chairman and the permanent and substitute members are entitled to a presence remuneration of EUR 223,18 (index 1,2682). This amount is linked to the index of consumer prices.

They are entitled to compensations for travel and subsistence costs in accordance with the provisions applying to the personnel of the ministries. The persons who are not civil servants or whose rank, to which their grade belongs, is not determined are regarded as a civil servant of rank 13.

The chairman is regarded as a civil servant of rank 17.

The experts whose assistance is ordered by the Commission or who assist the members charged with an investigation on the premises can be remunerated in the manner determined by the Minister of Justice in consultation with the ministers competent for Public Service and Finance.

The remunerations referred to in the first section are linked to the mobility measures applicable to the remuneration of the Public Servants on active duty.

## **CHAPTER VIIbis – Sectoral committees.**

### **Article 36bis.**

Within the Commission for the protection of privacy, a sectoral committee for the federal government is created, within the meaning of Article 31bis. The Federal Public Service for Information and Communication Technology shall be considered the managing institution referred to in Article 31bis, for the sectoral committee for the federal government.

The King is to determine, by royal decree deliberated upon in the Council of Ministers, the conditions and specific rules with which the three external members of the sectoral committee must comply.

Except in the cases determined by the King, any electronic communication of personal data by a service of the federal government or by a public institution with legal personality supervised by the federal government, requires a authorization under the principles of this sectoral committee, unless the communication is already subject to another authorization under the principles of another sectoral committee created within the Commission for the protection of privacy.

Prior to providing its authorization, the sectoral committee for the federal government is to verify whether the communication complies with the legal and regulatory provisions.

The authorizations provided by the sectoral committee for the federal government are public, as soon as they are final. They are published on the website of the Commission for the protection of privacy.

The leading civil servant of the applicable federal public service or of the applicable public institution with legal personality supervised by the federal government, or a staff member designated by him, can participate in the meetings of the sectoral committee for the federal government with an advisory vote.

## **Chapter VIII – Provisions concerning offences.<sup>14</sup>**

### **Article 37.**

Any member or member of staff of the Commission for the protection of privacy or any expert who violates the confidentiality obligation referred to in Article 33 shall be punished with a fine of between 200 and 10.000 euro.

### **Article 38.**

The data controller, his representative in Belgium, his agent or his authorized representative, who violates one of his obligations under the Article 15 or 16, §1 shall be punished with a fine of between 100 euro and 20.000 euro.

### **Article 39.**

Shall be punished with a fine of between 100 euro and 100.000 euro:

1° the data controller, his representative in Belgium, his agent or authorized representative, that processes personal data in violation of the conditions imposed in Article 4, § 1;

2° the data controller, his representative in Belgium, his agent or authorized representative, that processes personal data outside the cases allowed by Article 5;

3° the data controller, his representative in Belgium, his agent or authorized representative, that processes personal data in violation of Article 6, 7 of 8;

4° the data controller, his representative in Belgium, his agent or authorized representative, that fails to comply with the obligations under Article 9;

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<sup>14</sup> The fines are represented in euro prior to "revaluation". In order to obtain the current amount of the fine, the amount must be multiplied by 5,5. For instance, a fine of 100 euro should be read as a fine of 550 Euros.

5° the data controller, his representative in Belgium, his agent or authorized representative, that does not communicate the information referred to in Article 10, § 1, within forty-five days after receipt of the request, or that knowingly provides incorrect or incomplete information;

6° he who, to force a person to provide to him information obtained by exercising the right set out in Article 10, § 1, or to obtain his consent for the processing of his personal data, uses towards that person acts of violence, threats, gifts or promises.

7° the data controller, his representative in Belgium, his agent or authorized representative, that begins processing personal data by using automated means, manages such a data processing operation or continues such management, or terminates such a data processing operation, without complying with the requirements of Article 17;

8° the data controller, his representative in Belgium, his agent or authorized representative, that provides incomplete or incorrect information in the notifications imposed by Article 17;

9° [Repealed]

10° the data controller, his representative in Belgium, his agent or authorized representative, that, in violation of Article 19, refuses to communicate to the Commission the information concerning non-automated processing of personal data which form part or are intended to form part of a filing system;

11° [Repealed]

12° he who transfers, orders a transfer or permits a transfer of personal data to a country outside the European Community that is mentioned on the list referred to in Article 21, § 2, whilst violating the requirements of Article 22;

13° he who prevents the Commission, its members or the experts charged by it to carry out the verifications referred to in Article 32.

#### **Article 40.**

In case of a conviction for an offence described in Article 38 or 39, the judge may order the entire or partial publication of his judgment in one or more journals in the manner he decides, and at the expense of the convicted person.

#### **Article 41.**

§ 1. In case of a conviction for an offence described in Article 39, the judge may pronounce the seizure of the media on which the personal data relating to the offence are stored, such as manual files, magnetic discs or magnetic tapes, excluding computers or any other equipment, or order the erasure of those data.

The seizure or the erasure may also be pronounced if the media on which the personal data are stored do not belong to the person convicted.

Article 8, § 1 of the Act of 29 June 1964 on suspension, deferment and probation does not apply to the seizure, nor to the erasure ordered in accordance with the first and second subparagraph.

The objects that were seized must be destroyed when the judgment becomes final.

§ 2. Without prejudice to revocation of competences provided in specific provisions, the court can, in case of a conviction for an offence mentioned in Article 39, impose for a period of maximum two years the prohibition to manage, either directly or by means of an intermediary person, any processing of personal data.

§ 3. Any violation of the prohibition set out in §2 or any recidivism in relation to the offences provided in Article 37, 38 and 39 shall be punished with a term of imprisonment between three months and two years and with a fine between 100 euro and 100.000 euro or with one of these sanctions.



**Article 42.**

The data controller or his representative in Belgium is liable for the payment of the fines to which his agent or authorized representative is convicted.

**Article 43.**

All provisions of Book I of the Criminal Code, including chapter VII and article 85, apply to the offences introduced by this Act or by its implementing decrees.

**CHAPTER IX – Final provisions.**

**Article 44.**

The King can determine, by royal decree deliberated upon in the Council of Ministers and after having taken the advice of the Commission for the protection of privacy, specific rules for the application of the provisions of this Act in view of taking into account the specific issues of the different sectors.

Professional associations and other organizations who represent categories of data controllers, that have drafted codes of conduct or that intend to modify or extend existing codes of conduct, can submit these codes to the Commission for the protection of privacy.

The Commission shall verify in particular whether the drafts submitted to it comply with this Act and its implementing decrees, and investigates, to the extent possible, the positions of the concerned parties or of their representatives.

**Article 45.**

The King may determine the public authorities that order the destruction of processed data or that are charged with destroying data during times of war or times that are equivalent thereto according to Article 7 of the Act of 12 May 1927 on military requisitions, as well as during the occupation of the Belgian territory by the enemy.

The King may determine the amounts of the compensation for any destruction determined in the previous section.

He, who violates or wrongly uses decisions taken on the ground of the first section, or abuses the right to destruction referred to in the first section, shall be punished with a fine of between 100 euros and 100.000 euros.

**Article 46.**

[Provision modifying article 580,14° of the Code of Civil Proceedings]

**Article 47.**

[Provision modifying article 587 of the Code of Civil Proceedings]

**Article 48.**

[Provision modifying article 5, second section of the Act of 8 August 1983]

**Article 49.**

[Provision modifying some articles of the Act of 15 January 1990]

**Article 50.**

[Provision modifying §§4 and 5 of Article 25 of the Royal Decree of 16 March 1968]

**Article 51.**

[Provision modifying the Act of 12 June 1991]

**Article 52.**

This Act shall enter into force on the date determined by the King and at the latest on the first day of the twenty-fourth month following the month of its publication in the Belgian State Gazette.

The King is to determine the deadlines within which the controller of the file<sup>15</sup> must comply with the provisions of this Act for processing operations that exist at the moment of their entry into force.

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<sup>15</sup> Controller of the file is the former expression for data controller.

## Bibliographical information<sup>16</sup>

Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data (Belgian State Gazette of 18 March 1993).

Act of 22 July 1993 providing various tax and financial provisions (Belgian State Gazette of 26 July 1993).

Act of 30 June 1994 modifying article 52 of the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data (Belgian State Gazette of 18 August 1994).

Act of 11 December 1998 implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Belgian State Gazette of 3 February 1999).

Act of 11 December 1998 concerning the classification and the security clearances, security attestations and security advices (Belgian State Gazette of 7 May 1999).

Act of 26 June 2000 concerning the introduction of the euro in the legislation relating to matters referred to in Article 78 of the Constitution (Belgian State Gazette of 29 July 2000).

Act of 8 August 1997 concerning the Central Criminal Register (Belgian State Gazette of 24 August 2001).

Act of 22 August 2002 concerning patients' rights (Belgian State Gazette of 26 September 2002).

Program Act of 24 December 2002 (Belgian State Gazette of 31 December 2002).

Act of 26 February 2003 modifying 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 creating and organizing the Crossroads Bank for Social Security in view of establishing the status and extending the powers of the Commission for the protection of privacy (Belgian State Gazette of 26 June 2003).

Program Act of 5 August 2003 (Belgian State Gazette of 7 August 2003).

Act of modifying the Act of 11 December 1998 concerning the classification and the security clearances (Belgian State Gazette of 27 May 2005).

Act of 23 December 2005 containing various provisions (Belgian State Gazette of 30 December 2005).

Act of 27 March 2006 modifying various acts relating to matters referred to in Article 78 of the Constitution to reflect the new names of the legislative assemblies of the Communities and of the Regions (Belgian State Gazette of 11 April 2006).

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<sup>16</sup> This chapter provides an overview of the acts that are incorporated in this consolidated version. Reference is made to the official title of the act and its publication date.

Act of 10 July 2006 concerning the threat analysis (Belgian State Gazette of 20 July 2006).

Program Act of 27 December 2006 (Belgian State Gazette of 28 December 2006).

Act of 23 May 2007 changing certain acts concerning the grants to the Court of Auditors of Belgium, the federal ombudsmen, the Nominations Committees for the Notariat and the Commission for the protection of privacy (Belgian State Gazette of 20 June 2007).

An official German translation was published by Royal Decree of 14 November 2000 establishing the official German translation of the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data and of legal provisions modifying this act (published in the Belgian State Gazette on 6 December 2000). This text can be also consulted on the website of the Central Service for German Translation – Commission for German legal terminology (Ministry of Internal Affairs) (<http://www.ca.mdy.be/upload/downloads/19921208.fin.doc>). The published text is an unofficial, consolidated version.