

DECISION no. 28 of 7th of March 2007 regarding personal data transfers in other countries

In accordance with the provisions of Article 3 paragraphs (5) and (6) of Law no. 102/2005 on the setting up, organization and functioning of the National Supervisory Authority for Personal Data Processing, modified and amended and those of Article 6 paragraph (2) letter b) of the Regulation on the organization and functioning of the National Supervisory Authority for Personal Data Processing, approved by the Standing Bureau of the Senate no. 16/2005,

in view of the provisions of paragraph (3) of 95/46/EC Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and the free movement of such data, according to which “the establishment and functioning of an internal market, in which, in accordance with Article 7 of the Treaty, the free movement of goods, persons, services and capital require not only that personal data should be able to flow freely from one Member State to another, but also that the fundamental rights of individuals should be safeguarded”,

in view of the provisions of Article 1, paragraph (1) of 95/46/EC Directive, according to which the “Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data”,

having regard to the provisions of Article 1, paragraph (2) of 95/46/EC Directive, according to which the “Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph (1)”,

in view of the provisions of Article 26, paragraph (2) of 95/46/EC Directive, according to which “a Member State may authorize a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 25, paragraph (2), 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”,

in view of the Approval Report no. 1 of 5th of March 2007 of Authorizations Office within the National Supervisory Authority for Personal Data Processing,

in the enforcement of the provisions of Article 22, 29 and 30 of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, modified and amended,

having regard to Romania statute of European Member State starting with 1st of January 2007,

the **President of the National Supervisory Authority for Personal Data Processing** issues the following decision.

Art. 1

(1) According to Article 22 of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, modified and amended, the personal data processing which imply data transfers to European Union and European Economic Area Member States shall be subject to preliminary notification to National Supervisory Authority for Personal Data Processing. With that end in view it is used the notification form F1, within Annex no. 1 of the President of National Supervisory Authority for Personal Data Processing of Decision no. 60/2006 on establishing standard forms for the notifications provided by Law No. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, decision which was published in Official Journal of Romania, Part I, no. 507 of 12th of June 2006.

(2) The data transfers in the states mentioned in paragraph (1) are not subject to authorization.

Art. 2

(1) According to Article 25, paragraph (6) of 95/46/EC Directive, the personal data transfers in other states, for with the European Commission recognized an adequate level of protection, are to be notified to National Supervisory Authority for Personal Data Processing, by using the notification form F1, in accordance with the provisions of Article 22 and Article 29, paragraph (3) of Law no. 677/2001, modified and amended.

(2) The data transfers mentioned in paragraph (1) are not subject to authorization.

Art. 3

(1) According to Articles 22 and 29, paragraph (3) of Law no. 677/2001, modified and amended, personal data transfers towards other states that the ones mentioned in Articles 1 and 2, transfers which were carried on according to the provisions of Article 29, paragraph (4) of Law 677/2001, modified and amended, are subject to notification to National Supervisory Authority for Personal Data Processing, by using F1 form.

(2) The transfers mentioned in paragraph (1) are subject to authorization, by observing the conditions stipulated in Article 26, paragraph (2) of 95/46/EC Directive.

Art. 4

(1) According to Articles 22 and 29, paragraph (3) of Law no. 677/2001, modified and amended, personal data transfers towards other states that the ones mentioned in Articles 1 and 2, transfers which were carried on in accordance with the

provisions of Article 30 of Law 677/2001, modified and amended, are subject to notification to National Supervisory Authority for Personal Data Processing, by using F1 form.

(2) The provisions of the Decision no. 89/2006 of the President of the National Supervisory Authority for Personal Data Protection on establishing the categories of personal data processing operations which are likely to present special risks to the rights and liberties of individuals are becoming applicable in the cases of the personal data transfers mentioned in paragraph (1), which supposes the flow of data provided by Articles 7-10 of Law no. 677/2001, modified and amended, decision which was published in the Official Journal of Romania, Part I, no. 654 of 28th of July 2006.

Art. 5

This decision is without prejudice to the rights and obligations established according to Law 677/2001, modified and amended, and the documents enforcing this decision.

Art. 6

This Decision enters into force on the date it is published in the Official Journal of Romania, Part I.

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PRESIDENT
Of The National Supervisory Authority For Personal Data Processing,
Georgeta Basarabescu

Published in the Official Journal of Romania No. 182 of 16th of March 2006