

**THE NATIONAL SUPERVISORY AUTHORITY FOR  
PERSONAL DATA PROCESSING**

**ANNUAL REPORT**

**2007**

The activity report is presented to the Senate of Romania, in virtue of art. 5, Law no. 102/2005 regarding the formation, the organization and the operation of the National Supervisory Authority for Personal Data Processing, published in the Official Gazette of Romania no. 391/9.05.2005, with ulterior changes and amendments.

**Bucharest**

## FOREWORD

***Mr. President of the Senate,  
Esteemed Senators,***

*For the National Supervisory Authority for Personal Data Processing the year 2007 represented a corner-stone in passing from the national system of the protection of personal data to the extended, communitarian framework which was implemented at a fully harmonized level with the standards of the European Union.*

*If at the beginning of the activity the notion of protection of personal data was very little known in Romania, now we are proud to announce that, in 2007, our country ranked second in the world with the best results in the field of the protection of data, according to a report of the Privacy International organization, published in London.*

*We consider that we couldn't have achieved such a result without the careful supervision of data processing by our authority, within the duty of exerting the competences which were offered to us by the Romanian legislative authority.*

*From the perspective of the quality of Member State of the European Union, we firstly had in view the correlation of the practice of the supervision authority with the activity of the other independent authorities for supervision and control, focused on the debate of burning issues of our world and especially of the right to privacy.*

*On the level of the European Union as on the level of the whole world, in fact, the problems raised by the protection of privacy and by the protection of personal data gained awareness especially after the events of 9.11, when they found that on an international level, "the general trend is to eliminate privacy".*

*The fear of terrorist attacks, the intensification of the circulation of persons and of migration, a very strict control of borders, the necessity of ensuring an increased security of persons and the outstanding developments in technology have led to the spreading of surveillance systems, especially video surveillance, to the creation of extremely complex data bases and to the usage on a larger scale of biometric data.*

*To this purpose, a new alarm signal was drawn through the Declaration adopted by the European Authorities for the Protection of Data in November 2006, in London, document known as*

*the London Initiative. By this document, the member states of the European Union commit to respect and to reinforce the civil freedoms of the citizens who live in the European Union, to establish an appropriate system of concrete measures regarding personal data, which may guarantee a high standard of protection.*

*At the same time, the London Initiative proposes to adopt and implement the measures as soon as possible, ensuring an appropriate level of protection of the data inside the Union and in the case of transfers performed outside the Union or by international entities.*

*Moreover, by this document that we greatly appreciate, it was underlined that the video surveillance of certain activities can bring benefits, but the uncontrolled or excessive surveillance may affect the right to privacy.*

*Another aspect that I would like to bring to your attention is the active participation of Romania, during the year 2007, in the specific international reunions, among which we'd like to emphasize the Art.29 Working Group, regarding the protection of data, formed on basis of Directive 95/46/CE of the European Parliament and of the Council, acting as a consultant for the European Commission.*

*Considering the main events which characterized the activity of the authority for supervision during the year 2007, I'd like to especially underline our effort to maintain and to issue regulations destined to correlate the Romanian legislation with the communitarian legislation and to complete the already existent legal framework.*

*A first step was the initiative to start an emergency ordinance which may abrogate the taxes imposed to data controllers at the time of the notification of the supervision authority, considering the fact that the respective taxes represented a hindrance in the way of the free circulation of personal data between the member states of the European Union.*

*In view of enforcing the provisions of the communitarian acquis and in order to improve the specific activity, in the year 2007, we issued seven decisions published in the Official Gazette of Romania, among which we can underline Decision no.105/2007 regarding personal data processing within the data systems of the type of loan companies.*

*On issuing this decision, we took into consideration the risks involved in the processing of personal data by automatic means, for the privacy of each and every one of us, because the result is the assessment of certain aspects of the personality of the citizens, the credibility, the behaviour and the creditworthiness of a person.*

*By these regulations we aimed at ensuring the efficient protection of the rights of the honest individuals the personal data of whom are subjected to processing within the data bases of loan bureaus.*

*Aware of the force of television and of radio in disseminating information to the general public, the authority has focused its actions to promote the rights of the citizens through national and local stations throughout the country and intends to strengthen this collaboration during this year.*

*In view of the preparations for the accession of Romania to the Convention for the enforcement of the Schengen Agreement, the authority started a vast supervision process in order to fulfill its new responsibilities in this field and in order to inform all data controllers who have attributions in this field.*

*We especially appreciate the important role played by the Romanian Police in the development of these activities, through their involvement on county level in the process of raising awareness among data controllers, regarding the legal framework applicable to the protection of data and also regarding the obligations of the data controllers and the rights of the affected individuals.*

*Within this context, I'd like to underline the fact that the supervision authority takes part in the meetings of the common control authorities in the Schengen and Europol fields, forums which reunite representatives of the national authorities responsible with the protection of data in every member state of the Union.*

*Therefore, ladies and gentlemen, esteemed Members of the Parliament, we consider that the accomplishments of the supervision authority in 2007 have contributed to highlighting the progress of Romania within the European integration process.*

*We consider that during these two years, we laid the foundation necessary in Romania for the creation of a genuine culture of the protection of personal data.*

*Georgeta Basarabescu,  
President*

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## **CHAPTER I: GENERAL PRESENTATION**

The protection of personal data is regulated in Europe mainly by the following legislative acts:

- Directive 95/46/CE of the European Parliament and of the Council from the 24th of October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data,
- Directive 2002/58/CE of the European Parliament and of the Council, concerning the treatment of personal data and the protection of privacy in the sector of electronic communications.
- Convention for the Protection of Individuals with Regard to the Automatic Processing of Personal Data, adopted in Strasburg on the 28<sup>th</sup> of January 1981 within the Council of Europe.

The Romanian Constitution guarantees the fundamental right to privacy and to a private life (art. 26)<sup>1</sup>, although it does and consecrate the right to the protection of personal data.

The provisions of the communitarian regulations were transposed into the Romanian legislation through Law no. 677/2001 for protection of persons with regard to personal data processing and free movement of these data<sup>2</sup> (named below, within the present report, the Framework Law) and Law no. 506/2004 regarding the processing of personal data and the protection of privacy in the field of electronic communications.

During 2007, we initiated a series of projects of legislative acts with the purpose of transposing directives which have influence in the field of the protection of personal data<sup>3</sup>. By adopting these, the competence of the supervision authority shall extend into the field of the verification of electronic communications providers, who are forced to keep traffic data for one year, with the purpose of the prevention and of fight against severe offences.

Keeping in mind these new legislative perspectives, the necessity to develop the capacity of the institution and in order to support data controllers, during 2007, the supervision authority went

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<sup>1</sup> Art. 26 „(1) the public authorities respect and protect privacy and private life.

(2) the natural person has the right to dispose of it herself/himself, and by doing so, he/she does not beach the rights and the liberties of others, public order and morals.”

<sup>2</sup> The Law was published in the Official Gazette of Romania no. 790 from the 12th of December 2001 and it entered into force at the same date, being enforced starting with the 12th of March 2002.

<sup>3</sup> The debates on these projects are included in ch. III of the present report.

through the necessary proceedings in order to hire new additional personnel, to form territorial offices and to forge for itself a clear autonomous image, including of its personnel.

*Emergency ordinance of the government no. 115/2006 for the amendment and the completion of Law no. 102/2005 regarding the formation, organization and operation of the National Supervisory Authority for Personal Data Processing*<sup>4</sup>

Among the main provisions of this emergency ordinance there was the necessity of increasing the number of personnel and the possibility of forming territorial offices, with the endorsement of the permanent office of the Senate. During the Parliament debates regarding the project of the law for the approval of the Emergency Ordinance of the Government no. 115/2006, the Chamber of Deputies improved the provisions of this ordinance, by increasing the number of the personnel from 50 to 97, by a correct evaluation of the conditions for the deconcentration of the activity of the supervision authority at the level of territorial offices. In addition, the Specialized Commissions from within the Senate of Romania maintained the amendments subjected to debate in the Chamber of Deputies.

However, #the Parliament of Romania adopted law no. 270 / 1 October 2007, regarding the rejection of the Emergency Ordinance of the Government no. 115/2006<sup>5</sup>.

Therefore, from the point of view of the administrative capacity, maintaining a small number of personnel may affect the efficient fulfillment of the attributions in the field of the protection of data, which are specific to Member States of the European Union. Solving the situation is necessary within the perspective of the future evaluation task to which the supervision authority shall be subjected within the context of the process of the accession of Romania to the Convention for the Application of the Schengen Agreement.

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<sup>4</sup> Published in the Official Gazette of Romania no. 1031 / 27 December 2006

<sup>5</sup> Published in the Official Gazette of Romania no. 678 / 4 October 2007



## CHAPTER II

### THE SUPERVISION ACTIVITY

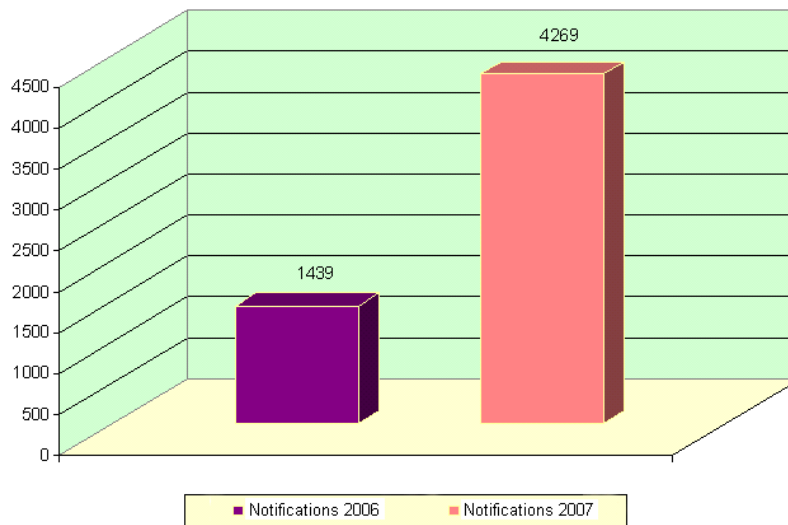
#### Part 1: The activity of registration of data processing

##### *1.1. The registration of notifications*

According to the provisions of Law no. 677/2001, amended and completed, data controllers who process personal data are forced, as a general rule, to notify the Supervision Authority of this activity.

During the year 2007 there was an increment of the number of notifications, as a consequence of the communication activity performed by the authority by promoting the legislative provisions in the field, and especially of the obligations of the natural and of the legal persons who process personal data, and as a consequence of the control activity.

Therefore, during the period comprised between the 1<sup>st</sup> of January and the 31<sup>st</sup> of December 2007, the Supervision Authority received a number of 4269 notifications.



At present, the data controllers have at their disposal the following ways of sending notifications:

- by filling in a paper form and by submitting it to the authority or by mailing it;
- by filling in an e-form in by sending it online.

The existence of two registration systems is justified by the objective impossibility of certain data controllers of sending information about the data processing activity that they perform in an electronic form.

In view of accelerating the process of registering notifications, data controllers were guided towards using the online notification method, implemented by the authority since 2006. Some of them, especially data subjects who did not have the possibility of an Internet connection, were supported to fill in the forms online, at the headquarters of the institution even.

Although this method is advantageous from the point of view of the speed of the registration of data processing, there was a high number of notifications sent on paper, even from entities the core business of which is electronic communications or Internet services or even from public authorities and institutions. Due to these reasons, the operations of examining how the notifications and the activity of replying the data controllers continued to represent this year too an important part of the activity of the institution.

We observed the following deficiencies in the activity of collecting and processing data:

- declared purposes are not correlated accordingly to the provisions of art. 22 par (1) of Law no. 677/2001, amended and completed;
- the activity of collecting data is excessive in comparison with the purpose determined by the data controller.

Example: some of the data controllers from the field of electronic communications collect copies of location documents (sale-purchase contracts, rental contracts, etc.) as proof of the domicile or of the residence of the client. Documents contain much more information about the person at stake than the information necessary for making known the address at which the person can be contacted in view of sending invoices or other documents;

- the notification of the persons concerned is not performed according to the purpose of the processing activity, to the nature of the processed data and to the processing means, within the conditions regulated by art. 12 of Law no. 677/2001, amended and completed.

As a positive response to the requests of the authority for supervision regarding the observance of the principles established by art. 4 of Law no. 677/2001, the data controllers from the field of data processing with the purpose of advertising, marketing and publicity have reduced the quantity of data and of data categories that they were processing, limiting themselves to information strictly necessary for the fulfillment of the purpose.

### *1.2. Exemption from the obligation of notifying the authority*

According to law no. 677/2001, the notification is a condition for the declaration of personal data processing. According to the nature of certain processing and to the risk on privacy, the supervision authority may establish the simplification of the necessary diligences for declaring the activity of data processing, but also exemptions from the obligation to notify the authority.

Therefore, keeping in mind the fact that certain data processing activities are recurrent in the usual activity of an data controller, they do not involve the processing of sensitive data or are provided as legal obligations on grounds of legislative acts, the president of the Supervision Authority issued Decision no. 100/20076, regarding the formation of certain categories of data processing which are not susceptible of affecting, at least not apparently, the rights of the persons concerned.

### *1.3. Analysis of the annual reports of public authorities*

The annual reports of the public authorities regarding the activity in the field of personal data processing shall be submitted to the supervision authority on grounds of art. 21, par. 3, letter j) of Law no. 677/2001. For the year 2007 there were received a number of 249 reports from public authorities.

Through these annual reports, a part of the authorities signalled especially the necessity of drawing up methodological norms for the enforcement of Law no. 677/2001.

Within this context, we consider that the data controllers may draw up methodologies, internal regulations, etc. in their own field of activity, with the endorsement of the supervision authority.

## **Part 2: The transfer of personal data abroad**

### *2.1. The regulation of the field*

The issue of the transfer of personal data abroad is regulated by art. 29-30 of Law no. 677/2001 for the protection of individuals regarding the processing of personal data and the free circulation of this data, amended and completed, in accordance with the communitarian principles provided in art. 25 and art. 26 of Directive 95/46/EC.

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<sup>6</sup> Published in the Official Gazette of Romania no. 823 / 3<sup>rd</sup> of December 2007. The details regarding the content of the decision no. 100/2007 are included in chapter 3 of the present report.

Therefore, art. 29 of Law no. 677/2001, in accordance with the provisions of art. 25 of the directive, establishes the principle according to which the transfer can be performed only within the conditions in which the state which intends to transfer the data (the destination state) ensures an adequate protection level.

When the destination state does not ensure an adequate protection level, art. 29, par. (4) of the law provides the possibility for the data controller to adopt contract measures, by which he offers sufficient guarantees regarding the protection of the fundamental rights of the individuals. This contract shall be analyzed, as the case may be, with reference to the provisions of Order no. 6/2003 regarding standard contract clauses in the case of personal data transfer to an data controller from a state, the legislation of which does not provide a protection level at least equal to the protection level offered by the Romanian law or given the Decision of the President of the Supervision Authority no. 167/2006 regarding the approval of standard contract clauses in the case of personal data transfer to a representative located in a state legislation of which does not provide a protection level at least equal to the protection level offered by the Romanian law.

## *2.2. The obligation to notify the transfer of data abroad*

Regarding this aspect, Law no. 677/2001 establishes the rule according to which the transfer of data abroad shall be the object of a preliminary notification of the supervision authority.

The supervision authority established by decision no. 100/2007 the cases in which it is not necessary to notify the processing, respectively the transfer of certain personal data. However, due to the specific conditions which must be fulfilled in the case of the transfer of personal data abroad, there were provided certain situations in which, although the data controller is exempted from the obligation to notify processing, he is not exempted from notifying the transfer.

In view of regulating certain aspects which have occurred as a consequence of the accession of Romania to the European Union, the supervision authority issued Decision no. 28/2007 regarding the transfers of personal data to other states, published in the Official Gazette of Romania no.182 /16<sup>th</sup> of March 2007, Part I.

According to this decision, the transfer of data into the member states of the European Union, into the states of the Economic European area, respectively Iceland, Liechtenstein and Norway, and into the states to which the European Commission has acknowledged by decision an adequate protection level, respectively, Argentine, Canada, Switzerland, Guernsey, the Isle of Man and the United States of America (if the USA data controller acceded the Safe Harbor privacy principles) shall be notified the supervision authority, but it is not subjected to approval.

The transfers of personal data to other states than to the ones mentioned previously, performed on grounds of art. 30 of Law no. 677/2001, shall be declared by means of a previous notification, but without being issued an approval from the supervision authority.

### *2.3. Approvals*

As for the transfer of personal data to a third-party state, which does not ensure an adequate protection level, performed on basis of a contract which contains sufficient guarantees regarding the protection of the fundamental rights of individuals, according to art. 29, par. (4) of the framework Law, the transfer shall be notified to supervision Authority, who shall issue an approval regarding the data transfer. Within these conditions, the supervision Authority issued a number of three approvals regarding the transfer of data in states which do not ensure an adequate protection level, on basis of standard clause contracts.

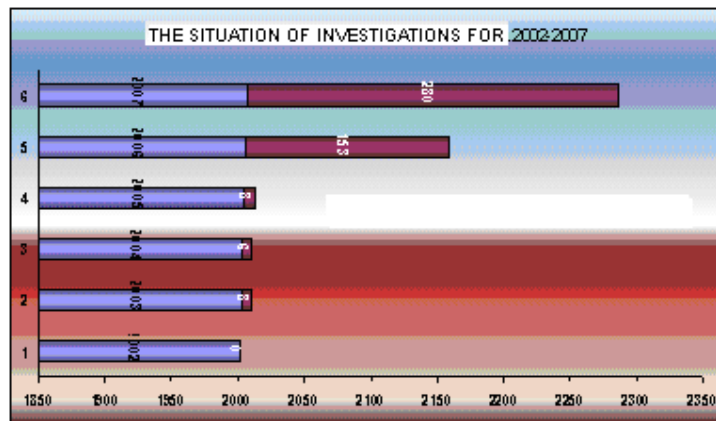
It is worth mentioning that irrespective of the conditions in which the transfer of the data is performed, data controllers must also respect all their other obligations, according to Law no. 677/2001, respectively the obligation of informing the concerned individuals, of guaranteeing and of respecting their specific rights, of respecting privacy and of ensuring the security of data processing and transfer.

## CHAPTER III THE CONTROL ACTIVITY

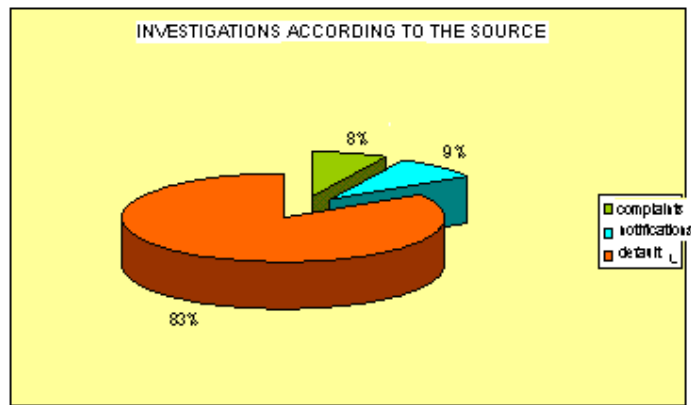
### Part 1: General presentation

Within the context of personal data processing, one of the objectives established by the strategy of the supervision Authority is raising the awareness level of the obligations of the data controllers and of the rights of the concerned individuals, including by increasing the number of inspections and by applying pecuniary penalties to those who fail to respect the rights of the persons the personal data of whom are processed.

During the year 2007, there were performed a number of 280 investigations, which represents an increment of 83% with respect to the year 2006 and by 1200% with respect to the 2002-2005 period.

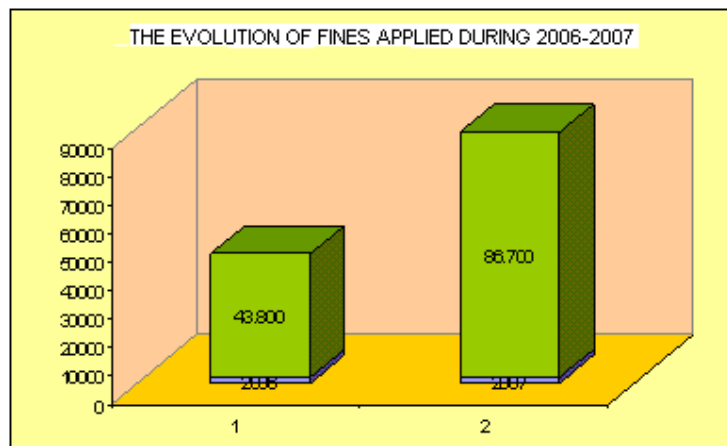


Out of the 280 investigations, a number of 235 were carried out by default, and 45 as a consequence of the submission of complaints (21) and of notifications (24).



Following the investigations, there were applied contraventional sanctions represented by warnings (64) and fines (95). The total amount of the fines applied in 2007 is of 86,700 lei (RON), increasing by 97.94% with respect to the year 2006. The fines were paid by the offenders (as income to the state budget) represent 78.94%, the others being appealed or sent to the financial administration in order to be enforced.

The appeal in a court of law of the fines applied was carried out only in 5 cases, out of which in three cases the court of law maintained the pecuniary sanctions established by the supervision Authority, and two of the cases are still under way.



According to the provisions of art. 21 par. (3) letter d) of Law no. 677/2001 and of art. 3 par. (5) of Law no. 102/2005, in the cases in which there was found an infringement of the provisions of Law no. 677/2001, according to the circumstances, there were applied, aside from contraventional sanctions, some specific compulsory measures, by means of the decision of the president of supervision Authority.

Therefore, the data controllers who did not respect the principles of the protection of personal data or the rights of the concerned individuals were forced to cease processing personal data (in four cases), and to delete illegally processed personal data (in six cases). At the same time, in four situations, they ordered a temporary interdiction and temporary suspension of the activity of processing personal data.

## **Part 2: Theme investigations, according to the annual schedule**

Most default investigations pursued the fulfillment of the *annual schedule* drawn up on grounds of certain themes derived from the activity of the authority, with regards to which it was previously found that Law no.677/2001 was unknown, and there was registered a small number of notifications. Therefore, the four important themes according to which investigations were carried out throughout each of the four quarters of the year were:

- *telemarketing* – processing of personal data performed by means of services focused on the provision of commercial information related to the products or services of a commercial agent, by long-distance communication means (i.e., by phone);
- *debt recovery* – processing personal data of the debtors pursued for the collection of debts;
- *selection and placement of the workforce* – personal data processing of applicants for jobs within the borders of the country or abroad;
- *tourism agencies* – personal data processing carried out within the context of booking or of selling various touristic products.

Following the investigations performed according to the theme schedule, there was found a significant increment of notifications received from the data controllers working in these fields.

### *2.1. Investigations in the field of marketing and telemarketing*

A significant part of the notifications submitted to the authority for the supervision of personal data processing is represented by those referring to commercial, marketing and advertising activities. According to the provisions of the Ordinance of the Government no. 99/2000 regarding the trading of the products and of the services on the market, approved by Law no. 650/2002, advertising campaigns may be carried out on basis of regulations and/or any other procedure document. The regulation must respect Law no. 650/2002 and Law no. 677/2001, modified and completed, and the organizers have the obligation to calculate, to retain and to transfer the tax owed for the income obtained by the winners, according to Law on. 571/2003 regarding the fiscal code, with ulterior amendments and modifications.



By these activities, the organizers of advertising campaigns process the personal data of the participants and of the winners, respectively: the name, the surname, the address, phone number/fax number, e-mail address, and personal numeric code, the number of the ID card, and also information regarding the preferences/the behavior of the consumers. Following the designation of the winners, the organizers of advertising campaigns have the obligation to make public the name of the winners and the amounts won by them.

As for direct marketing operations <sup>7</sup>, the supervision Authority continued its activity started in 2006, on the level of the Romanian Association for Direct Marketing (ARMAD)<sup>8</sup>, for the implementation of the measures necessary for exerting the right to oppose of the persons who do not wish to receive advertising material.

In fact, ARMAD agreed with the recommendation of the Supervision Authority to take measures regarding the inclusion into the materials for the collection of the data of the participants in advertizing lotteries of the option to freely express their consent with regards to the ulterior processing of their personal data with direct marketing purposes. As a practical way of ensuring the exertion of the right to oppose, they agreed to draw up an opposition list at the level of ARMAD, according to the pattern set by those of other states of the European Union.

In addition, the use of these lists is a requirement of the conduct code of ARMAD, endorsed by the supervision Authority.

These measures turned into putting opposition lists at the disposal of the public, at the following address: [www.robinson.ro](http://www.robinson.ro). The Robinson and list is a list of names and addresses of consumers who gratuitously announce ARMAD that they wish to limit the quantity of mail they receive, having the possibility of registering their name and address in the list used by direct marketing companies or, as the case may be, to erase their records. This list allows them to exert their right to oppose the use of their phone number for the purpose of receiving offers or information, but it does not allow blocking of SMS type messages; therefore, the persons concerned must directly address the companies who send such messages, in order to manifest their right to oppose.

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<sup>7</sup> According to the definition given by the Order of the Advocate of the People no. 75/2002 regarding the specific measures and procedures which may ensure a satisfactory level of protection of the rights of the persons the personal data of whom make the object of data processing, **direct marketing** represents "the advertising of products and services, directed directly to clients, data subjects, by means of the kind of mail, including electronic, or other long distance marketing means, other than the usual advertising methods (commercials) ". This definition was taken from the *Conduct code for personal data processing in direct marketing* of the Romanian Association for Direct Marketing, endorsed by the Advocate of the People institution during the time in which it fulfilled supervision Authority attributions.

<sup>8</sup> According to the site of this association, [www.armad.ro](http://www.armad.ro), the Romanian Association for Direct Marketing was founded in the year 2003 and at present it has 37 members. Member of FEDMA (Federation of European Direct Marketing), ARMAD has the purpose of fostering the positive acknowledgment of direct marketing and of increasing the trust of the clients and of end consumers, as a consequence of implementing conduct and good practice codes in this field and ensuring a competitive and liberal legislative framework.

In order to be able to attract clients by their multiple and diverse special offers, data controllers frequently use commercial communication through e-mail or by phone, i.e. telemarketing. Mainly out of the need for information, but also due to the attraction towards a possible, additional, gratuitous winning, the people who receive directly addressed commercial offers, by mail and by e-mail also, from various companies, do not manifest an attitude of total rejection against such practices.

During the year 2007 there were performed by default a number of 10 investigations having as object the checking of the conditions for processing personal data within telemarketing activities in direct marketing companies and in financial institutions who use telemarketing in order to advertise their services.

Having in view the situations found with this occasion, a supervision Authority recommended phone data controllers to inform those concerned adequately, respecting Law no.677/2001.

At the same time, the supervision Authority recommended data controllers who did not establish the exact destination of the personal data collected to include clear deadlines for keeping personal data and also to mention their ulterior destination in their internal procedures.

As for personal data processing with the purpose of organizing advertising lotteries, the supervision Authority issued decisions for ceasing the disclosure of the personal data of the winners, after the date provided by the regulation of the advertising campaign, respectively of erasing the personal data of the participants, kept by the data controller and after the period necessary for the validation of the winners.

Under the aspect of the collection of the personal numeric code, respectively in other cases than those of the winners of the campaigns, the president of the authority decided to cease its processing, and to erase the data collected previously from individuals who did not fulfill these requirements.

All the situations described above were checked subsequently and it was found that data controllers respected the measures ordered by the authority.

## *2.2. Investigations in the field of debt recovery services*

The procedure for the recovery of debts can be amicable, in the case in which the debtor will pay his debt willingly or judicial through the intervention of a court of law. As for personal data processing in this field, there are two situations:

- the processing of the data of the debtors by the creditor (natural or legal person, as data controller);
- the processing by the assignor of the debts of the personal data of the assigned debtors.

In the field of the recovery of debts, there were performed 25 investigations. The results of the investigations revealed the fact that the personal data of the debtors were kept also after the date at which the debts were recovered, contrarily to the facts notified by the data controllers to the supervision Authority. In such cases, there was issued a decision in order to erase the data.

In other situations, they found that the data controllers were keeping the data of the debtors in view of forming databases of bad-debtors, the so-called „black lists”, some of these being published on the Internet even, on the webpage of the data controller. Within these conditions, the authority ordered the cease of personal data processing represented by publishing on the site of a debtor „black list” and the erasure of the data which were disclosed by this method.

Debt recovery companies, as data controllers, were sanctioned for illegal personal data processing. Therefore, for breaching the provisions of art. 4, par. (1), letter e) of the framework law, regarding the limitation of keeping data only for the period necessary for fulfilling the purpose of processing, the data controller was forced *to delete* the personal data of the debtors which were not involved in fulfilling the purpose. Subsequent inspections revealed the fact that the decision of increasing illegally processed data was respected.

### *2.3. Investigations in the field of the selection and of the placement of the workforce*

Law no. 156/2000 regarding the protection of Romanian citizens who work abroad provides that the mediation activities related to hiring Romanian citizens abroad may be performed by categories of legal persons the core business of which is recruiting and placing workforce abroad, named *agencies for the selection and for the placement of the workforce*.

Within the procedures regarding the selection and the placement of the workforce, agencies perform operations which involve the collection, use and disclosure to third parties of personal data. With regards to the latter operations, there must be mentioned the fact that after the first of January 2007, the supervision Authority granted more attention to the transfer of data towards data controllers located in third party countries, with regards to examining the adequate protection level in personal data processing.

In the year 2007, there were performed 46 investigations with data controllers who carry out activities which involve the selection and the placement of the workforce, which revealed the fact that the collection of the personal data of the persons concerned (individuals in search of a job) is performed by means of forms. A part of the recruitment companies have their own resume form, others receive resumes in the form chosen by the concerned individual, existing thus the possibility

of collecting personal data which may be excessive with respect to the requirements of contract partners.

The collection of personal data is generally performed directly from the concerned individuals. There are also cases in which personal data is obtained from other specialized data controllers in the field of the selection and of the placement of the workforce (such as using websites: bestjobs, ejobs). Our investigations resulted in the conclusion that some data controllers from the field of the selection and of the placement of the workforce did not inform the individuals concerned regarding the rights provided by Law no. 677/2001, amended and completed.

As for keeping the privacy of personal data processing, we found that the labor contracts of the employees of the companies working in the field contain nondisclosure clauses.

In some cases, the investigated data controllers did not establish a determined duration for keeping personal data, adapted to the specific nature of processing and of the fulfillment of the purpose for which the data was collected.

There were applied sanctions for the illegal processing of personal data, under the aspect of not informing the concerned individuals, according to art. 12 of Law no. 677/2001.

#### *2.4. Investigations in the field of tourist agencies*

In the field of tourism, on signing the service provision contract, the agency processes the personal data of the clients, including the data of their family members. The main legislative acts which regulate tourism activity are: Ordinance of the Government no. 58/1998 regarding the organization and performance of the tourism activity in Romania, the Decision of the Government no. 238/2001 regarding the conditions for granting the license and the certificate for tourism, Decision of the Government no. 237/2001 for the approval of the Norms regarding the access, the record and the protection of tourists in tourist welcoming facilities, Ordinance of the Government no.107/1999 regarding the trading activity of tourist packages, the Order of the Ministry of Transportation, Constructions and Tourism no. 516/2005 for the approval of the framework-contract for trading tourist service packages, etc.

According to these regulations, *tourism agencies* are specialized units who organize, offer and sell tourist service packages or components thereof, as a tour-data controller tourism agency<sup>9</sup>

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<sup>9</sup> The core business of the tour operating tourism agency is the organization and the sale of tourist service packages or of components thereof, directly or through third parties.

or as a retail tourism agency <sup>10</sup>. Agencies are personal data controllers or, as the case may be, representatives who have the power to process data on behalf of the data controller, according to the results of the investigations performed by the supervision authority.

According to the thematic schedule for the year 2007, there were performed 35 investigations in tourism agencies. As a result of these investigations, we found the following general aspects regarding personal data processing:

- it in most cases of personal data processing through representatives, signed contracts did not contain the clauses provided by art. 19 and by art. 20 of Law no. 677/2001 (the obligation of representatives to act on the on basis of the instructions received from data controllers and to apply adequate security measures, from the technical and organizational point of view), recommending the data controllers to change the respective contracts;
- there were few situations in which the investigated tourism agencies notified the supervision authority of the data processing performed with this purpose, a fact which brought on the contraventional sanctioning of the respective data controllers, according to art. 31 of Law no. 677/2001 and were forced to notify the performed data processing;
- the categories of data generally processed by tourism agencies are: name, surname, personal numeric code (CNP), series and number of ID, date of birth, address, phone number and signature, and in some cases, e-mail address;
- individuals concerned are clients, from whom personal data is connected directly;
- concerned individuals were not informed regarding the rights provided by art. 12-18 of Law no. 677/2001, which brought on the contraventional sanctioning of the data controllers. according to art. 32 of Law no. 677/2001, and the recommended to inform the persons concerned;
- data is frequently sent to their contract partners of the European Union;
- most agencies did not have an established destination for the data after the expiration of the archive period, the supervision authority recommending data controllers to fulfill this obligation;
- the recording systems used by the tourism agencies are manual or mixed (automated and manual), and the recording systems do not have links to other previous working or recording systems;
- tourism agencies respected the minimum security requirements.

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<sup>10</sup> A retail tourism agency is an agency which sells or offers with the purpose of selling, on behalf of a tour operating tourism agency, contracted tourist service packages or components thereof.

We should also mention the fact that after performing investigations, we observed a significant growth of the number of tourism agencies which notified the supervision authority of personal data processing.

### **Part 3: Investigations in other fields of activity**

#### *3.1. Theme investigations, according to the schedule of the Art.29 Working Group*

##### *A. The SWIFT case*

The supervision authority took part, as a full member, in the meetings of the Art.29 Working Group (Brussels, Belgium), entity which reunites the representatives of the supervision authorities from the member states of the European Union and plays a consulting role for the European Commission. As a member of this group, the supervision authority follows the policy outlined on the European level and monitors, within its national competence, common interest issues which derive from the application of the Directive no. 95/46/EC.

Throughout the year 2007, aside from the investigations performed according to the annual schedule, there resulted the necessity to perform default investigations, as a consequence of the issues approached by the Art. 29 Working Group. Among these, there is personal data processing within the SWIFT international financial transactions system.

In the year 2006, the American press published a wealth of information regarding the access of the department of the US Treasury, with the purpose of pursuing terrorist acts financing, to information regarding international financial transactions held by the Society for the Worldwide Interbank Financial Telecommunication (SWIFT), respectively by its data storage center, located on the territory of the United States. The supervision authorities the European Union approached aspects which involve protection problems with the personal data of the clients of the financial institutions which use the SWIFTNet service.

Within this context, the supervision authority forwarded the Romanian Bank Association, the main information points that banking institutions which use SWIFT services should send their clients, this information representing fundamental elements established according to Opinion no.10/2006 of the Art. 29 Working Group. Therefore, notifications should make reference to the personal data of the clients of financial institutions, including to data categories which are processed and transferred into the USA. At the same time, the notification must state clearly the rights of the individuals concerned - clients of financial institutions, within the context of international fund transfers, by means of the "SWIFT" program, according to Law no.677/2001, amended and completed, i.e.: access right and the right to correct the data. Also, the content of the notification

must also contain the way in which the specific rights of the concerned individual may be exerted, by indicating the contract information of the person responsible in this field and the method of informing the concerned individual (in written).

A part of the banks declared that they will include the notifications, established on basis of these recommendations, in contract terms or in bank statements, on their web sites or in the posters existent at their branches or bank agencies.

The information sent to the Romanian Association of Banks and those sent directly to the clients of financial institutions regarding their acknowledged rights regarding the transfer of their personal data on the territory of the USA, were posted on the site of the supervision authority [www.dataprotection.ro](http://www.dataprotection.ro).

The supervision authority shall continue to monitor the way in which financial institutions fulfill their obligations regarding the transfer of data to the USA, in SWIFT transactions, and shall check the fulfillment of their obligation to inform those concerned.

#### *B. Medical insurance in the private sector*

During the year 2006, the data protection authorities of the European Union, reunited within the Art. 29 Working Group, started a joint investigation for the implementation of the legislation regarding the protection of personal data in the states that they represent, using a specific method: sending a mutually accepted questionnaire to the personal data controllers of the selected field.

In this direction, the Working Group chose for the first exercise of this kind a field with harmonized legislation at a high level and with a similar impact regarding the protection of personal data: medical insurance in the private sector. The exercise developed during 13 months, and its results were reflected in the content of the Report 1/2007, adopted by the plenary of the Art. 29 Working Group on the 20th of June 2007.

Due to the fact that Romania became a member state of the European Union on the 1st of January 2007, the supervision authority decided to carry out in its turn a theme investigation during the year 2007, using the method and the instruments chosen by the Working Group. The investigation was carried out with the purpose of checking the degree of observance of the regulations regarding the protection of personal data by the companies which provide medical insurance services.

Thus, on basis of the information obtained from the National Commission for the Insurance Supervision, questionnaires were sent to a number of 19 insurance companies. Out of these, only 8 companies sent filled in questionnaires, 6 other companies replied that they do not practice such insurance activity, and 5 companies did not send any reply.

From the analysis of the replies, we can conclude that, generally, insurance companies respect the principles for the protection of personal data.

As the Working Group mentioned in their report, the questionnaire also comprised questions which proved to be incomprehensible or irrelevant for certain personal data controllers (having in view certain differences generated by the specificity of the national health insurance systems).

With regards to the *personal data* collected by insurance companies and to the *purpose* of the processing activity, in most cases, companies have indicated the general identification data collected for the questionnaires, data regarding the health condition, genetic information, financial data (hard to payment of the insurance bonuses and indemnities) and data regarding the family. Data regarding the health condition and genetic information are collected with the purpose of establishing the insured risk, identifying major risks and for the sake of prudence. To the same extent, the data regarding the family of the insured is collected from the statement or from the medical questionnaire, with the purpose of drawing up the insurance offer, in order to established the insured risk and the bonus, and in order to evaluate medical history of the family.

As for the *information* provided to the insured individuals the personal data of which are collected, companies have declared that the concerned individuals are being presented with the insurance offer, in view of contracting the insurance and in view of establishing the insurance bonus, being notified at the same time of their right to access and to correct the data on grounds of the insurance application and of contract clauses. At the same time, the individuals concerned are offered the possibility to officially stipulate restrictions regarding the use of their personal data with other purposes than those related to the insurance contract signed between the parties, by means of medical statement or of the insurance statement. Consequently, personal data are collected with the consent of the clients, by signing the insurance application or, as the case may be, by filling in the medical statement, from the medical service suppliers, for the payment of the insurance indemnity.

With regards to the *addressees*, insurance companies mentioned the fact that personal data may be disclosed to the medical service provider or to other competent authorities on basis of legal grounds. All companies replied that there are no personal data related to medical insurances transferred outside European Union.

As for personal data processing by *other companies*, some companies mentioned the fact that in the case re-insurances, information such as the name, the surname and the personal numeric code is sent on basis of the consent of the client, expressed at the date of signing the contract.

With regards to the storage periods, most companies declared that information regarding risk assessment is stored up to the time of the expiry of the prescription period, and after that, the data is archived/transformed in anonymous data.



With regards to *security measures*, insurance companies have implemented specific procedures, according to which: the access to personal data is only granted on basis of de attributions established a by the job description; the personnel is informed regarding their obligations by means of internal work regulations and by periodic notifications through the internal network of the company; there are system logs and regulations regarding data access are respected; in order to send data to distance, they use crypted communication channels; backup copies of personal data are usually made on a daily basis, stored on external storage means, being also implemented procedures for the recovery of data in the case of the occurrence of unpredictable events.

We must also mention that the answers addressed by the Romanian companies are in many ways similar to those reflected in the report of the Working Group.

### *3.2. Investigations carried out in the field of education*

During the year 2007, mass-media published a series of articles regarding certain data collected by the Ministry of Education and of Research (the present Ministry of Education, Reasearch and Youth) for the formation of the National Education Database, among which there is data regarding the income per family member and the health condition of the pupils.

Due to the possible implications in the area of personal data, the supervision authority conducted by default a series of investigations related to the formation of this National Education Database (named below *BDNE*).

The database was created according to the Order of the Minister of Education and of Research no. 5760 / 28<sup>th</sup> of November 2006 regarding the management and the use of the National Education Database. Although the order contained provisions related to the processing of personal data, the supervision authority was not consulted during its preparation.

In order to check actual conditions for personal data processing in the BDNE, investigations were carried out both at the headquarters of the Ministry of Education and of Research (named below *MEC*) and also in the units subordinated to it: county boards of education, educational institutions from the municipality of Bucharest and from the rest of the country.

The investigations led to the following conclusions:

According to art. 2 of the Order no. 5760/2006, „BDNE is a unique and integrated statistic database, which ensures the collection, the validation and the consultation of the data necessary for the national education indicators and for supporting the administration process of the educational system with regards to: the assessment and the supervision of the system, the preparation of

estimates; taking decisions regarding the educational strategy; activity planning, and also reporting the required data in surveys and in other types of documents which involve public responsibility”.

The annex of this order (The uploading and use plan of the data belonging to BDNE) provided a series of stages that the educational institutions and the county boards of education needed to go through, in order to form and to update BDNE, without clearly providing the categories of personal data necessary for each of the purposes aimed at by the use of BDNE. The only references to personal data were the ones related to the nominal data of the teaching staff („norms, departments, etc.”) and of the pupils („belonging to classes, foreign languages studied, etc.”).

In order to enforce Order no. 5760/2006, MEC processes personal data, as personal data controller, with the meaning of art. 3 lett. e) of Law no. 677/2001. Educational units with legal personality which collect personal data on behalf of MEC and upload them into the BDNE, and county boards of education declared responsible by Order with the accuracy and the correctness of the collected data inserted into the BDNE, with organizing collection centers at the level of school units and with drawing up reports, are representatives, in the sense of art. 3 letter f) of Law no. 677/2001.

As an data controller, MEC shall have the following obligations:

- to establish exactly and explicitly the purposes of the processing of the data inserted into the BDNE;
- to establish exactly the adequate, pertinent and non-excessive personal data which need to be collected in order to be processed in the BDNE, according to each purpose;
- to adequately inform the individuals concerned regarding the identity of the data controller, the purpose of the collection and of the processing of data, potential addressees, the obligatory or optional nature of the collection of data and the consequences of their refusal to supply information, the rights that they benefit and the conditions for exerting such rights;
- to prepare instructions for personal data processing by the representatives and by all those under their authority, as users of the BDNE application;
- to submit the notification, previously to the processing of the data.

By not respecting the above-mentioned obligations, we found the infringement of the provisions of Law no.677/2001, as follows:

- the provisions of art. 4, par. (1) letter b), c), d), according to which „personal data destined to make the object of processing must be (...) collected with legitimate, explicit and clear purposes; they must be adequate, pertinent and non-excessive, with reference to the purpose of their collection and processed subsequently; accurate and if the case may be, updated”;

- provisions of art. 7, par. (1), according to which „personal data processing related to racial or ethnic origin, to political, religious, philosophical convictions or similar criteria, trade union membership and also personal data regarding the state of health or sex life is forbidden”, except for the cases established by art. 7 par. (2) and by art. 9;
- the provisions of art. 12, which provides that „in the case in which personal data is obtained directly from the person concerned, the data controller must supply the person at least the following information, except for the case in which the person already holds the said information:
  - the identity of the data controller and of his representative, if the case may be;
  - the purpose of data processing;
  - additional information, such as: the addressees or the categories of addressees of the data; if it is compulsory to supply the information, the consequences of the refusal to supply such information; the existence of the rights provided by the present law for the individual concerned, especially access rights, the right to change the data and to oppose, and also the conditions in which these rights may be exerted;
  - any other information the supply of which is imposed by the order of the supervision authority, keeping in mind the specific nature of the processing of data;”
- the provisions of art. 19 which provide that „#any person who acts under the authority of the data controller or of his representative, including the representative, who has access to personal data, can only process the said information on basis of the instructions of the data controller, except for the case of legal obligations”;
- the provisions of art. 22, par. (1), according to which "the data controller must notify the supervision authority, in person or through representatives before performing any processing or of any group processing having the same purpose or different purposes.”

With regards to the above-described facts, MEC was required to adopt the following measures:

In order to check the implementation of the measures, we performed a new investigation, occasion on which we found that the Ministry of Education, Research and Youth (MECT) drew up a methodological guide for the regulation of the activity of collecting and of processing personal data.

In order to remedy all deficiencies which remained unsolved regarding the observance of the provisions of Law no. 677/2001 within the BDNE, the supervision authority issued compulsory instructions with the purpose of MECT adopting the following measures:

- explicitly establishing the purposes which are going to be served by the usage of the personal data inserted into the BDNE;
- exactly establishing the personal data which are necessary for the fulfillment of all the purposes aimed at by the formation of the BDNE; the data must be adequate, pertinent and non-excessive. Therefore, according to the purpose established for collecting the e-mail addresses of the pupils, the income per family member and the type of deficiency which affects the health of the pupils, it is necessary for these data categories to be collected exclusively from the those who are eligible for the special programs developed by the Ministry;
- to adequately inform the individuals concerned regarding the identity of the data controller, the purpose of the collection and of the processing of data, potential addressees, the obligatory or optional nature of the collection of data and the consequences of their refusal to supply information, the rights that they benefit and the conditions for exerting such rights;
- the preparation of centrally coordinated instructions for the processing of personal data which may be applied by representatives (county education boards and school units), and by all persons under their authority, as users of the BDNE application; to establish uniform methods for collecting personal data, so that in the case in which special forms are going to be used for collecting data, the forms must contain the information provided by art. 12 of Law no. 677/2001 and the option of the individuals concerned to provide data which are not compulsory to collect, including the date and the signature of the person who confirms giving his consent to supply personal data, keeping in mind also their legal competence;
- Periodic follow-up of the observance of the instructions given to the representatives, in the sense of art. 19 and 20 of Law no. 677/2001;
- Establishing a storage period for the data and notifying the supervision authority of the decision;
- revising all entries into the BDNE, according to the instructions above and erasing personal data which does not comply with the legal processing conditions.

The supervision authority shall continue to monitor, during the year 2008, the way in which MECT and the units involved in organizing the BDNE, are observing instructions and implicitly the provisions of Law no. 677/2001.

### *3.3. Investigations performed in the field of medical service*

Having in view of the high sensitivity of the personal data regarding the state of health, during the year 2007, we continued investigations in the field of medical service.

3.3.1. *The national program regarding the evaluation of the state of health of the population in primary medical assistance*

The authority was notified regarding the possible inconformities regarding the way in which personal data is processed within the National Program regarding the evaluation of the state of health of the population in primary medical assistance (named below the *PROGRAM*).

According to Order no. 994/2007 regarding the approval of methodological norms for performing and for reporting specific activities within the national program for the evaluation of the state of health of the population in primary medical assistance, jointly issued by the #Minister of Public Health and by the president of the National Health Insurance Authority 11, are man entities involved in the program are: the national agency for health programs, specialized directions from the Ministry of Public Health, the National Health Insurance Authority, county public health authorities and public-health authorities of the municipality of Bucharest, local health insurance authorities and medical service providers. The order suffered a series of changes by Order no. 1474/2007<sup>12</sup>.

The methodological norms provided the purpose, the objectives, preliminary activities, services performed within the program, program funding, responsibilities in preparing, implementing and in monitoring the program, the development module of the program, the report of the physical and efficiency indicators (statistic data), control methods, the supervision and the assessment of the program. Also, samples of coupons, samples of the letters sent to the citizens with the signature of the Minister of Public Health) and samples of the letters sent to general practitioners (with the signature of the Minister of Public Health and of the president of the National Health Insurance Authority), samples of the individual risk chart, of the individuals provision plan and of the contracts signed with local health insurance authorities were attached to the annexes to Order no. 994/2007.

According to Order no. 994/2007, the *PROGRAM* started on the 1<sup>st</sup> of July 2007, with the above described objectives.

The sample of the letter sent to the citizens, according to annex no. 2 of the Order no. 994/2007, contains the following information: „NOTE: This program is funded by the Ministry of Public Health, for all the citizens of Romania, according to Law no. 95/2006 regarding the reform in the field of public health and according to the order of the Minister of Public Health. The National Supervisory Authority for Personal Data Processing authorized the Ministry of Public

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<sup>11</sup> Published in the Official Gazette of Romania no. 409/19<sup>th</sup> of June 2007.

<sup>12</sup> Published in the Official Gazette of Romania no. 716/23<sup>rd</sup> of October 2007.

Health to process your personal data (name, surname, domicile, personal numeric code), with the purpose of developing this program, according to art. 2, par. (2) of Law no. 677/2001. Your personal data shall only be disclosed to the partners involved in this program (the Romanian Post Company, the „Imprimeria Nationala” National Company S.A. and your personal doctor). According to Law no. 677/2001, you have the right to access, to change the data and to oppose, right which may be exerted by means of a signed and dated letter, addressed to the Ministry of Public Health”.

The supervision Authority started a series of investigations with entities involved in the development of the *PROGRAM*. the national agency for health programs (named below *ANPS*), from within the Ministry of Public Health (named below *MSP*), the national health insurance Authority or (named below *CNAS*), the National School for Public Health and for Sanitary Management, and local health insurance authority, a local public health authority, medical service providers.

The personal data processing activity which was going to be carried out within the program was notified to the supervision Authority by the Ministry of Public Health, through the national agency for health programs, in October 2006. According to this notification, the data which were going to be registered were: name, surname, address, personal numeric code, which are present on the printed coupons and sent by mail to the citizens. This data was obtained from the National Inspectorate for Personal Records and from the National Center for the Administration of Databases regarding Personal Records, on grounds of art. 10 par. 6 letter c<sup>1</sup>) of the Emergency Ordinance of the Government no. 97/2005, amended and completed.

By notification, the representatives were designated to be the Imprimeria Nationala and the Romanian Post companies. Also, the finalization of the data processing activities was estimated on the 31st of December 2007 following the vast bsequently the data would be turned into anonymous data and stored with statistic and historic or scientific research purposes.

The investigations which were carried out revealed a series of deficiencies from the point of view of the enforcement of Law no. 677/2001.

The provisions of Order no. 994/2007 and the training of the general practitioners who collect personal data in individual risk charts (as representatives of the Ministry) did not refer to the possibility of the concerned individuals to refuse to reveal all the required data and the to the consequences of this refusal, as it is mentioned in Law no. 677/2001.

To the same extent, the categories of addressees of the personal data – local health insurance Authorities, the other entities involved in the program -- were not specified in the letters sent to the population, although this information must be provided by the data controllers, according to art. 12 of Law no. 677/2001. At the same time, the documents used for the collection of personal data

(coupons, risk charts, individual supervision schedules) did not contain the registration number of the notification, contrary to the provisions of art. 24 par. (2) of Law no. 677/2001.

The software application put disposal of the physicians by the MSP can be accessed on basis of the personal numeric code of the physician who entered the data.

Due to the fact that the purpose and the objectives of the PROGRAM provided the preparation of an individual supervision schedule for adults and for children, taking into consideration the fact that personal data must be accurate, pertinent and not excessive with reference to the purpose of data processing, according to art. 4 par. (1) letter c) of Law no. 677/2001, from the point of view of the National Supervisory Authority for Personal Data Processing, personal data associated to those regarding the state of health and sex life can be processed only by medical staff, respecting the provisions of art. 9 of Law no.677/2001. According to art. 4 par. (1) letter d) of Law no. 677/2001, processed data must be accurate and updated. However, a significant part of the coupons sent to the population returned to the health insurance authorities, as a consequence of the mismatch of the printed personal data.

With regards to the facts mentioned above, we required MSP to adopt measures in view of correcting the deficiencies that were found, as follows:

- ✓ to establish the ulterior destination of the data collected electronically and on paper;
- ✓ to ensure the legal nature of processing the data regarding the state of health, collected in the form established by the Order no. 994/2007, according to art. 9 par. (3) of Law no. 677/2001;
- ✓ to train general practitioners regarding the optional/compulsory nature of providing all the data required through the forms and the consequences of the refusal to provide such information;
- ✓ ensuring the notification of the persons concerned regarding all the categories of addressees of the personal data;
- ✓ implementing the minimum requirements for the security of personal data processing and training the representatives in view of this purpose;
- ✓ adopting measures to correct inaccurate data or data which is not updated, and has been processed on the coupons sent to the population;
- ✓ establishing concrete methods of exerting access, intervention and opposition rights by those concerned, in the relationship with the MSP and with the health insurance authorities;
- ✓ completing/modifying the notification with the information resulting from the enforcement of Order no.994/2007, regarding: the representatives, the categories of personal data, the estimated date for the finalization of the processing operations, the ulterior destination of the processed data, the description of the security measures for data processing;

- ✓ to put at the disposal of the supervision Authority any information necessary regarding the operation of the software application used within the PROGRAM.

In their answer, MSP, through the national agency for health programs, stated the following:

- the software application which will ensure data processing shall also ensure their privacy by encrypting identification data;
- physicians were trained in regional training sessions, although the investigations performed revealed the fact that not all physicians were properly informed regarding their obligations according to Law no. 677/2001;
- personal data associated with those regarding the state of health and sex life are processed exclusively by the personal physician, and any data sent to any other institution is transformed into anonymous data;
- as for the inaccurate or incorrect data present on the coupons, those concerned were guided to address INEP in order to correct them;
- additional information related to the operation of the software application used within the Program shall be forwarded after the finalization of the software application;
- MSP considers that the persons concerned were informed by means of the letter addressed to the citizens, and the citizens gave their consent for processing their personal data by appearing in front of the physician;
- with regards to the technical grounds of data processing regarding the state of health and sex life, they invoked art. 7 par. (2) letter g) and h) of Law no. 677/2001<sup>13</sup>.

With regards to the situation presented above, according to law no. 677/2001, the National Supervisory Authority for Personal Data Processing sent the Ministry for Public Health compulsory instructions regarding:

a) completing/modifying the notification no. 3396 with the information resulting from the enforcement of Order no. 994/2007, amended and completed, regarding: the representatives, the categories of personal data, the estimated date for the finalization of the processing operations, the ulterior destination of the processed data, the description of the security measures for data processing

b) to inform general practitioners involved in the program and the citizens regarding the addressees of the data and regarding the fact that the refusal of the citizens to provide the required

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<sup>13</sup> Art. 7 par. (2) letter g) when processing is necessary with purposes related to preventive medicine, establishing medical diagnosis, care or medical treatment for the person concerned or managing the health services who act for the better interest of the person concerned, with the condition that the processing of the said data shall be carried out by or under the supervision of medical staff who respect privacy, by or under the supervision of another person subjected to an equivalent obligation with regards to the professional duty to respect privacy;

#h) when the law expressly provides such facts with the purpose of protecting an important public interest, with the condition that processing is carried out respecting the rights of the person concerned and of the other guarantees provided by the present law.



information through the individual risk chart, approved by Order number 994/ 2007, amended and completed, does not draw any consequences;

c) to establish concrete methods of exerting access, intervention and opposition rights by those concerned, in the relationship with the MSP and with the health insurance authorities;

d) to respect the minimum security requirements for personal data processing, provided by Order number 52/2002, regarding the approval of the minimum security requirements for personal data processing, which establishes the assignment of identification codes, accompanied by logging in methods, by eliminating the possibility for the software application put at the proposal of the Ministry of Public Health to be accessed on basis of the personal numeric code of the personal physician.

At the same time, in view of enforcing these compulsory instructions, we recommended MSP to modify some of the provisions of Order no. 994/2007, amended and completed.

The supervision Authority shall continue to monitor, during the year 2008, the way in which MSP followed the addressed instructions and recommendations, in a view of respecting the provisions of Law no. 677/2001.

On the other hand, from the information received after the investigations, there resulted a significant number of cases in which the coupons sent to the population contained erroneous data, as a consequence of the data sent by CNABDEP, on basis of the protocol signed by MSP with MAI.

As such, the supervision Authority notified these issues to INEP and to CNABDEP, in view of taking the necessary measures, according to Law no.677/2001, regarding the act of ensuring the processing of accurate and updated data and of correcting data which do not comply with legal requirements.

### *3.3.2. Disclosing data referring to mental illnesses*

The supervision authority was notified regarding a hospital disclosing data referring to the mental illnesses of a patient to an association (NGO), in absence of any legal grounds.

After investigating this case, it was found that the notification was based on genuine facts, the concerned hospital being sanctioned for not respecting the provisions of art. 7 of Law no. 677/2001, because it disclosed special (sensitive) data regarding the state of health, which may deeply affect the privacy of an individual, to a third party, without any legal justification.

At the same time, we recommended the respective data controller to prepare a guide to regulate the disclosure of data regarding the patients or ex-patients, according to the position of the person requesting information and to the legal grounds of the request, so that they may avoid the occurrence of such situations in the future, such as the one which was investigated. The hospital accepted the recommendations of the supervision authority.

Having in view the limiting conditions provided by art. 7 and by art. 9 of Law no. 677/2001, and the fact that the hospital did not provide proof of respecting these provisions in the case of the disclosure of the data regarding the illnesses of the ex-patient, the supervision Authority ordered the interdiction to disclose data within other conditions than the ones imposed by Law no. 677/2001 and by the legislative documents which regulate the activity in the field of public health (such as Law no. 46/2003 regarding the rights of the patient).

### *3.3.3. Personal data processing with the purpose of providing „health services”, without fulfilling the obligation to notify performed data processing*

Following a notification by which they claimed the fact that certain data controllers from Arges County process personal data with the purpose of „health services”, without complying with the obligation to notify the supervision authority of personal data processing performed, there were investigated 14 of the medical centers of this county.

From the point of view of the legislation regarding the protection of personal data, we found that the data collection operations performed by the medical centers subjected to the inspection are carried out by using forms approved by specific regulations in the medical field, which contain the identification data of the person concerned and medical diagnose data, necessary especially in patient-physician and physician-health insurance authority relationships.

From the point of view of the right to be informed, the investigations revealed the fact that the data controllers from the medical field displayed in visible locations the rights of patients, as they are provided by Law no. 46/2003, regarding the rights of the patient. Because medical care services involve processing operations, such as the collection or use of the personal data of the patients, we recommended to display including the rights provided by Law no. 677/2001, amended and completed, which should ensure efficient protection, not only of the right to protect health, but also of the right to protect data.

The fact of establishing the purpose and the personal data processing means (identification data and medical data) related to the core business, respectively health service provision, by every Medical Center, determines their qualification as personal data controllers, affected by the obligation to notify, according to Law no. 677/2001. As such, data controllers who did not comply,

were sanctioned for the fact that they failed to notify that they were carrying out personal data processing related to the activity of providing medical service, within the conditions provided by law.

Subsequently to these investigations and to the enforced sanctions, data controllers respected the recommendation to register with the supervision authority.

Investigations performed in the medical field shall continue during the year 2008, given the importance of ensuring a solid framework for personal data processing with regards to the state of health, especially in the context of the development of software products which allow a faster and more efficient processing of information, but which, on the other hand, can raise issues from the perspective of the legislation regarding personal data protection, if there are not sufficient security measures for databases, for the careful supervision of the access to this information and for encrypting communication by means of electronic communication systems.

#### *3.4. Investigations in the field of video surveillance*

One of the fields which has permanently been in the attention of the supervision authority is personal data processing through video surveillance means. Aside from the provisions of Law no. 677/2001, the field of video surveillance is regulated by the provisions of Law no. 333/2003, regarding the protection of objectives, assets, values and the protection of persons, amended and completed, which contains special regulations regarding the conditions for the installation, assembly and operation of the technical protection and alarm systems against breaking entries, which can also include closed-circuit TV sub-systems.

In the year 2007, there were conducted a series of investigations related to data processing by means of video surveillance, either as a consequence of default notifications or as an effect of complaints from individuals concerned.

Thus, one of the investigations started as an effect of information coming from the mass-media, which referred to the fact that a local public transport service company processes personal data with the purpose of monitoring public means of transport by using video means. The investigation went through various stages, necessary in order to check the legal nature of personal data processing (of the image of the passengers, captured by means of the video cameras installed in some of the transport means), and of the observance of the measures set forth by the supervision authority.

The purpose invoked for the use of the video surveillance system was the prevention of acts of vandalism or of anti-social deeds in means of transport and the identification of the perpetrators. However, the data controller used to the system without drawing up a written document to justify

the necessity of installing the video cameras inside the means of transport and denied to put the video cameras into operation, which involves the installment of a specialized software.

With regards to the first findings, the authority took the measure to temporarily suspend the video surveillance processing activity up to date when the data controller shall present documents with the purpose of proving the legal and the legitimate conditions for data processing, and the security and confidentiality procedure of the processing activity.

Therefore, the data controller notified the personal data processing performed with the purpose of ensuring the security of the persons and of the public/private premises.

In order to ensure the observance of the measures provided by the supervision authority, we performed a new inspection with the same data controller, who was carrying out activities for the training of the personnel with regards to the operation of the video surveillance system and to the preparation of written procedures regarding the way in which the images resulted from the use of the video surveillance system are going to be processed. The notification of the individuals concerned shall be carried out by using a note displayed in the public means of transport subjected to video surveillance.

Moreover, the data controller inserted into the project for the procedures a new purpose for personal data processing through the video surveillance system: finding the disciplinary infringements of its own drivers.

The last inspection followed up on the way in which images are going to be processed before putting into operation the surveillance system and on the ensurance of security measures for the collected data. During this stage, we found that the security measures implemented by the local public transport service are in accordance with Order no. 52/2002.

Consequently, the data controller respected the recommendations of the supervision authority and adopted the following measures:

- It notified the supervision authority the data processing performed through the supervision means installed in public transport means;
- it determined the purpose of installing the video surveillance system in public transportation means in order to ensure the security of persons and of public/private premises, to prevent vandalism acts and anti-social behaviour (theft, disturbing public order) in public means of transport and to find the disciplinary infringements of its own drivers;
- it sent the supervision authority a sample of the notice directed to the persons concerned and displayed it in the public means of transport which were under video surveillance;
- It prepared the operational procedure for video surveillance in public means of transport;
- it established who are the persons who have the right to access stored images.

Having complied with the measures established by the supervision authority, the order to suspend personal data processing by using the video surveillance system was revoked;

At the same time, the authority prohibited the use of the personal data collected through the video surveillance system installed in public means of transport for finding the disciplinary infringements of drivers, purpose considered to be incompatible to the notified purpose, respectively "the security of persons and of public/private premises".

### *3.5 Investigations in the field of financial and banking services*

One of the investigations performed during the year 2007 followed the observance of the provisions of Law no. 677/2001 with regards to the implementation of adequate security measures for the protection of personal data, the more so, given that the classified nature of the data is absolutely related to bank privacy.

Therefore, we investigated the circumstances in which an electronic support means (diskette), containing a file with the personal data of the employees of an institution (name, surname, personal numeric code, net salary, bank account) which entered into the possession of another institution, both being clients of the same bank. It was found that the file on the diskette was not secured in any way (e.g. encrypted), and the bank did not establish express instructions regarding the obligations of the staff who have access to data stored on such data storage means. In addition, the data of the diskette could be viewed clearly by any person who could have entered in possession of it.

Personal data collected by means of magnetic support, in file format and the method imposed by the bank by the agreement signed with its clients are special in nature, determining the direct identification of the persons through their personal numeric code (associated to the name and to the surname of the respective employees) and disclosing information regarding bank accounts and monthly wages.

Consequently, we recorded the infringement by the bank of art. 33 of Law no. 677/2001, related to the failure to comply with the obligations regarding to privacy and to applying security measures, fact which determined the disclosure of personal data to unauthorized individuals. The offense was punished by applying a fine in the amount of 15,000 lei (RON).

At the same time, the supervision authority addressed the bank the recommendation to adopt appropriate security measures, in order to protect personal data against disclosure and unauthorized access, including by bank officers who handle magnetic support means with files which contain personal data.

The bank complied with the recommendations of the authority and sent, within the specified deadline, a detailed internal procedure, meant to prevent the re-occurrence of errors of the kind of those investigated.

#### **Part 4: The activity of solving complaints**

Data subjects who consider themselves offended by personal data processing method, may address complaints to the supervision authority, with the condition of not having filed for a similar action with the same object in court. The law provides the obligation of the person concerned to previously (15 days before the submission of the complaint) submit a petition to the concerned data controller, before submitting it to the supervision authority.

During the year 2007, the supervision authority received a number of 51 complaints, by which there were notified aspects related to possible infringements of the rights regulated by Law no. 677/2001. Most of these related to the disclosure of personal data and to the reporting of personal data of the debtors to various banks at the Credit Bureau or at the Credit Risk Office.

The reasons for rejecting the complaints filed by the persons concerned were:

- *not respecting the procedure provided by the law;*
- *complaining against facts which were not of the material or territorial competence of the supervision authority, such as: the refusal to provide documents which contain personal data following the exertion of the free access right to public information, the refusal to provide data regarding third parties; the receipt of commercial communication specific for direct marketing from data controllers who are not located in Romania, by means located on the territory of other states;*
- *not providing proof to support the complaint.*

In the cases which were considered as founded, there were applied conventional sanctions and, as the case may be, the president of the supervision authority ordered to cease personal data processing with the purpose of direct marketing and the deletion of the processed personal data on grounds of not taking into account the rights of the concerned individuals.

During the year 2007, we observed a tendency to use the complaint samples that the supervision authority provided on its site in view of diminishing ill-founded cases (at least from the procedure point of view).

##### *4.1. Medical service*

The *complaints* addressed to the supervision authority regarding the possible breaching of the rights to privacy by processing personal data regarding the state of health proved to be generally ill-founded.

Therefore, in one of the cases, the person concerned notified the authority of not respecting the obligation to notify personal data processing performed by a medical center (from the municipality of Bucharest) and the disclosure of personal data regarding the state of health on occasion of the disciplinary investigation carried out against a physician.

As a consequence of the investigation, it was found that the personal data processing for finding disciplinary infringements was performed in accordance with the law, and the respective data were not sent by the medical center to any third party. Therefore, we could not charge the data controller with any breach of the privacy of the medical data of the patient.

For not respecting the obligation to notify personal data processing, we recorded the offense provided by art. 31 of Law no. 677/2001, in the form of failing to notify, which was why the data controller was sanctioned. Also, we recommend to display at the headquarters of the data controller the rights of the persons concerned, expressly provided by Law no. 677/2001.

Subsequently to the investigation, the data controller complied with his obligations and submitted the notification imposed by the law for personal data processing.

#### *4.2. The selection and placement of the work force*

By the *complaint* addressed to the supervision authority, the person concerned invoked the failure to respect the law by a company dealing with the selection and the placement of the workforce through the Internet, to whom he expressly required to erase his personal data, collected on occasion of creating an account on their site.

As a result of our verifications, we found that the data related to the account of the person concerned were deactivated within the legal period of 15 days, provided by Law no. 677/2001, amended and completed. However, the entry of the details of the account continued to contain personal information such as: name, surname, the date of birth, mobile phone number, professional category, field of activity.

Having in view what we found and the express requirement of the person concerned to have the personal data that the company was holding on its site deleted, the president of the supervision authority issued a decision by which he ordered the definitive deletion of the personal data relating to the created account, which were stored without any justified reason by the said company.

#### *4.3. Tourism services*

By the *complaint* addressed to the Authority, the person concerned notified the authority of the repeated receipt of unsolicited commercial messages, despite his expressly manifested opposition. Within the context of Law no. 677/2001, amended and completed and of Law no. 506/2004, we performed an investigation at the headquarters of the data controller, in order to verify the notified aspects.

Therefore, although following the first message received, the concerned person exerted his right to oppose, he continued to receive messages of the same nature repeatedly and from the same tourism agency. We therefore found that the right to oppose of the person concerned was not respected.

Also, the respective messages did not offer the possibility to oppose receiving unsolicited commercial communication using simple and free means, according to art. 12 of Law no. 506/2004, which represents the unsolicited commercial communication offense, sanctioned by art. 13 par. (1) letter l) of the same law.

Moreover, the tourism agency did not notify the authority of the personal data processing, according to the obligation provided by art. 22 of the Law no. 677/2001, although it was processing personal data within its current activity.

Given the findings resulting from the investigation, the data controller was sanctioned contraveniently, and the supervision authority ordered the deletion of the personal data of the person concerned from the batch mailing list for commercial messages.

The data controller complied with the recommendation of the supervision authority.

#### *4.4. Video surveillance*

Through the *complaint* addressed to the authority, the person concerned notified the authority of a possible breach of the right to privacy by abusively using a video surveillance system comprising six video cameras, including image recording and storage equipment, installed within the premises of a National College, without the consent of those working and learning within the premises of the school.

The investigations revealed the fact that the video supervision system, installed on grounds of a contract, was operating since the 15<sup>th</sup> of January 2007, with the purpose of monitoring the access within the educational facility, ensuring the security of the persons and of school premises. We found that there were 16 fixed, operational videocameras, having limited zoom enhancing possibilities, oriented towards access ways, classes, administrative offices, access ways to the



floors, basement, IT and psychology-pedagogy laboratories, internal yards and access ways to the yards.

Regarding the act of monitoring the entrances into the teachers and into the pupils toilets, we found that the entrances were not distinctly and specifically monitored, the cameras being located in the hallway, with no viewing angle towards the toilets, aspect which does not affect privacy. The images were captured using a movement sensor, recorded and stored up to the full capacity of the hard disk, without being stored on an external storage device, except for the cases of the occurrence of an incident (e.g.: theft, fight, etc.), situation in which images stored are sent to the competent investigation authorities.

Regarding the notification of the persons concerned regarding the video surveillance of the premises and of the appurtenances of the College, this is ensured by the provider of the surveillance equipment, by means of typical notice signs. Because the notice signs were discreet, we recommended the data controller to use visible graphical signs in order to notify the persons concerned regarding the use of video surveillance systems.

After talking with the pupils and with the teaching staff, we found that they were verbally notified regarding the purpose, the destination and the location of video surveillance cameras, previously to their installation. With regards to these findings, we did not record any illegal aspects of data processing.

Having in view the fact that the respective school unit, although it was processing of personal data by means of the video surveillance system, did not notify the supervision authority, it was sanctioned contraveniently.

At the same time, the General Inspectorate of the Romanian Police was notified because the installation of video surveillance cameras was carried out without its endorsement, necessary according to Law no. 333/2003, aspect which was subsequently confirmed by the notified institution, who ordered the taking of the correction measures provided by the law.

The data controller proceeded to make the necessary diligences in view of registering the personal data processing that it was carrying out with the supervision Authority, according to the recommendations which were addressed to it.

#### *4.5. Police*

A series of investigations took place in order to solve a *complaint* filed by a person who invoked a possible abusive use of his personal data by a police precinct, with the occasion of drawing up a report.

In fact, the person concerned contested the act of collecting his personal data (data regarding his personal numeric code, domicile, date and place of birth) from authorized sources, respectively from the Persons' Records Service, as was certified in the police file.

In order to solve the complaint, the supervision authority went through a series of diligences at a level of the accused precinct, the Persons' Record Service, where the personal data of the claimant were collected, and at the National Center for Databases regarding Persons' Records.

The investigations revealed the following:

- the report drawn up by the police was part of the file formed as a consequence of a penal complaint against the person concerned; because for such offenses, the complaint must be submitted to a court of law, the file was forwarded to the competent court, according to an internal procedure; even in these cases, the police is forced to verify the identification data of the accountant;
- the checking of data was performed by phone, by calling the county Persons' Records Office;
- the Persons' Records Service and the National Center for Databases regarding Persons' Records did not confirm the verification of the data of the claimant by the investigated police precinct.

Having in view the contradictory information, the case was notified to the General Inspectorate of the Romanian Police (IGPR) which was inquired regarding the conditions to be met in order to verify identification data, the official sources for the verification of the accuracy, of the correctness and of the complete nature of the personal data, when this is compulsory, the procedure for accessing official data bases in every precinct, the date when the data was accessed, the persons who accessed the data and the result of the interrogation, respectively the personal data which was obtained.

According to IGPR, in order to verify the identity of the offenders, according to the norms of the Penal Procedure Code and to the practice of collaboration relationships between the police and the courts of law, the police precincts refer to the database of the National Center for Databases regarding Persons' Records (CNABDEP), as an official source for verifying the accuracy, the correctness and the complete nature of personal data. This database is consulted according to a methodology issued by the CNABDEP during the year 2004. According to the methodology, the consultation of the records of the CNABDEP is recorded into the consultation register, which identifies the persons who interrogated this database.

IGPR concluded that the police precinct subjected to investigation acted to carry out specific activity, according to their duties and the data obtained (by phone) was used according to the legal legislation in force. There was not provided other information regarding the legal nature of the personal data verification procedure by phone and regarding the way in which such verification is highlighted.

Having in view the findings resulting from the investigations conducted in order to solve this complaint, the supervision authority issued a written recommendation to the IGPR, referring the implementation of a uniform procedure for the verification of personal data in the databases of the CNABDEP, including for those precincts which do not have direct, automatic acces to this database. The verification procedure must provide the registration of clear information, which may allow the identification at any time of the person who required the verification, of the required/obtained data, of the date of the verification and of the motive,

Also, we recommended to follow up on the observance of the minimum security requirements of personal data processing, as provided by Order no. 52/2002, referring especially to the identification and to the authorization of the user, the type of access, accessed files.

The recommendation was sent to the National Inspectorate for Persons' Records, to the National Center for Databases regarding Persons' Records and in carbon copy, to the Ministry of Justice, according to the provisions of art. 21 of Law no. 677/2001.

According to the recommendations, IGPR issued a set of *methodological norms regarding the access to the database containing the records of the population* which provide concrete conditions for the direct or, as the case may be, indirect access of policemen to the database of the CNABDEP, with the exclusive purpose of fulfilling job-related duties, and the method to use in order to highlight such access.

## **CHAPTER IV: THE ACTIVITY OF PREPARING THE ACCESSION PROCESS TO THE SCHENGEN AREA**

### **Part 1: The Common Control Authority**

According to the provisions of art. 115 of the Convention for the enforcement of the Schengen Agreement, there was formed a Common Control Authority, with the role of controlling the technical assistance service of the Schengen Information System. This authority is made up of two representatives of each national control authority. Each contracting party holds one vote. The control activity exerted according to the provisions of CAAS, of the Convention of the Council of Europe dated the 28<sup>th</sup> of January 1981 for the protection of persons regarding the automatic processing of personal data, taking into consideration Recommendation R (87) 15 of the 17<sup>th</sup> of September 1987 of the Committee of Ministers of the Council of Europe which regulates the usage of personal data by the police and according to the internal legislation of the Contracting Party responsible with the technical assistance service. The National Supervisory Authority for Personal Data Processing shall take part in the works of the Common Control Authority from the month of June 2007, with the President of the authority and with an expert with legal training.

### **Part 2: The National Supervisory Authority for Personal Data Processing**

On grounds of the provisions of art. 114 of the Convention for the enforcement of the Schengen Agreement, the National Supervisory Authority for Personal Data Processing is a control authority, which ensures the external control of personal data processing performed by the Romanian data controller designated by the law to administer and to manage the implementation of the convention for the enforcement of the Schengen Agreement - the Ministry of Internal Affairs and of the Administrative Reform.

This authority exerts an independent control of the data file of the national section of the Schengen Information System and verifies if the processing and the use of the data inserted into the Schengen Information System do not infringe the rights of the person at stake.

The identification of the relevant acquis in the field of the protection of personal data for chapters IX and X of the Convention for the enforcement of the Schengen Agreement, the review of the present situation from the legislative point of view, the review of the independence, of the organization and of the competences of the supervision authority, establishing clear access regulations for individuals to personal data and raising public awareness regarding the field of the protection of personal data were thoroughly examined by the National Supervisory Authority for Personal Data Processing at the date of the acceptance of its evaluation in view of the accession to the Schengen area.

In order to establish the institutional capacity for performing the control of personal data processing during the year 2007, the authority prepared a short term strategy which comprises organizational measures, the training of the personnel, the organization of the information campaign regarding the rights of the person concerned, the cooperation with the competent authorities in enforcing the Convention for the enforcement of the Schengen Agreement, performing inspections at the police, border police, consulates, the National Center for Visas.

### **Part 3: Organizational measures at the level of the authority**

On grounds of the provisions of the Regulations for the organization and operation of the National Supervisory Authority for Personal Data Processing, a panel of experts was organized for the Schengen area, coordinated by the President of the Authority. This group has the role of monitoring the fulfillment of the obligations of the authority in view of the accession to the Schengen area, the organization and the development of the campaign for the information of the persons concerned with regards to the rights deriving from Law no. 677/2001 and from the Convention for the enforcement of the Schengen Agreement and participating to the investigations performed in the sector of the police. In the year 2007, the supervision authority required the

common control authorities in the fields of Schengen, Europol and Eurodac to allow its representatives to take part in their activities, request which was accepted during the 2<sup>nd</sup> quarter of the year.

#### **Part 4: The training of the personnel**

Because the protection of personal data represents an essential component within the evaluation process of Romania for its accession to the Schengen area, there were hosted seminars at the headquarters of the company with subjects belonging to the field, in view of acquiring relevant information regarding the Schengen acquis and of training all the personnel at the highest standards.

Also, the staff of the authority benefited documentary materials, took part in working groups in the Schengen field and to experience exchanges in member states of the European Union.

#### **Part 5: The information campaign**

The supervision authority carried out a vast campaign for raising the awareness of the general public with regards to the rights of the individuals concerned in the field of personal data processing, including within the Convention for the enforcement of the Schengen Agreement.

The authority created and distributed informative materials regarding the rights of individuals in the field of the protection of personal data, it posted on its site an informative guide named „the National Computerized Notification System (SINS) and the protection of your personal data”, which comprises the necessary elements for the correct information of the persons concerned regarding their rights in the Schengen area and organized seminars with the leaders of the county police inspectorates. On the site of the county police inspectorates there were posted the notifications recommended by the supervision authority, the guide and they also created a direct link to the site of the authority, with the purpose of informing individuals correctly and in a complete manner regarding their rights in the field of data processing.

It is worth mentioning the great interest manifested by the administration of the General Inspectorate of the Romanian Police in signing the collaboration protocol with the National Supervisory Authority for Personal Data Processing. They facilitated organizing in stages the training of the personnel with leading positions from within the county police inspectorate, then of their deputies and of the persons responsible with the protection of data. Aware of the importance of the field of personal data processing in the activity of implementing the Convention for the enforcement of the Schengen Agreement, the chiefs of the police inspectorates required the supervision authority to organize training sessions of the policemen on county level. We could not

deal with all the requests due to the great workload and to the small staff. Due to the same reason, we could not follow up on the request to organize debates at the level of the town and municipality police force.

In Gorj county, the police inspectorate organized, together with the supervision authority, various meetings for the training of the personnel in the field of data protection from leading officers to chiefs of precincts. Following these meetings, there were distributed brochures with information regarding the rights of the persons concerned throughout the whole county and information notices were displayed on the notice boards of the police units and the local TV station hosted a live debate with the president of the authority, on the subject of the specific rights of the persons concerned.

In their turn, the Constantin Brâncuși University of Târgu Jiu and especially, the Judicial Sciences Faculty were involved in the activity of informing the youth on the subject of the protection of personal data, and with this purpose, each entity signed a collaboration protocol with the supervision authority, in order to organize classes, seminars and debates with the students. In order to inform young people correctly regarding their rights in the field of the protection of personal data, there were involved other academic structures also, such as the Lucian Blaga University – the Simion Bărnuțiu Law Faculty of Sibiu and the Hyperion University of Bucharest.

The information campaign was supported by the authority by other specific means also, such as interviews given to radio and TV stations, press conferences, seminars, the dissemination of flyers to the police, town halls and prefect's offices.

The answer to this campaign was positive, in the sense that the supervision authority is receiving more and more requests to organize seminars for debates of the provisions of the national framework law in the field of the protection of data and of the secondary legislation, and to send informative materials regarding the correct application of the principles for data processing.

## **Part 6: The cooperation with similar authorities of the European Union**

Starting with the second quarter of the year 2007, the supervision authority shall take part in the activity of the common control authorities in the Schengen, Europol and Eurodac fields,

With the purpose of getting to know the good practices in the implementation of the Convention for the enforcement of the Schengen Agreement, the authority carried out experience exchanges with similar authorities from the Czech Republic and from Slovakia, and with the latter, we signed a collaboration protocol.

## **Part 7: The cooperation with the competent authorities in implementing the Convention for the enforcement of the Schengen Agreement**

The supervision authority acted in the sense of establishing a cooperation relationship with the personal data controller designated by the Emergency Ordinance of the Government no. 128/2005, respectively with the Minister of Internal Affairs and of the Administrative Reform, within the limits offered by the autonomous and independent status of the authority. It is well worth mentioning our cooperation with the General Inspectorate of the Romanian Police, which signed with the National Supervisory Authority for Personal Data Processing a collaboration protocol for the year 2007, with the following objectives:

- to designate persons responsible with the protection of data at the level of police units and to train them within classes organized by the general inspectorate, which are going to be taught by specialists of the supervision authority;
- Organizing training at the level of the general inspectorate and at the level of the administration of the police inspectorates, through a class held by the supervision authority with the help of the video equipment belonging to the police; subsequently, the training of the other members of the administration staff of the inspectorates was carried out in the same way;
- jointly developing a campaign for the information of the public.

The informative materials created by the supervision authority were taken over by the police units either directly, or through the general inspectorate and were posted on the site of the inspectorate or posted on the notice board (e.g.: the county police inspectorate of Gorj).

Being aware of the importance of knowing the legislation regarding personal data processing, but also of the good practices of the field, the leaders of the Mehedinți, Cara°-Severin, Maramure°, Sibiu and Gorj police inspectorates manifested their interest to establish unitary practices for the implementation of the protection of data on county level and supported the specialists of the authority in conducting investigations.

Finding that up to the end of the year 2007 there were not submitted for endorsement any projects of legislative acts by the authorities with competence in the implementation of the Schengen Agreement, the supervision authority shall organize working groups for the support of the legislative harmonization in the field of the protection of data, with the beginning of the year 2008.

Also, the supervision authority shall make the necessary diligences in order to sign, in the year 2008, a collaboration protocol with the Minister of Internal Affairs and Administrative Reform (MIRA), in view of finding solutions for performing the legislative harmonization and for developing the information campaign in the field of the protection of data. During the same year,



2008, there will be clarified the request of MIRA, according to which, the Romanian participants to the Schengen evaluation mission must hold their presentations only in English, given the fact that the evaluation mission takes place in Romania, where the official language is Romanian.

During the year 2008, the supervision authority sets to organize a Working Group with all the authorities competent in the implementation of the Schengen Agreement, including with the MIRA data controller, in order to support the fulfillment of their obligation to harmonize the legislation in the field of the protection of data for every activity sector, but also sector Working Groups with the Ministry of Justice and the Ministry of Foreign Affairs, with the same purpose.

## **Part 8: Investigations**

### *8.1. Police Units*

The supervision authority performed a great number of inspections in police units. One of the objectives was to check for the existence and for the content of unitary methodologies regarding the way in which the personal data handled by the police in their current activity is processed.

In one of the cases, we found that the methodology adopted by a county police inspectorate contained a series of provisions taken from Law no. 677/2001 and from the organization and operation regulations of the National Supervisory Authority for Personal Data Processing, by which they created a confusion between the role of personal data controller of the respective police inspectorate and the supervision and control attributions of the supervision authority (of the kind of performing preliminary inspections and investigations, solving complaints regarding the protection of personal data).

With regards to this situation, we recommended to change the methodology, in the sense of including specific provisions for the implementation of the legislation regarding the protection of personal data which make impossible any wrong interpretation with respect to overlapping attributions with those of the supervision authority. The data controller at stake promptly complied with the recommendations of the authority.

Moreover, the supervision authority recommended police units to inform the concerned individuals accordingly, respecting the provisions of art. 12 of Law no. 677/2001, establishing

instructions/methodologic norms for the unitary enforcement of legal provisions, recommendations which were complied with.

### *8.2. The border police*

The following terrestrial border crossing points were checked within the border police: Moravița, Porțile de Fier, Jimbolia, Moldova Nouă, Giurgiu, Oravița, Negru-Vodă; International Airports „Mihail Kogălniceanu” from Constanța, „Traian Vuia” from Timișoara and „Henri Coandă” from Otopeni; the border police inspectorates from counties: Giurgiu, Constanța, Mehedinți, Caraș-Severin, Timișoara, Galați.

The representatives of the supervision authority recommended to display in a visible location the rights of the persons concerned or, as the case may be, to post the same rights on the site of the border police. Also, we recommended to inform the persons who are not allowed on the territory of Romania of the rights that they benefit.

At border crossing points, the supervision authority recommended to inform the persons concerned about their rights, in Romania and in other frequently used languages by the individuals of third party countries.

During the inspection performed at the border police inspectorate of the county of Caraș-Severin, we found that they were not informing the persons concerned and they were not aware of the general regulations for data processing provided by the national framework law regarding the protection of personal data.

Starting from the aspects mentioned above, the supervision authority tried to develop a collaboration protocol with the General Inspectorate of the Border Police, but with no result. The project of the protocol was forwarded to MIRA without being signed.

Within this situation, we consider that during the year 2008, it is necessary for the supervision authority to establish cooperation relationships directly with the county inspectorates of the border police, to increase the frequency of inspections in border crossing points, to identify and to recommend the remedy of possible deficiencies in the activity of personal data processing.

### *8.3. The National Visa Center*

During the year 2007, following the investigation conducted at the Ministry of Foreign Affairs – the National Visa Center, we recommended the data controller Ministry of Foreign Affairs to declare within 30 working days the processing of data performed. The data controller complied with the recommendation of the supervision authority.

#### 8.4. Consulates

We verified *two consulates* of Romania and we found that their activity respected the privacy and security regulations for personal data processing. The supervision authority recommended that the notices for the persons concerned be posted on the site and on the notice board also; they complied with the recommendation. For the year 2008, it is necessary to sign a collaboration protocol with the Ministry of Foreign Affairs, as data controller in the field of granting visas, and of establishing regulations for good practice in the consulate activity carried out between third party countries.

During our investigations, we found that the work procedure used ensured the security of the data and the application forms for the visas contained information regarding the rights of the individuals concerned. Also, there is the possibility of granting the visa online, the provisions being known from the Common Consular Instructions.

The Romanian delegation to the annual Conference of the authorities for data protection from Central-Eastern Europe held a presentation with the subject – granting the visa for Romania, which enjoyed the interest of the participants.

## **CHAPTER V**

### **THE REGULATION AND CONSULTATION ACTIVITY**

#### **Part 1: Legislative acts issued on grounds of Law no. 677/2001**

During the year 2007, having in view the new status of Romania of member state of the European Union, the regulatory activity in the field of the protection of personal data envisaged aspects found in the current activity, with the aim of harmonizing the internal legislation with the existent regulations at the level of the European Union.

Therefore, the supervision authority issued the following decisions:

##### *1.1. Decision no. 28/2007 regarding the transfer of personal data to other states*

In view of enforcing the provisions of Directive 95/46/CE and of art. 22, 29 and 30 of Law no. 677/2001, the supervision authority issued Decision no. 28/2007 regarding the transfer of personal data to other states<sup>14</sup>, decision which distinctly regulated the conditions and the procedure

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<sup>14</sup> Published in the Official Gazette of Romania no. 182 / the 16th of March 2007

for *transmitting* personal data to member states of the European Union and to the states of the European economic area or to other states to whom the European Commission acknowledged an appropriate protection level and of the *transfer* of data to third party countries.

According to the Decision no 28/2007, the transfer of personal data to third party countries who do not ensure an appropriate level of protection is subjected to authorization, on grounds of a contract signed between the data importer and the data exporter, which contains sufficient guarantees regarding the protection of the fundamental rights of persons.

*1.2. Decision no. 100/2007 regarding the cases in which it is not necessary to notify the authority of personal data processing*

This decision was issued for the application of the provisions of art. 22 par. (9) of Law no. 677/2001, according to which the supervision authority can establish cases in which the notification is unnecessary. The issuance of this decision is fundamented on the fact that certain data processing is not susceptible to affect, at least apparently, the rights of the persons concerned, in the case of their frequent use.

The exemptions from the notification mainly concern the situations in which personal data processing in fulfilling the obligations provided by the law is carried out by the competent departments/persons of the public and private entities with the purpose of organizing and of carrying out their own current economic, financial and administrative management activity; the situations in which personal data processing regarding data subjects registered for sitting exams or for taking part in competitions is performed in view of filling vacant jobs or in which personal data processing is carried out regarding participants to seminars, conferences and other similar events or with the purpose of carrying out professional and protocol activity.

Also, we established that it is not necessary to notify the processing of personal data in the case of cults or religious associations recognized according to the law, certified researchers or data subjects who have access to their own file in the archive of the National Council for Studying the Records of the former Communist Intelligence Service and when the perrocessing is performed with jurnalistic, literary or artistic purposes.

*1.3. Decision no. 105/2007 regading personal data processing carried out in recording services of the type of loan bureaus*

When issuing decisions, there were taken into consideration the risks for the privacy of the data subjects, represented by the computerized personal data processing, which allows for the

evaluation of aspects such as credibility or creditworthiness. We aimed at ensuring efficient protection of the rights of the individuals the personal data of whom are subjected to processing within the recording systems of the type of loan bureaus.

The supervision authority found deficiencies in the evaluation procedure, which is subjective sometimes and which stands at the basis of the decision of the employees of the participants in loan bureaus to report certain personal data of the clients or of their potential clients. The complaints addressed to the supervision authority resulted in the fact that certain banks reported to the *Loan Bureau* information regarding minute outstanding amounts which were not owed due to a direct fault of the debtor, but to certain information deficiencies from the bank (fees related to the closing of current or credit accounts or related to the growth of credit interest).

Given the importance of this subject, the supervision authority organized together with the Romanian Association of Banks an international conference, in the month of May 2007, where we invited representatives of the banking sector from Romania and from other states, but also the representatives of the supervision authority from the European Union. The subject of the conference was the debate regarding *The protection of personal data in the financial-banking activity*, most speakers approaching the theme of personal data processing performed by loan bureaus.

The conclusions of the conference were used within the working group made up of representatives of the Loan Bureau, of important banks of Romania, of the National Authority for the Protection of Consumers and of the National Supervisory Authority for Personal Data Processing.

Taking into consideration the opinions of all the parties involved, the supervision authority issued Decision no. 105/2007, in the preparation of which we also kept in mind the issues which were on the agenda of the Casuistry Seminar from Lisbon, November 2007, regarding the processing of personal data by loan bureaus.

This decision established the participants, in the recording systems of the type of the loan bureaus from the banking sector, the categories of personal data and the conditions for their transfer, the storage period, the obligations of the participants in these systems, including the obligation of previously informing clients, of ensuring the confidentiality and the security of personal data processing.

*1.4. Emergency Ordinance of the Government no. 36/2007 for the abrogation of Law no. [476/2003](#) regarding the tax for the notification of personal data processing, which fall under Law no. [677/2001](#) for the protection of persons regarding personal data processing and the free circulation of this data*

The data controllers and the representatives of the press noticed that the existence of notification taxes represent an obstacle in the way of declaring data processing. The supervision authority initiated an emergency ordinance project, for the abrogation of Law no. 476/2003, regarding the approval of the notification tax for personal data processing.

The proposal of the supervision authority is in accordance with Directive 95/46/CE of the European Parliament and of the Council, which states the necessity of ensuring the free circulation of personal data among the member states of the EU.

Within this context, a tax in the case of the notification of a transfer of data abroad would hinder the free circulation of personal data.

## **Part 2: The endorsement of legislative acts**

The supervision authority shall be consulted on basis of the provisions of art. 21, par. (3), letter h) of Law no. 677/2001, amended and completed, when preparing legislative act projects referring to the protection of the rights and of the liberties of the persons regarding personal data processing. Within the preparation procedure of such legislative acts it is compulsory to request the previous endorsement of the supervision authority, as a consultant.

Therefore, during the year 2007, there were mainly endorsed the following legislative act projects:

### *2.1. The legislative proposal for the amendment and the completion of Law no.677/2001 for the protection of persons regarding the processing of personal data and the free circulation of such data, amended and completed*

Having in view the necessity of the full harmonization of the provisions of Law no. 677/2001 with the provisions of the communitarian *acquis* in the field of the protection of personal data, and implicitly with the communitarian legislative evolution, within the context of the new status of Romania as a member state of the European Union, the supervision authority provided endorsed this initiative.

In this sense, we consider that the legislative proposal is in accordance with the provisions of Directive 95/46/EC of the European Parliament and of the Council regarding the protection of persons with regards to the processing of personal data and the free circulation of such data.

One of the most important provisions regarded the amendment of art. 2 par. (7) of Law no. 677/2001 by excluding the exemption from the enforcement of the law regarding the processing of personal data within activities performed in the field of national defense and security. The amendment envisages the *acquis* assumed in the fields of Schengen and of Europol, and the

recommendations of the European Commission from the last monitoring report from the 16<sup>th</sup> of May 2006.

At present, the legislative initiative is being debated in the Parliament.

### *2.2. The project of the Law regarding the organization and the operation of the National System for Judicial Genetic Data*

This law project establishes the conditions in which there can be collected biological samples from certain categories of data subjects or from the traces left at the site of a crime, in view of determining the genetic profile and the conditions in which the data comprised in this national system can be processed.

The National System for Judicial Genetic Data is a structure organized in three segments: the Personal Database, the Case Database and the Judicial Genetic Profile Database.

The Personal Database contains the personal data of the suspects or of the persons who were irrevocably convicted for certain expressly and limitatively established offences, data about the committed or investigated offence.

The project of the law was endorsed after the initiator of the project accepted all the observations and the proposals formulated by the supervision authority, in the sense of establishing with exactity the data and the personal data categories which are going to be uploaded into the database, of the concrete ways in which data can be erased from the system and the necessity of obtaining the consent of the victims of the offences with the purpose of collecting and of analyzing their biological samples.

### *2.3. The Project of the Emergency Ordinance of the Government for the regulation of measures for the enforcement of the Convention regarding the formation of the European Police Office, signed on the 26th of July 1995, on grounds of the provisions of art. K 3 of the Treaty regarding the European Union and its protocols*

By this legislative act project, the National Supervisory Authority for Personal Data Processing was designated as a supervisory authority in the field, according to the provisions of art. 23 of the Europol Convention which establishes the necessity of designating an independent authority which may monitor and control the transfer of the data by the member state to Europol.

With regards to the project of the Emergency Ordinance of the Government subjected to approval, the supervision authority recommended to take into consideration also the provisions comprised in the Emergency Ordinance of the Government no.103/2006 regarding certain measures



in order to facilitate international police cooperation, regarding the period within which the Europol National Unit shall be informed.

The proposal of the supervision authority was accepted by the initiator and this project turned into the Emergency Ordinance of the Government no. 61/2007.

*2.4. The Memorandum with the subject „The Accession of Romania to the Treaty between the Kingdom of Belgium, The Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Great Duchy of Luxemburg, the Kingdom of the Netherlands and the Republic of Austria regarding the stepping up cross-border cooperation, especially in view of combating terrorism, cross-border crime and illegal migration, signed in Prüm, on the 27 of May 2005”.*

The supervision authority expressed its reserves regarding the necessity to accede to this treaty, in the context in which there isn't any general communitarian regulation regarding the protection of data of the 3<sup>rd</sup> Pillar, having in view that one of the main purposes of the Prüm Treaty is the exchange of data between the police and the judicial authorities of the member states of the European Union, especially DNA and dactyloscopic data.

The European Authority for the Supervision of Data (EDPS) made various observations with regards to this treaty, including observations referring the observance of the principle of proportionality and of necessity, in view of ensuring an appropriate level of protection of personal data, opinion shared by the Romanian supervision authority also.

*2.5. The Memorandum with the subject „The Negotiation of the Agreement between the Government of Romania and the Government of the Republic of Bulgaria regarding police cooperation in the field of penal law”*

This project was endorsed by the president of the supervision authority, with the recommendation to rephrase an article, in the sense that the authorities which send and receive data must enforce the appropriate technical and organizational measures to protect personal data against accidental and illegal damaging, loss, change, disclosure or unauthorized access, and against any other form of illegal processing, having in view the provisions of art. 17, par. (1) of Directive 95/46/EC.

The signing of this Agreement is included in the process of training and adopting the necessary measures for the accession of Romania to the Schengen area and has as objective the

elimination of the dangers against public order and safety by fighting crime and criminally prosecuting offenders. This Memorandum was approved and published in the Official Gazette.

*2.6. The project of the Decision for the amendment and for the completion of the Decision of the president of the National Authority for the Regulation of Communications no. 1074/2004 regarding the implementation of the universal service in the sector of electronic communications*

Through this project, we proposed to form a complete directory of the phone users from Romania, made by service providers universally designated to provide information services regarding phone users and to put the directories of the subscribers at the disposal of the end-users. Because the directory will contain identification data of the public telephone service subscribers, the supervision authority underlined the fact that this data processing must observe the provisions of Law no. 677/2001. With regards to the personal data processing which is going to be entered into the directory, the quality of data controllers in the sense of Law no. 677/2001, shall be held by mobile/landline phone service data controllers from Romania.

The authority considered that it is necessary to establish distinctly the data which is going to be entered in the directory in physical format and the data which is going to be used in the case of an unidirectional search in the online electronic directory (search parametres). Personal data which is going to be entered into the subscribers' directory shall be collected by data controllers directly from the persons concerned and only provided their express and absolute consent.

As for the observance of art. 12, regarding the notification of the person concerned from Law no. 677/2001 and of art. 11 of Law no. 506/2004 regarding personal data processing and the protection of privacy in the sector of electronic communications, amended and completed, we mention that the notification of the persons concerned, respectively of the subscribers of phone services, the data of whom are going to be entered into the complete subscribers' directory following their consent, shall be performed by personal data controllers.

This project materialized into decision no. 3284/2007 issued by the National Authority for the Regulation of Communications.

*2.7. The Project of the Decision of the Government for the amendment and the completion of the Decision of the Government no. 839/2006 regarding the form and the content of identification documents and of the sticker regarding the current residence and of the register of tenants*

Through this legislative act, the "first name of the father" of the contents of the identification document was replaced by "citizenship". This change is based on the express provisions of Directive 38/2004 of the European Parliament and of the Council regarding the right to free circulation and stay on the territory of the member states for the citizens of the Union and for the members of their families. The supervision authority endorsed the project.

### **Part 3: The endorsement of the conduct codes of professional associations**

During the year 2007, the supervision authority continued to inform professional associations regarding their obligation to prepare conduct codes which must contain appropriate norms for the protection of the rights of the persons the personal data of whom are being processed.

The norms regarding the protection of personal data, contained by each conduct code in part are the more necessary to professional associations, aside from the legislation in force, which forms the general framework in the field of the protection of data, as they are applicable to a limited and specific field of activity, which assumes the processing certain types of data within a given context.

The legal obligation left to professional associations by art. 28 of Law no 677/2001, was respected by the Romanian Bank Association and by the Association of Private Practice Stomatologists of Romania, who subjected their conduct codes for endorsement to the supervision authority.

The project of the conduct code of the Association of Private Practice Stomatologists from Romania was endorsed by the supervision authority.

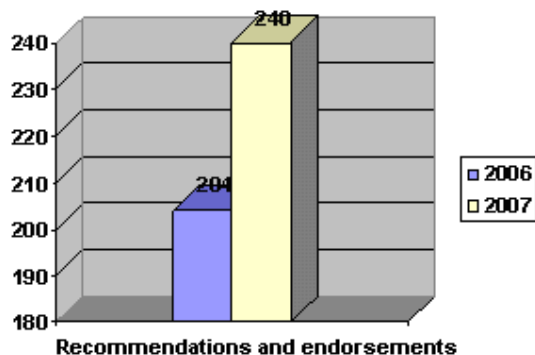
As for the project of the conduct code sent by the Romanian Bank Association, the supervision authority made various observations and recommendations, considering that it is necessary to reassess it and complete it. One of the main recommendations of the authority referred to the necessity of including information regarding the protection of data processed in recording systems of the type of the Loan Bureau, in accordance with the provisions of Decision no. 105/2007.

### **Part 4: Endorsements and Recommendations**

On grounds of the provisions of art. 21, par.(3), letter j) of Law no. 677/2001, the supervision authority formulates recommendations and endorsements for any issue related to the protection of the rights and of the fundamental liberties regarding the processing of personal data.

The fact that some personal data controllers registered with the supervision authority, but also concerned persons and third parties required a significant number of endorsements proves the

growing interest in the field of personal data processing, but also good faith with regards to the observance of the legislation in force.



#### 4.1. Personal data processing by public authorities

##### a) Local authorities

In exerting their duties, the *National Inspectorate for Persons' Record*, the *public communitarian directions or services for persons' record*, the *institution of the Prefect*, other *authorities of the public local administration* constantly process personal data. Above, there is a series of relevant situations which were brought to the attention of the supervision authority:

- In one case, the authority was required to express its opinion regarding the act of including „citizenship” into the category of personal data and they asked about the legally founded nature of a possible refusal of a Romanian institution to send German authorities the personal data of a person with German citizenship who re-acquired, Romanian citizenship within the conditions of the law.

The authority declared that citizenship represents personal data and that it considers that the Romanian authorities could send the data of the person at stake, if processing is necessary in view of fulfilling a legitimate interest of the third party to whom the data is disclosed, with the condition of proving the existence of this legitimate interest and without affecting the rights and the fundamental liberties of the concerned individual.

- A *public communitarian direction for persons' record* requested the opinion of the supervision authority regarding its duties to send monthly statistic data to the National Inspectorate for Persons' Record relating to the issuance of civil status certificates and of identification documents for citizens belonging to the Rrom ethnic group.

The authority mentioned that the consent of the person concerned is not required #when the personal data processing is carried out with statistic, historical or scientific purposes, and data remains anonymous throughout the processing activity.

Therefore, within the mentioned legal context, taking into consideration the attributions of the Public Communitarian Directions for Persons' Recod and of the National Inspectorate for Persons' Record, we concluded that the monthly statistic data regarding the civil status certificates and the identification documents of citizens belonging to the Rrom ethnic group may be sent to the National Inspectorate for Persons' Record.

*b) Central authorities*

A significant number of *central public authorities* requested the opinion of the authority regarding the applicability of the provisions from the field of the protection of data in actual situations, as follows:

- *The Ministry of Public Finance – The General Direction for Information Technology* asked the supervision authority clarifications regarding the personal identification data of the taxpayer, natural person, which may be made public, so that he may recognize his own data in an administrative act drawn up by the tax organs.

According to the provisions of the Fiscal procedure code, #the fiscal administrative document is issued only in written form and it comprises, among other elements,### the identification data of the taxpayer or of the representative of the taxpayer, as the case may be.

The law requires that within the content of the notice in which it is mentioned that the fiscal administrative document was issued in the name of the taxpayer, there must be present the name, the surname and the domicile of the taxpayer at stake, without any other identification data. If the legislative authority intended to process the personal numeric code in the said situation, it would have expressly mentioned it, as it was done in other cases regulated by the Fiscal procedure code. In addition, having in view the fact that the notification which contains including the personal numeric code is published also on certain internet pages, this involves a high level of risk for the privacy of the processing and for the protection of the rights of the person concerned.

At the same time, the supervision authority considered that the processing of this item of personal data with identification role is excessive with regards to the purpose established by the provisions of the Fiscal procedure code.

Consequently, the supervision authority considered that it is sufficient to mention within the notification the name and the surname of the taxpayer, and of his tax domicile, without mentioning the personal numeric code.

- The National Public Health Insurance Authority requested the authority to state whether it is legal to use the personal numeric code as "personal identification code" on the European health insurance cards.

According to the law, the processing of the personal numeric code or of any personal data which have a generally applicable identification role can be performed only if #the person concerned has expressly given his/her consent or if #the processing is expressly provided by a legal provision.

As for the processing of the personal numeric code in relation to the European health insurance card, in Law no. 95/2006 regarding the reform in the field of public health, amended and completed, it is provided that this European card contains a compulsory set of visible information, among which # there is also the personal numeric code of the insured.

In addition, in the Annex to the Decision no. 190 of the 18th of June 2003 regarding the technical features of the health insurance card (2003/752/CE), it is mentioned that the health insurance card must contain the personal numeric code of the holder of the card or if he/she doesn't exist, of the insured person from whom the rights of the holder of the card derive and the fact that no specific field can be attributed on the card to personal characteristics, such as sex or family status.

Consequently, the processing of the personal numeric code for the issuance of the European health insurance card is performed within the conditions of express legal provisions.

#### *4.2. The processing of the image and of the personal numeric code by using RFID technology*

A football club subjected to the analysis of the supervision authority the possibility to process the photos and personal numeric codes in view of issuing subscriptions or tickets for the participation of the public to the football matches played on the stadium of the club, by using RFID technology.

The supervision authority stated that usually, collecting the image of the person concerned (photo) is performed with the consent of the person. Having in view the purpose declared by the data controller, respectively to ensure the security of the persons who take part in football matches, the authority considered that this personal data processing is justified. In the sense of the facts mentioned above, it was considered that it is necessary to process the image of the persons concerned strictly within the purpose of protecting the right to life of persons and in order to

combat violence on stadiums. In addition, it was mentioned that the data controller must ensure also an appropriate level of protection for the processed data.

#### *4.3. The processing of personal data regarding minors*

Various personal data controllers from the private field contacted the supervision authority for situations regarding the necessity to obtain the consent in the case of processing the data of certain categories of concerned individuals (including minors) and of processing special data.

- A *business company* brought to the attention of the authority the fact that it requested certain education units the academic records of the pupils the parents of whom had signed service provision contracts with this company, in view of communicating by email or by text messages the pupil's academic record and statistics created by comparison with the records of all the pupils, including to those the parents of whom had not signed service provision contracts with this purpose.

The administration of the education unit did not comply with the request of the business company, although the latter invoked the fact that the academic records of the pupils are „confidential public information”.

Within this context, the authority mentioned the fact that the academic records of a pupil is not part of the information considered to be of public interest, the refusal of the administration of the education unit to provide information regarding the academic records of the pupils being justified. Regarding the disclosure of the academic records, it is necessary to obtain the consent of the persons concerned (the pupils and/or the legal representatives of the pupils – parents, guardians, appropriate adults).

Regarding the act of collecting the personal numeric code of the pupil by means of the service provision contract, the supervision authority considered that it is excessive with regards to the purpose of the processing. In order to identify the pupil, it is sufficient to collect data regarding the name, surname, education institution, year of study and class.

- A business company requested the opinion of the supervision authority regarding the personal data processing of minors with the purpose of direct marketing.

They mentioned that the personal data of the minors may only be processed with the previous consent of the parents. At the same time, the data controller must adopt reasonable measures in order to check whether the person who is exerting the rights of the child is his/her parent.

During the operation of collecting the data, data controllers must ensure that they are informing the child and the parent correctly about the purpose of collecting the personal data of the

child. In the case in which advertizing material directed directly to children are used or collected from them with this purpose, information must be visible, easy to read and comprehend by children.

The data controller must not condition the participation of the child in games, the receipt of prizes or any other type of advertizing actiivity of the disclosure of more personal data than are strictly necessary for participation.

#### *4.4. Personal data processing in view of informing the population regarding the provate pension system*

The Supervision Commission of the Private Pension System requested the opinion of the supervision authority regarding the possibility and the effective method of using personal data (name and address) from the database of the National Pension and Other Social Rights Authority – CNPAS, in view of informing the population and especially the employed population of Romania who are ensured in the public pension system, regarding the private pension system.

According to the provisions of the Emergency Ordinance of the Government no. 50/2005 regarding the formation, organization and operation of the Supervision Commission of the Private Pension System, it has, among other attributions, the duty to inform and to educate the population regarding the private pension system. Having in view the legislation regarding the protection of personal data, the supervision authority considered that this Commission may receive personal data (name and address) from the database of the National Pension and Other Social Rights Authority – CNPAS.

The authority recommended the Supervision Commission of the Private Pension System to inform the persons concerned, according to the provisions of art. 13-18 of Law no. 677/2001, appropriately modifying the notification of the participants in the system.

The recommendation was complied with.

#### *4.5. Personal data processing within police units*

Following an investigation performed by the representatives of the supervision authority in order to solve a complaint related to a possible abusive use of his personal data by a police unit, there was issued a recommendation to the General Inspectorate of the Romanian Police.

The authority had in view the formal letter of the General Inspectorate of the Romanian Police, according to which the official source for the verification of the accuracy, correctness and complete nature of the personal data is the database administered by the National Center for Databases regarding Persons' Records, and also the Methodology regarding the activity of recording



and managing the interrogations performed into the databases for the recording of persons, which was communicated to the General Inspectorate of the Romanian Police by the National Center for Databases regarding Persons' Records.

Therefore, within the context of the above-mentioned facts, on grounds of art. 4, art. 5, art. 19 and art. 20 of Law no. 677/2001, the authority recommended the General Inspectorate of the Romanian Police to implement a uniform procedure for the verification of personal data by the subordinate police units, into the database administered by the National Center for Databases regarding Persons' Records, including in the case of units who do not have direct, computerized access into this base.

It was mentioned that the previously-mentioned verification procedure must provide the registration of clear information, which may allow the identification at any time of the person who required the verification, of the required/obtained data, of the date of the verification and of the motive.

At the same time, it was highlighted the importance of respecting the minimum security requirements for personal data processing by the General Inspectorate of the Romanian Police, in the context of the verifications into the database of the National Center for Databases regarding Persons' Records, especially referring to the provisions regarding the identification and the authentication of the user, the type of access and the files which can be accessed.

The recommendation was sent to the National Inspectorate for Persons' Records, to the National Center for Databases regarding Persons' Records and in carbon copy, to the Ministry of Justice.

The General Inspectorate of the Romanian Police acted promptly in the sense of respecting the recommendation received and sent to the supervision authority the appropriate methodology.

#### *4.6. The balance between public interest information and personal data*

A series of authorities and public institutions requested the opinion of the supervision authority regarding the interpretation and the enforcement of the provisions of Law no. 544/2001 regarding the free access to public interest information, amended and completed, by comparison to those of Law no. 677/2001, especially when the mass-media or some NGOs request information which is considered as public interest information, which contains also personal information.

1. A public financial control institution was required, on grounds of Law 544/2001, copies of the documents it drew up, with the occasion of inspections performed according to its legal attributions.

The supervision authority mentioned that, in the situation in which the required documents contain personal data, these can be communicated only by respecting the legislation in force, respectively the principle of the express and absolute consent of the persons concerned.

Also, it is worth keeping in mind the fact that Law no. 544/2001 establishes as the duty of the authorities and of the public institutions to communicate by default, by publishing an annual informative bulletin, a series of public interest information. Among these, there is also the list of „public interest documents”.

Within this context, the supervision authority considers that every public institution may decide, according to certain criteria, which information is of public interest and which is not, before publishing it.

2. A *county police inspectorate* requested clarifications regarding the possibility to put at the disposal of journalists information, and, possibly, personal data regarding certain persons against whom there is a preliminary criminal investigation procedure open.

The supervision authority stated that *#*personal data processing regarding an offense by the person concerned or to criminal convictions, safety, administrative or contraventional measures applied on the person concerned may be carried out only by or under the control of the supervision authority, within the limits of its powers granted by law and within the conditions established by the special laws which regulate these issues.

Corroborated with these provisions, Law no. 677/2001 provides, as an exception, that the processing of data regarding the commitment of offences by the person concerned *#*is not applicable in the situation in which data processing is carried out exclusively with journalistic, literary or artistic purposes, if the processing of personal data regards data which were made public in a manifest manner by the person concerned or which are inherently linked to the quality of public person of the person concerned or to the public nature of the events in which he/she is involved.

In addition, Law no. 544/2001 stipulates that information regarding the personal data of the citizen may become public only to the extent to which it affects the capacity to perform in a public position.

Within the context of the above-mentioned facts, personal data may be disclosed to third parties with the consent of the person concerned, and without his/her consent to the extent to which *#*processing is necessary in view of fulfilling a legal obligation of the data controller, when the objective is the fulfillment of measures of public interest or when they are already part of publicly accessible documents.

## **Section 5: The activity of representation before courts of law**

During the year 2007, we observed that the courts of law adopted a unitary practice in litigations regarding the protection of data, although initially, there was a different approach to the level of lesser courts.

In a first phase, some of the decisions of the authority by which there were applied contraventional sanctions were contested in court, on procedural grounds.

The High Court of Cassation and Justice decided irrevocably, by Decision no. 1188/2007, that: "Law no. 677/2001, as a special law, has provisions which derogate from common law in the field of contraventions, respectively the Ordinance of the Government no. 2/2001. The issuance of an ulterior decision to the drawing up of the contraventional offence report is not contrary to Law no. 677/2001, because art. 3 par. (2) and (5) of Law no. 102/2005 which amends and completes Law no. 677/2001 provides that the finding and the sanctioning of the contraventions are carried out by the supervision authority through the president of the authority, who issues decisions by exerting his attributions."

Below, there are a few of the relevant situations in which the sanctions applied by the supervision authority were contested:

a. As a consequence of the investigation conducted in a private kindergarten which was processing personal data by video surveillance means, the kindergarten was sanctioned contraventionally for omitting to notify the authority of personal data processing. The data controller filed a complaint against the report, requesting the change of the sanction from fine into warning.

Having in view that the personal data of the children and of the specialized personnel were processed without notifying, the court considered that the contravention provided by art. 31 of Law no. 677/2001 was recorded correctly. As for the contraventional sanction applied, the court mentioned that, according to the Ordinance of the Government no. 2/2001, the contraventional sanction must be proportional with the degree of social danger of the deed.

Consequently, having in view the legal provisions and the arguments of the supervision authority, the court overrules the complaint formulated by the data controller as ill-founded, the deciding remaining final and irrevocable.

b. In the same field of personal data processing by means of video surveillance camera systems, the supervision authority conducted the investigation of a business company for breaking the provisions regarding the obligation to notify, carrying personal data processing without notifying the person concerned, and for not ensuring the privacy of the processed data, contraventional offences which fall under Law no. 677/2001. Images represent without any doubt personal data, because they can lead to the identification of a person.

The data controller had installed video surveillance cameras in order to process the image of the persons who entered the shop without previously notifying the supervision authority, stating that the processing did not fall under Law no. 677/2001.

The court stated that “the contraventional sanctioning ordered by the authority shall be analyzed within the procedure regulated by the Ordinance of the Government no. 2/2001 and by the Civil Procedure Code”, admitting the complaint without keeping in mind the fact that Law no. 677/2001 derogates from general treatment of contraventions provided by the Ordinance of the Government no. 2/2001 and that, according to Directive 95/46/EC, video images represent personal data.

In the same case there was invoked also the exception of the non-constitutional nature of art. 26 of Law no. 677/2001, by which the appeal of the decisions of the supervision authority is affected by a single degree of jurisdiction. This article regulates only the situation of the decisions by which specific measures are applied, such as: the suspension or the ceasing of data processing, the deletion of data. The Constitutional Court decided that the contested provision is constitutional, because the right to the double jurisdiction degree is only applicable to criminal law, argument which was presented also by the supervision authority before the Constitutional Court.

c. There were brought before the court cases in which they contested contraventional offence reports of data controllers without legal personality (local public services for persons' record formed by decisions of town councils).

As a consequence of the investigations conducted with the public communitarian persons' record services, designated data controllers by the Ordinance of the Government no. 84/2001, they were contraventionally sanctioned for omitting to notify, and for not respecting the right to be informed of the concerned individuals.

The above-mentioned services for persons' record filed complaints against the decisions to enforce the sanctions issued by the supervision authority.

Indirectly, the services for persons' record recognized, through the complaints filed, that they did not inform the persons concerned of the existence of their rights or of the conditions for exerting their rights.

Although the court of first instance admitted the complaints, the courts of law of the appeal maintained the decisions of the supervision authority and ordered the complete modification of the appealed decisions, in the sense of recognizing the status of data controller of the services for persons' record and of the obligations which derive from this status.

d. The supervision authority conducted the investigation of a tourism agency, finding that the data controller had not notified performed data processing.

Thus, it was found that the data controller was processing the personal data of the clients during its activity of tourist assistance as a tourist agency. Although, subsequently to the sanctioning, the data controller notified the performed data processing, it contested the sanction applied by the supervision authority.

Although the court of the first instance admitted the appeal, the High Court of Cassation and Justice ordered the admittance of the appeal formulated by the supervision authority, overruled as ill-founded the complaint filed by the data controller, maintaining legal and founded the decision of the supervision authority.

The decision of the court is final and irrevocable.

e. Another situation was that in which a professional information center contested the contraventional sanctioning report invoking the fact that it did not contain the date of the offence, although the date of drawing up the report was present in the document.

The supervision authority sanctioned the data controller contravenitionally for the incomplete notification of the data processing activity, for not informing the persons involved regarding their rights and the conditions in which they can exert these rights and, also for not complying with the obligation to ensure privacy and the enforcement of the security measures regarding the processed data.

The data controller notified the authority incompletely, in the sense that it didn't declare all the personal data collected during its activity (the personal numeric code, the series and the number of the ID document). At the same time, it declared that the persons concerned shall be informed by postings on the site and at their headquarters, however, the data controller did not comply with this legal obligation. Also, the data controller did not comply with the minimum requirements for the security of data processing, provided by the Order no. 52/2002.

With regards to the object of the appeal formulated by the data controller, the court decided that “the deeds held as contraventions are continuous, situation in which the date of the offence report represents the actual date of committing the offences”.

Consequently, the findings and the procedure followed by the supervision authority were correct and the court maintained the applied sanction.

*In conclusion, we would like to highlight the fact that despite the diversity of the aspects contested in court and of the situations subjected to the control of the court, the interpretation of the*

*legislation regarding the protection of personal data was similar to the approach proposed by the supervision authority.*

## **CHAPTER VI**

### **ACTIVITIES IN THE FIELD OF INTERNATIONAL RELATIONS**

#### **Part 1: International working groups**

Having in view the importance of the issues subjected to debate within the meetings of the international working groups, the National Supervisory Authority for Personal Data Processing took part in these meetings, especially in the Art. 29 Working Group, the Consultative Committee of the Convention (ETS No. 108) and in the International Working Group in the field of Telecommunications.

##### *1.1. The Art. 29 Working Group 29*

The most important and efficient means of cooperation between the authorities for the protection of data from the member states of the European Union is the Art. 29 Working Group, an independent consultative entity in the field of the protection of data, within which every authority is represented at the level of administration.

The supervision authority took part in the year 2006 in the meetings of the Art. 29 Working Group as an observer and, starting with the 1<sup>st</sup> of January 2007, with the accession of Romania to the European Union, it became a full member.

As Mr. Peter Schar, the president of the Art. 29 Working Group, underlined „during the last decade, the European concept of the protection of data has become an attractive pattern on global level. This pattern must constantly prove its utility, otherwise it may lose its attractiveness. It must be open to innovation and to take into account the latest economic, social and technical breakthroughs.” In order to meet these requirements, in the year 2007, the Working Group focused especially on the following aspects: the concept of “personal data”, passenger name record (PNR), the „Swift case”, unitary action for the enforcement of the legislative framework in the field of public health insurance system, the transfer of data to third party states (Binding Corporate Rules), the processing of personal data regarding the state of health within the electronic medical registers, the Internet, telecommunications and the new technologies, the protection of the consumer.

*a) Passenger Name Record (PNR)*

During the month of July 2007, the European Union signed a monitoring agreement with the United States of America regarding the transfer of data from the Passenger Name Record (PNR) and their processing by the Internal Security Department of the USA. The object of this agreement is to offer legal grounds for air transporters who operate flights to and from the USA.

Following the signing of this agreement, the Working Group adopted Opinion no. 5/2007 regarding the processing and the transfer of PNR data by air transporters to the Internal Security Department of the USA. In this document, the Working Group underlines the fact that it supports the fight against international terrorism and organized crime, however, there must exist a correct balance between the requirements regarding the protection of public safety and the right to privacy.

Previously, in November 2006, the Working Group mandated the PNR sub-group to prepare a strategy regarding the data of passengers, strategy which materialized during the year 2007 by Opinion no 2/2007 regarding the information of passengers regarding the PNR data transfer to the authorities of the US.

This opinion contains an information form model that air companies must use in order to notify their clients regarding the transfer of data to the authorities of the United States when bookings are made for flights with destination the US.

As a consequence of adopting this document, on the national level, the supervision authority made diligences with the involved data controllers (air transporters and tourism agencies) in view of respecting the obligation to inform passengers regarding the transfer of data to the US.

Also, important aspects referring to the processing of passenger data were debated within the International Conference of the Commissaries for privacy and the protection of data, organized in Montreal. Within the debates, there was stated the fact that the purpose of using PNR data is that of fighting against terrorism and related crime, against other severe transnational offences, including organized crime and the evading from arrest warrants or from freedom depriving punishment for the previously mentioned offences.

*b) VISA și biometric data*

In March 2007, the Working Group adopted an opinion (Opinion no. 3/2007) regarding the Regulation Proposal of the European Parliament and of the Council for the modification of the Common Consular Instructions regarding visas for diplomatic missions and consulate positions related to biometric data. The Common Consular Instructions establish the minimum practices which must be respected by the consulates of the member states on issuing visas in an uniform manner.

The Opinion of the Art. 29 Working Group regarding this Regulation Proposal comprises a series of recommendations. As for including biometric data and the possible use of digital prints relating to visa applications, it is recommended to have in view the implications on human dignity and on fundamental rights, and their use with the purpose of identification should be limited. The Working Group recommended to restrict the activity of collecting and processing the digital prints of children and of elderly persons.

*c) The transfer of data abroad*

The 95/46/CE Directive for the protection of data allows the transfer of personal data outside the European Economic Area only in the cases in which the third party state can provide an appropriate level of protection of data or when the data controller offers appropriate guarantees regarding the protection of privacy. Binding Corporate Rules – BCR are one of the means by which a group of companies may prove appropriate guarantees regarding the transfer of data within the respective group. The use of the Binding Corporate Rules as legal grounds for the transfer of data from the European Economic Area requires the approval of every authority for the protection of data from the European Economic Area of the source country of the data transfer. Recommendation 1/2007, adopted by the Art. 29 Working Group contains the form used by the companies which require the approval of the Binding Corporate Rules.

Also, in October 2007, the Group adopted two opinions (Opinion no. 8/2007 and Opinion no. 9/2007) by which they recognized an appropriate level of protection of data for Jersey Island and the Faroe Islands.



*1.2. The Consultative Committee of the Convention no. 108/1981 for the protection of persons regarding the computerized processing of personal data and the Office of the Consultative Committee of the Convention no. 108 (T-PD and T-PD-BUR)*

The T-PD activity focused, during the reference period, mainly on the proposal of the EU Council for a Framework Decision regarding police and judicial cooperation in the criminal law field. In this sense, T-PD underlined<sup>15</sup> the fact that the fundamental principles regarding the protection of personal data provided by this legislative act must refer international data flows and also processing performed on national level. This way, there will be ensured an efficient cooperation relationship of the police and of the judicial authorities between the member states, being ensured, at the same time, an appropriate level of protection for any personal data processing performed in this field.

Another very important aspect in the activity of T-PD, regarded the analysis of the notions of *computerized personal data processing* and of *personal data controller* within the context of international telecommunication networks. The concepts established initially by the 108th Convention were not applicable anymore in all the actual situations which occurred with the fast development of the electronic telecommunications field. Therefore, in the present context of international electronic telecommunications, there are various persons or entities who establish all the parametres of computerized personal data processing. Therefore, one of the obligations of the data controller, established by art. 8 of the Convention is that of informing the person concerned of the place and of the entity where he/she can exert his/her right to access or to correct personal data.

*1.3. The International Working Group regarding the Protection of Data in Telecommunications*

Another important platform is the International Working Group regarding the Protection of Data in Telecommunications. Among the aspects discussed within this group there are: Digital television, e-ticketing, the processing of personal data within the services offered by Google Inc., issues related to privacy within web services, privacy on the Internet – referring especially to the young and to children, online searches, sensor based networks.

**Section 2: The collaboration with other supervision authorities**

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<sup>15</sup> In the T-PD-BUR (2006) 15 E FIN document, adopted in Strasbourg (France) on the 20th of March 2007

During the year 2007, we continued the collaboration through experience exchanges with similar institutions of the European area. Thus, the supervision authorities of Spain (*Agencia Espanola de Proteccion de Datos*) and Italy (*Garante per la protezione dei dati personali*), with a vast experience in the field of the protection of personal data, assisted the Romanian authority in clarifying aspects regarding the transfers of personal data to third party countries. These exchanges resulted in a greater efficiency of the personal data transfer activity, performed on grounds of a standard clause contract.

Also, we carried out experience exchanges on Schengen issues with the Authorities for the Protection of Data from the Czech Republic and from Slovakia. In the Czech Republic, the Schengen evaluation for the field of the protection of data took place during the year 2006, and Slovakia was involved up to the present time in two evaluation missions in this field.

We would also like to mention cooperation agreements with the supervision authorities from Italy, Spain and Slovakia.

### **Section 3: International conferences**

Having in view the importance of the subjects debated during the European conferences on the protection of data, in the year 2007, the staff of the supervision authority took part in such conferences and seminars, among which there are:

- The meeting of the Authorities for the Protection of Data from Central and Eastern Europe (Croatia, Zadar);
- The 15<sup>th</sup> meeting of the Casuistry Seminar (Finland, Helsinki);
- The 16<sup>th</sup> meeting of the Casuistry Seminar (Portugal, Lisbon);
- "Efficient strategies for the Data Protection Authorities" seminar (Great Britain, London).

Within the Casuistry Seminar which took place in Finland, the president of the supervision authority from Romania acted as chairman of the session dedicated to the financial-banking field. Also, with the occasion of the participation in various European events, the representatives of the supervision authority from Romania held presentations on various subjects: "Conditions for obtaining the visa for Romania", "The protection of the data of children and video surveillance in kindergartens", "The decision project of the National Supervisory Authority for Personal Data Processing regarding personal data processing carried out by the Loan Bureau".

## **CHAPTER VII**

### **COMMUNICATION AND PUBLIC RELATIONS**

#### **Part 1: The communication and public relations activity**

The development of the communication activity represented one of the essential priorities of the supervision authority, which performed a series of specific activities with the purpose of raising the awareness of the public regarding the field of the protection of personal data.

*The European Day of the Protection of Data* was marked by organizing in Sibiu – the European cultural capital in 2007 – of the Round Table with the subject „The European Day of the Protection of Data”, on the 25th of January 2007. The event, organized with the support of the Institution of the Prefect of the county of Sibiu enjoyed the presence of personalities of the Romanian public life, who marked the importance of the field of the protection of personal data within nowadays social environment.

*The international conference with the subject: „The protection and the processing of personal data in the financial-banking activity”* was organized by the supervision authority together with the Romanian Association of Banks, on the 24<sup>th</sup> of May 2007, in Bucharest. This conference represented an excellent occasion for debate, in the national and international context of personal data processing in systems of the type of loan bureaus and of bringing to the attention of the public the points of view of the supervision authority, of international institutions and of the main data controllers (commercial banks, insurance companies, leasing companies, mobile and landline data controllers, credit companies, utility providers).

There were organized various *meetings and round tables* at the headquarters of the authority, with the participation of personal data controllers from the relevant fields of activity: personal physicians, persons' record services, transporters, agencies for the selection and the placement of the workforce, Trade Register territorial offices, tourism agencies.

At the same time, the national information campaign started in 2006, intensified and diversified during the year 2007, materializing in the organization, with the support of the Institution of the Prefect, of the county Trade Register offices, respectively of the Superior Council of the Magistracy, of 15 *meetings* in the following counties: Constanța, Brașov, Covasna, Brăila, Tulcea, Mureș, Bistrița, Caraș-Severin, Harghita, Neamț, Buzău, Cluj and in the municipality of Bucharest, with the participation of the representatives of the public local authorities, of the deconcentrated services of the ministries and of the business companies which operate in the field of tourism.

Every meeting finalized with debate sessions related to the practical applicability aspects of Law no. 677/2001, and the press conferences organized on this occasion benefited a wide presence of the representatives of the written and audio-visual press.

Among the events, the *Public debate* organized with the Superior Council of the Magistracy was of great importance. The subjects approached had in view the ensurance of the balance between public interest information and personal information, mentioning on specific documents the processing number, and other specific aspects notified to the authority, during the year 2007, by courts of law and Departments of Public Prosecutors through annual reports.

During the year 2007 we diversified the subjects approached on the *site of the supervision authority, [www.dataprotection.ro](http://www.dataprotection.ro)*, in order to meet the information and dialogue requirements in the relationship with the citizens and with the personal data controllers. It contains information regarding the national and communitarian legislation in the field of the protection of data, including the decisions of the authority, published in the Official Gazette of Romania, the notification forms, the guide for filling in the notification form to assist data controllers, the projects of the decisions of

the authority, the organizational chart, contact data of the authority and other public interest information.

The supervision authority disseminated over 5,000 brochures regarding its main attributions and over 7,000 flyers regarding the notion of personal data and the rights of the citizens related to the field of the protection of data.

At the same time, on the occasion of the European Day of the Protection of Data, of the International Conference in Bucharest, organized together with the Romanian Bank Association and of the Public debate organized with the Superior Council of Magistracy, there were created and disseminated special brochures and flyers, in Romanian and in English.

Through the *reception desk and the consultations*, we informed citizens and data controllers promptly and efficiently, in the sense that there were offered in a direct manner, useful information regarding the persons concerned and the specific obligations of the data controllers, clarifications regarding the conditions of data processing and of the disclosure of the data to third parties.

On the other hand, the supervision authority received, in the year 2007, a number of 240 inquiries by which there was requested information regarding the enforcement of the Law no. 677/2001. Out of these inquiries, 63 were sent by email.

## **Section 2: The relationship with the mass media**

As for the relationship with the written press, with radio and TV stations, it is worth highlighting that there is a change in the perception of the activity carried out by the supervision authority, in the sense that, during the year 2007, the domain of the protection of data has constantly been in the attention of the mass information means. This was accomplished by holding press conferences in Bucharest and especially in counties, with the occasion of the national information campaign and by sending press releases. These press releases were taken over by Romplex and by Mediafax, the main Romanian news agencies.

The field of the protection of data was reflected in various radio and TV shows on various topics, aspect which demonstrates the growing interest of the mass-media for the specific issues of this field

Starting from the month of January 2007, the Radio România Actualități radio station hosted a special live edition of the show "The European Integration Files", dedicated to the supervision authority.

Other prestigious radio stations such as BBC, broadcasted the point of view of the representatives of the authority with regards to aspects regarding the formation of the database in the field of education or of ensuring the security and the privacy of data processing.

From among TV stations, TVR1 and TVR2 were the most interested in the debate of certain topics with implications on personal data processing.

Also, the representatives of the supervision authority were invited to various shows broadcasted by the public and private radio and TV stations, where they presented the main aspects of the activity of the protection of data, among which we can mention: TVS Braşov, TV Târgu-Jiu, Radio România Actualităţi, Radio Constanţa and News Fm.

The *written press* reflected the activity of the supervision authority in various articles which highlighted the importance of the field of the protection of data on European and national level, the necessity of the registration as data controller of natural and legal persons, the rights that the citizens benefit in this field (especially the right to be informed and the right to file a complaint), and the role of the supervision authority. Other shows emphasized the means used by the supervision authority to sanction the data controllers who breach the legal provisions of the field.

At the same time, we noticed a significant growth in the number of articles present in various publications and daily and weekly, central and local newspapers such as: Curierul Naţional, Cotidianul, Săptămâna Financiară, Viaţa Buzăului, Evenimentul de Neamţ, Ziarul Prahova, Ziua de Cluj, Monitorul Expres, Ghid Braşov, Botoşani News, Monitorul de Sibiu, regarding the supervision authority and personal data processing.

With the purpose of making known the activity of the institution and the specific regulations of the field, there were disseminated 25 press releases by which we presented the events organized by the supervision authority, significant aspects of its activity, information campaigns we started and the relevant international events in the field of the protection of data.

## **CHAPTER VIII**

### **THE PERSONNEL OF THE AUTHORITY**

The organizational structure of the supervision authority reflects the main fields of activity, as they are established by the national framework law:

- a) data controllers;
- b) certifications;
- c) international relations;
- d) investigations

The organizational chart approved by the Permanent Office of the Senate relates to the stage of the commencement of the operation of the authority, which is in the process of structuring its competences at the level of the requirements of a member state of the EU.

The authority is led by a President, assisted by a vicepresident with legal training. The economic manager coordinates the economic and administrative activity of the authority.

Within the authority, there are working groups for the activity of issuing the points of view in the field of the protection of data and for the preparation of data protection evaluation missions in view of the accession of Romania to the Schengen area.

The supervision authority carried out its activity in the year 2007 with a personnel chart which comprised 52 jobs, including dignitaries.

Mainly, the specialized personnel of the authority is made of counselors and experts taken with an individual labor contract from the People's Advocate institution, according to the provisions of Law 19 of Law no. 102/2005 regarding the formation, organization and operation of the National Supervisory Authority for Personal Data Processing.

During the year 2007, there were organized professional training sessions regarding personal data processing with study material which relates to the processing of personal data and to the free circulation of this data. Given the nature of the field of activity, the employees who carry out their activity in the investigations and notifications sector could not be sent to training courses within Romanian universities, because these have no programs in the field of the protection of data.

However, some universities supported the supervision authority in solving certain law issues (e.g.: Lucian Blaga University of Sibiu, Constantin Brâncuși University of Târgu Jiu and Hyperion University of Bucharest).

In its own field of activity, the institution continued to benefit the support of the authorities of the other European countries.

## **CHAPTER IX**

### **THE ECONOMIC MANAGEMENT OF THE AUTHORITY**

The last section of the present report refers to the financial-accounting situation and to aspects regarding the use of the budget.

At the end of the year 2007, the updated budget of the authority amounted to 3,884 thousand lei, out of which the amount of 3,809.27 mii lei was effectively used, which represents a budget use rate of 98.08 %. The unit kept within the limits of the budget allotted from the state budget in all chapters, articles and paragraphs.

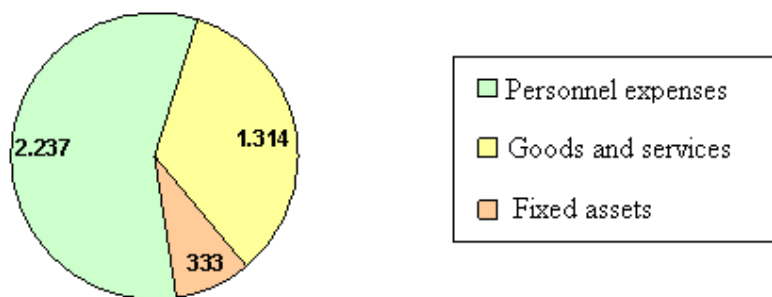
Name of indicator	Code	Updated budget on the 31 <sup>st</sup> of December 2007	Use rate (%)
Total expenses, out of		3,884 thousand lei	98.08%



which:			
Staff expenses	10	2,237 thousand lei	99.85%
Goods and services	20	1,314 thousand lei	95.19%
Capital expenses	70	333 thousand lei	97.56%

Below, there is a distribution of the expenses per items, with reference to total expenses incurred, according to the bank statements issued at the end of the year 2007:

**Distribution of the expenses according to items (thousands of lei)**



The amount relating to personnel expenses represented 57.6 % of the total of the credit allotted from the state budget, out of which there was effectively used credit amounting to 2,233.58 thousand lei (99.85% of the credit allotted from the state budget). Most personnel expenses related to the payments made for the wages of the employees of the specialized departments. The amounts do not reflect continuous income. Due to the specific conditions regarding the continuation of the act of putting the authority into operation, as a consequence of the integration of Romania into the European Union, the employees carried out their activity including outside scheduled working hours, the amounts paid to the employee comprising also the value of overtime which could not be recovered by time off within 30 days.

In order to ensure the headquarters of the supervision authority in a very short period of time, due to the evaluation missions in the field of the protection of data, in the year 2006, a premises rented, representing 45,5% of the total of the credit allotted for Goods and services (respectively 15% of the total of the expenses of the authority for the year 2007).

The authority continued (after renting the headquarters premises) to make the necessary diligences in order to obtain an administrative premises destined to its activity from the state patrimony, but the request could not be solved favourably.

Expenses for trips represent 7% of the total of the expenses for the year 2007. The supervision authority performs its main activity through investigations and controls with the data controllers located on the territory of Romania and in Romanian consulates. At the level of the EU, the supervision authority has the obligation to take part in the activity of the Art. 29 Working Group, which operates attached to the European Commission, and to the working groups for the field of the protection of data formed at this level; in the activity of the common control authorities (Schengen, Europol, Eurodac) and in the activity of the Council of Europe in the field of the protection of data. Therefore, the amounts allotted for trips also comprise this category of expenses.

The relatively low level of expenses regarding purchased goods and services is the result of various factors, out of which we mention: the lowest price criterion applied to purchases, together with carefully considered technical requirements and to budget limitations.

The budget use rate related to investment expenses was of 97.56% of the allotted amounts, due to the limitations imposed by the Ministry of the Economy and of Finance, with regards to the quarterly distribution of the funds and also to the monthly level of credit.

Within this context, the institution was forced to take the decision of postponing some investment.

**Decisions with Normative Character**

**issued by**

**National Supervisory Authority for Personal Data  
Processing**

## DECISION

### on the transfer of personal data to other states

On the grounds of art. 3 paragraph (5) and paragraph (6) of Law no. 102/2005 on the establishment, organization and operation of the National Supervisory Authority for Personal Data Processing and of art. 6 paragraph (2) “b” of the Regulation of organization and operation of National Supervisory Authority for Personal Data Processing, approved through the Decision of the Senate Permanent Bureau no. 16/2005,

considering the provisions in paragraph (3) in the recitals of Directive no. 95/46/EC of the European Parliament and the Council on data subjects protection and the free movement of these data, according to which “the establishment and operation of an internal market, in which it is granted, in keeping with art. 7 of Treaty, the free movement of goods, persons, services and capital, involves not only the free movement of personal data from one state to another, but also granting the people’s fundamental rights”,

considering the provisions of art. 1 paragraph (1) of Directive 95/46/EC, according to which “The EU-countries grant, in accordance with this directive, the protection of the people’s fundamental rights and freedom, especially the right to private life regarding personal data processing”,

considering the provisions of art. 1 paragraph (2) Directive 95/46/EC, according to which “The EU-countries cannot limit or forbid the free movement of personal data among the EU-COUNTRIES for reasons related to the protection granted in keeping with paragraph (1)”,

considering the provisions of art. 26 paragraph (2) Directive 95/46/EC, according to which “a EU-country may authorize one or a series of personal data transfers to a third country which does not grant an adequate protection level in keeping with art. 25 paragraph (2) whenever the controller offers enough guarantee regarding the protection of private life and of the people’s fundamental rights and freedoms, as well as exerting the corresponding rights; these guarantees may result especially from adequate contractual clauses”,

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

applying the provisions of art. 22. art. 29 and art. 30 Law no. 677/2001, modified and completed,

considering the Romania’s status as EU-country, starting with January 1, 2007,

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

#### **Art. 1**

(1) The personal data processings, involving their transmission to the EU-countries and to the countries within the European economic area, are declared to the National Supervisory Authority for Personal Data Processing, according to art. 22 Law no. 677/2001, modified and completed. Therefore, it is used the F1 notification form, provided in addendum no. 1 to the Decision of the President of the National Supervisory Authority for Personal Data Processing no. 60/2006 on elaborating typified forms for the notifications provided by Law no. 677/2001 for protection of persons with regard to personal data processing and free movement of these data, published in the Romanian Official Gazette no. 507 of June 12, 2006.

(2) The transmission of these data to the countries provided in paragraph (1) is not subject to authorization.

#### **Art. 2**

(1) The personal data transmissions to other countries than those stipulated in art. 1, for which the European Commission has approved, through order, an adequate protection level, in accordance with art. 25 paragraph (6) of Directive 95/46/EC, are declared to the National Supervisory Authority for Personal Data Processing by using the F1 notification form, according to the provisions of art. 22 and art. 29 paragraph (3) Law no. 677/2001, modified and completed.

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

#### **Art. 3**

(1) The personal data transmissions to other states than those mentioned in art. 1 and art. 2, performed in keeping with the provisions of art. 29 paragraph (4) Law no. 677/2001, are declared to the National Supervisory Authority for Personal Data Processing by using the F1 notification form, according to the provisions of art. 22 and art. 29 paragraph (3) Law no. 677/2001, modified and completed.

(2) The transmissions mentioned in paragraph (1) are subject to authorization, observing the terms stipulated in art. 26 paragraph (2) Directive 95/46/EC.

#### **Art. 4**

(1) The personal data transmissions to countries other than those indicated in art. 1 and art. 2, performed on the grounds of art. 30 Law no. 677/2001, modified and completed, are declared to the National Supervisory Authority for Personal Data Processing, by using the F1 notification

form, according to the provisions of art. 22 and art. 29 paragraph (3) Law no. 677/2001, modified and completed.

(2) In the case of personal data transmissions indicated in paragraph (1), which involve the transmission of the data categories provided in art. 7 – 10 Law no. 677/2001, modified and completed, becomes applicable the Decision of the President of National Supervisory Authority for Personal Data Processing no. 89 of July 18, 2006 on setting the categories for personal data processing operations which are susceptible to present special risks for the people's rights and freedoms, published in the Romanian Official Gazette no. 654 of July 28, 2006.

**Art. 5**

This decision has no prejudice over the rights and obligations set by Law no. 677/2001, modified and completed, and over the documents issued in its application.

**Art. 6**

This decision becomes effective on the date of its publishing in the Romanian Official Gazette, Part I.

**The President of the National Supervisory  
Authority for Personal Data Processing,**

**Georgeta Basarabescu**

No. 28 of March 7, 2007

**DECISION**

**on setting the cases which do not require  
to notify the processing of personal data**

On the grounds of the provisions of art. 3 paragraph (5) and (6) Law no. 102/2005 on the establishment, organization and operation of the National Supervisory Authority for Personal Data Processing, modified and completed, and of art. 6 paragraph (2) "b" of the Regulation of organization and operation of National Supervisory Authority for Personal Data Processing, approved through the Decision of the Senate Permanent Bureau no. 16/2005,

applying the provisions of art. 22 paragraph (9) Law no. 677/2001 for protection of persons

with regard to the personal data processing and the free movement of these data, modified and completed, according to which the supervisory authority may set the cases for which the notification is not required,

considering the fact that some data processings are susceptible, in case of regular use, of affecting, at least visibly, the right of the people envisaged,

examining the Approval Report no. 5 of September 1, 2007 of the Legal and Communication Bureau within the National Supervisory Authority for Personal Data Processing , with regard to the suggestion of issuing a decision on setting some cases for which it is not required to notify the personal data processing,

**The President of the National Supervisory Authority for Personal Data Processing** issues this decision:

**Art. 1**

The notification of personal data processing is not required in the following situations:

- a) when the personal data processing is performed by competent departments/persons in private and public law entities, with a view to fulfilling the obligations stipulated by law, for the organization and performance of the current activities of economical-financial and administrative management;
- b) when the personal data processing regarding to its own employees is performed with a view to registering deeds for the employees' interest;
- c) when the personal data processing regarding data subjects signed up for contests or examinations is performed with a view to filling the vacant positions;
- d) when the processing of personal data comprised in the curriculum vitae form sent, voluntarily, by data subjects is performed by private or public law entities, acting in the capacity of potential employers;
- e) when the personal data processing regarding to the participants in seminars, conferences and other similar events is performed exclusively with a vie to organizing these events, provided that the processing refers only to the data necessary for holding these events;
- f) when the processing of personal data regarding contact people for private and public law entities is performed by other private and public law entities, exclusively in order to perform the professional and protocol activities, by keeping record of the contact details;
- g) when the processing of personal data regarding to own members is performed by associations, foundations or other organizations without a patrimonial objective, exclusively

- with a view to accomplishing the specific of the organization activity, provided that the data are not revealed to third parties without the consent of the data subject in case;
- h) when the processing of personal data is performed by the legally authorized cults and religious associations, exclusively with a view to accomplishing the specificity of their activity;
  - i) when the processing of personal data is performed by researchers authorized by the National Council for the Study of the Security Archives, regarding the data subjects whose data are found in its archives, exclusively for journalistic, literary or artistic, static or of historical or scientific research purposes;
  - j) when the processing of personal data is performed by data subjects who have access to their own file from the National Council for the Study of the Security Archives, with a view to ascertaining, exerting and defending a right in court or for journalistic, literary or artistic, static or of historical or scientific research purposes;
  - k) when the processing of personal data is performed exclusively for journalistic, literary or artistic purposes.

## **Art. 2**

In the cases when the personal data processings provided in art. 1 involve the transmission/transfer of the data to other states, it is required to fill in the corresponding section of the F1 notification form, provided in addendum 1 to the Decision of the president of National Supervisory Authority for Personal Data Processing no. 60/2006, only for the cases provided in art. 1 “a” and “g”.

## **Art. 3**

The exceptions from the obligation to notify, provided in art. 1 and 2, do not exonerate controllers of fulfilling the other obligations they have according to the legal provisions applicable in the field of personal data protection.

## **Art. 4**

This decision becomes effective on the date of its publishing in the Romanian Official Gazette, Part I.



**Art. 5**

This decision does not affect the provisions of the Decision of the president of National Supervisory Authority for Personal Data Processing no. 90/2006 on the cases when it is not required to notify the processing of personal data, published in the Romanian Official Gazette, Part I, no. 654 of July 28, 2006 and those of the Decision of the president of National Supervisory Authority for Personal Data Processing no. 28/2007 on the transfer of personal data to other countries, published in the Romanian Official Gazette, Part I, no. 182 of March 16, 2007.

**The President of the National Supervisory  
Authority for Personal Data Processing,**

**Georgeta Basarabescu**

No. 100 of November 23, 2007

**DECISION**

**regarding the processing of personal data performed in  
record systems of the credit-bureau type**

On the grounds of art. 3 paragraph (5) and (6) Law no. 102/2005 on the establishment, organization and operation of the National Supervisory Authority for Personal Data Processing, modified and completed, and of art. 6 paragraph (2) “b” of the Regulation of organization and operation of National Supervisory Authority for Personal Data Processing, approved through the Decision of the Senate Permanent Bureau no. 16/2005,

considering the provisions of art. 5, art. 12 and art. 17 Law no. 677/2001 for protection of persons with regard to the personal data processing and the free movement of these data, modified and completed,

applying the stipulations of art. 8 and art. 10 Law no. 677/2001, modified and completed,

considering the private, family and intimate life risks of data subjects presented by processing personal data through computerized means, meant to assess aspects as credibility and solvency,

considering that the operations performed on the personal data included in the record systems of the credit-bureau type represent personal data processing subject to Law no. 677/2001, modified and completed, which is susceptible of holding special risks for the right to intimate, family and private life,

considering the necessity of insuring efficient protection of the data subjects involved in record systems of the credit-bureau type, due to the nature of the data processed and the purpose of the processing,

in order to avoid abuse in the activity of recording personal data in the record systems of the credit-bureau type, which may have implications upon a considerable number of individuals,

considering the legitimate interest of the financial and crediting institutions to adopt efficient policies and procedures of knowing the clients and preventing the use of the financial-banking system for illegal activities,

examining the Approval Report no. 5332 of October 13, 2006, on the proposal of issuing a decision on the personal data processings performed in record systems of the credit-bureau type,

**The President of the National Supervisory Authority for Personal Data Processing** issues this decision

#### **Art. 1**

The personal data can be performed within record systems of the credit-bureau type, with a view to evaluating solvency, reducing crediting risk and determining the leverage of debtors natural persons, observing legal provisions in the field of personal data protection, the regulations in the financial-banking field, as well as the provisions of this decision.

#### **Art. 2**

In the acceptance hereof, the following terms are defined as:

- a) *record systems of the credit-bureau type* – any data base organized in a centralized system and managed by a private law entity, comprising the personal data communicated in connection with the activities performed by financial and crediting institutions, legally authorized, with a view to assessing solvency, reducing crediting risk and leverage of the data subjects; these data bases may only be consulted by the entities participating in the system;
- b) *credit bureau* – private law entity which manages the record system defined in “a”; the credit bureau has the capacity of data controller in the meaning of Law no. 677/2001, modified and completed;
- c) *participant* – any private law entity which transmits to a record system of the credit-bureau type the personal data collected in relation with the application for/granting of credit, based on a contract concluded with the *credit bureau* and which consults n a reciprocity basis the data transmitted by the other participants; the participants have the capacity of data controllers in the meaning of Law

no. 677/2001, modified and completed. There can be participants in the record systems of the credit-bureau type only the financial and crediting institutions defined by the Government Emergency Ordinance no. 99/2006 on credit institutions and capital correspondence, modified and completed, and according to the Government Ordinance no. 28/2006 on regulating financial-fiscal measures, modified and completed, as well as insurance companies for credit products;

d) *negative data* – information regarding to late payments of obligations resulting from the crediting relations of data subjects;

e) *positive data* – information regarding to the credits granted to natural debtors, in order to contribute to determining their leverage and worthiness;

f) *data regarding inadvertent errors* – inconsistent information resulted from documents filed upon applying for credit, due to applicant's fault;

g) *data regarding fraudulents* – information on committing offences or contraventions in the financial-banking field, in the direct relation with a participant, determined by final or binding, as applicable, court orders, or by uncontested administrative deeds;

h) *sensitive data* – personal data regulated by art. 7 Law no. 677/2001, modified and completed.

### **Art. 3**

(1) The processings performed in record systems of the credit-bureau type can only have as subject the relevant and non-excessive personal data in relation to the purposes indicated in art. 1 and only connected to the crediting activity.

(2) The personal data processings performed in record systems of the credit-bureau type cannot be performed on sensitive data, nor on the data regulated by art. 10 Law 677/2001, modified and completed, except for data on fraudulents, in the meaning hereof.

(3) The personal data which can be processed within record systems of the credit-bureau type are the following:

a) data of identification of the data subject: surname, name, father's/mother's initial, address/residence, home/mobile phone, personal identification number;

b) negative data: type of product, granting term, date of granting, due date, credits granted, amounts due, residual amounts, number of residual installments, due date of the residuals, number of late payment days in refunding the credit, balance of the account;

c) positive data: type of product, granting term, date of granting, due date, amounts granted, due amounts, balance of the account, date of balancing of accounts, credit currency, frequency of payments, amount paid, monthly installment, name and address of the employer;

d) data regarding fraudulents: deed committed, number and date of the court order / administrative act, name of the issuer;

e) data regarding inadvertent errors.

(4) The data subjects whose personal data can be processed in the record systems of the credit-bureau type are loan takers, co-debtors, and pledgor.

#### **Art. 4**

(1) The credit bureaus collect personal data exclusively from participants.

(2) The participants have the obligation to transmit precise and accurate data to the record systems of the credit-bureau type.

(3) The credit bureaus are obligated to undertake measures in order to remedy the faults noticed related to the inaccurate or incomplete character of the information.

(4) The data in the record systems of the credit-bureau type can be updated, modified, completed or erased either directly by the participant who sent the data, or by the credit bureau, upon request or in agreement with the participant.

(5) The operations provided in paragraph (4) may occur including following the subject-in-case's exertion of the right provided in Law no. 677/2001, modified and completed, based on a request from the National Supervisory Authority of Personal Data Processing or on the grounds of a court order.

(6) It is forbidden the access by or supply of data from record systems of the credit-bureau type to third parties, except for the public authorities or institutions, in the legally conditioned cases.

#### **Art. 5**

(1) The negative data are transmitted to the record systems of the credit-bureau type in 30 days after the due date.

(2) The positive data are transmitted subsequent to the conclusion of the contract between the participant and the data subject.

(3) The data regarding inadvertent errors are transmitted after establishing the fault of the applicant who supplied inconsistent information, by the competent departments of the participants, observing the provisions of art. 8 paragraph (4) herein.

(4) The data regarding fraudulents are transmitted after being informed of the final or binding character of the court order, or subsequent to the date when a uncontested administrative document became executory, documents through which it was settled the guilt of a data subject in relation with a participant, observing the provisions of art. 8 paragraph (4) herein.

## **Art. 6**

(1) The personal data of the credit applicants who renounced the credit application or whose application has been rejected, are stored in the record systems of the credit-bureau type and are revealed to the participants for maximum six months since the date of transmitting the data to the *credit bureau*.

(2) The negative data are stored in the record systems of the credit-bureau type and are revealed to the participants for the period required to attain the purposes indicated in art. 1, but not for longer than 4 years since the payment of the last residual installment or since the last update sent, in the case of non-payment of residuals up to that respective date.

(3) The positive data are stored in the record systems of the credit-bureau type and are revealed to the participants for the period required to attain the purposes indicated in art. 1, but not for longer than 4 years since the last update sent.

(4) The data regarding inadvertent errors and the data regarding fraudulents are stored in the record systems of the credit-bureau type and are revealed to the participants for the period required to attain the purposes indicated in art. 1, but not for longer than 4 years since the transmission to these systems.

## **Art. 7**

On expiry of the terms provided in art. 6, the personal data are erased from the record systems of the credit-bureau type or are turned to, as applicable, anonymous data are processed for static purposes.

## **Art. 8**

(1) The personal data of the credit applicants are transmitted to the record systems of the credit-bureau type only with the written consent of the data subject obtained by the participants on the filing of the credit application.

(2) The negative data, including those resulted from applying commissions or from increasing interest rates, are transmitted to the record systems of the credit-bureau type only subsequent to the notification, performed by the participants in writing, by telephone, by text messages or e-mail to the data subject regarding the late payment and the transmission of the data, performed at least 15 calendar days before the date of transmission.

(3) The positive data are transmitted to the record systems of the credit-bureau type only subsequent to the written notification of the data subject, performed by the participants on conclusion of the contract.

(4) The data regarding inadvertent errors or fraudulents are transmitted to the record systems of the credit-bureau type only subsequent to the written, by telephone or e-mail, notification of the data subject, performed by the participants, before the transmission date.

#### **Art. 9**

(1) The participants have to supply the data subject, on the date of the notification provided in art. 8, in a clear and explicit manner, with the information provided in art. 12 paragraph (1) Law no. 677/2001, modified and completed, including with regard to:

- a) the personal data transmitted;
- b) the identity of the credit bureau(s) to which the data are transmitted;
- c) the categories of participants in the credit bureaus to which are sent the data;
- d) the period(s) of data storage in the record systems of the credit-bureau type;
- e) the actual means of exerting the right of access, intervention and opposition in the relation with the participant and the credit bureau(s).

(2) The participants and the credit bureaus are required to take the necessary measures in order to insure the observance of the rights of access, intervention and not being subject to individual automatic decision, provided by art. 13-14 Law no. 677/2001.

(3) On valid and legitimate grounds, related to justified particular cases, the data subjects can oppose to their personal data being transmitted or subsequently processed in the record systems of the credit-bureau type.

#### **Art. 10**

The participants and the credit bureaus are required to adopt the necessary organizational and technical safety measures in order to protect the personal data under the terms of art. 19-20 of Law no. 677/2001, modified and completed. Only authorized people can have access to personal data stored in record systems of the credit-bureau type.

#### **Art. 11**

The provisions of this decision are not applicable for the data processings performed by data controllers in other fields of activity, having as purpose keeping record of bad payers and assessing the solvency of their own clients, observing the legal provisions in the personal data protection field.

#### **Art. 12**

The infringement of the provisions herein may lead to contraventional liability, according to Law no. 677/2001, modified and completed.

**Art. 13**

This decision becomes effective within 60 days since its publishing in the Romanian Official Gazette, Part I.

**The President of the National Supervisory  
Authority for Personal Data Processing,**

**Georgeta Basarabescu**

No. 105 of December 15, 2007