

**Consolidated text of the
Belgian law of 8 December 1992 on
Privacy Protection in relation to the
Processing of Personal Data
as modified by the
law of 11 December 1998
implementing Directive 95/46/EC¹
and the law of 26 February 2003²**

English translation

Chapter I - Definitions, Principle and Scope

Article 1

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

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

§ 3. 'Filing system' shall mean any structured set of personal data that are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis.

§ 4. 'Controller' shall mean the natural or legal person, the factual association or public authority that alone or jointly with others determines the purposes and means of the processing of personal data.

If the purposes and means of processing are determined by or by virtue of a law, decree or ordinance³, the controller shall be the natural person, legal person, factual association or public authority that has been designated by or by virtue of that law, decree or ordinance as the controller.

¹ *Belgian State Gazette*, 3 February 1999, 3049.

² *Belgian State Gazette*, 26 June 2003.

³ The terms *law*, *decree* and *ordinance* have a specific meaning in Belgian Constitutional Law, which excels in complexity. A *law* applies in the entire Belgian territory, whereas a *decree* only applies in part of the territory (Flemish Region, Walloon Region, Flemish Community, French-speaking Community, German-speaking Community; *Communities* have competences relating to cultural and person-related matters (e.g. education), whereas *Regions* are competent for non-person-related matters (e.g. economic matters,...)). *Ordinances* apply in the Region of Brussels-Capital and have a legal status that is slightly different from that of *Decrees*.

If the term *Decree* in the present translation is used not in connection with *law* and *ordinance*, it has the meaning of an implementing measure (e.g. Royal Decree).

§ 5. 'Processor' shall mean any natural person, legal person, factual association or public authority that processes personal data on behalf of the controller, except for the persons who, under the direct authority of the controller or the processor, are authorised to process the data.

§ 6. 'Third party' shall mean any natural person, legal person, factual association or public authority other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorised to process the data.

§ 7. 'Recipient' shall mean any natural person, legal person, factual association or public authority to which data are disclosed, whether a third party or not; however, administrative or judicial authorities to which data may be disclosed in the context of a particular inquiry shall not be regarded as recipients;

§ 8. 'Consent of the data subject' shall mean any freely given, specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.

Article 2

Any natural person shall be entitled to the protection of his fundamental rights and freedoms, in particular the protection of his privacy, with regard to the processing of personal data relating to him.

Article 3

§ 1. This law shall apply to the processing of personal data wholly or partly by automatic means, as well as to the processing otherwise than by automatic means of personal data that form part of or are intended to form part of a filing system.

§ 2. This law shall not apply to the processing of personal data carried out by a natural person in the course of purely personal or household activities.

§ 3. a) The Articles 6, 7 and 8 shall not apply to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression, if the processing relates to personal data that have been apparently made public by the data subject or that are closely related to the public character of the data subject or of the fact in which the data subject is involved.

b) Article 9 § 1 shall not apply to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression, if the application thereof would interfere with the collection of data from the data subject.

Article 9 § 2 shall not apply to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression, if the application thereof would have one or more of the following effects:

- the application would interfere with the collection of the data;
- the application would interfere with an intended publication;
- the application would give indications on the sources of information.

c) The Articles 10 and 12 shall not apply to the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression, as far as the application thereof would interfere with an intended publication or give indications on the sources of information.

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

§ 4. The Articles 6 to 10, 12, 14, 15, 17, 17bis, first section, 18, 20 and 31, §§ 1 to 3 shall not apply to the processing of personal data by the State Security, the General Intelligence and Security Service of the Armed Forces, the Security Authority, the security officers and the Permanent Supervisory Committee for the intelligence services and its Inquiry Service, if the processing is necessary for the fulfilment of their duties.

§ 5. The Articles 9, 10 § 1 and 12 of this law shall not apply to:

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

2° the processing of personal data managed by police services referred to in Article 3 of the law of July 18, 1991 on the regulation of supervision of police and intelligence services in view of the fulfilment of their duties of administrative police;

3° the processing of personal data managed by any other public authority that has been designated in a Royal decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy in view of the fulfilment of their duties of administrative police;

4° the processing of personal data that has become necessary as a result of the application of the law of January 11, 1993 on the prevention of using the financial system for money laundry;

5° the processing of personal data managed by the Permanent Supervisory Committee for the police services and its Inquiry Service in view of the fulfilment of their legal duties.

§ 6. The Articles 6, 8, 9, 10 § 1 and 12 shall not apply after royal authorisation in a decree agreed upon in the Council of Ministers to the processing managed by the European Centre for missing and sexually abused children, hereinafter 'the Centre', being a public utility institution that has been established by deed of June 25, 1997 and recognised by Royal decree of July 10, 1997 with regard to the collection, transmission to the judicial authority and follow-up of data relating to persons who are under suspicion of a crime or misdemeanour in a specific dossier of absence or sexual abuse. The said decree shall lay down the duration and conditions of the authorisation after the advice of the Commission for the protection of privacy.

The Centre may not keep any filing system relating to persons who are under suspicion of a crime or misdemeanour or who have been convicted.

The Administrative Board of the Centre shall designate among the staff members of the Centre an appointee in charge of the processing of data, who has knowledge of the management and protection of personal data. The fulfilment of his duties shall not result in any adverse effect for the appointee. In particular he shall not be dismissed or replaced as appointee on grounds of the fulfilment of the duties that have been assigned to him. The King shall lay down in a decree agreed upon in the Council of Ministers after the advice of the Commission for the protection of privacy the duties of the appointee and the way in which they shall be fulfilled as well as the way in which the Centre shall report to the Commission for the protection of privacy on the processing of personal data under the terms of the given authorisation.

The staff members and those who process personal data for the Centre shall be obliged to secrecy.

Any violation of the obligation of secrecy shall be punished in accordance with the provisions laid down in Article 458 of the Penal Code.

In the context of its supporting duties in respect to the tracing of persons who have been reported as missing or kidnapped the Centre may register telephone calls only if the caller is informed thereof and as far as he has not opposed thereto.

Article 3bis

This law shall apply to:

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

2° the processing of personal data by a controller who has no permanent establishment on the territory of the European Community, if for purposes of the processing use is made of equipment, automated or otherwise, situated on Belgian territory, unless such equipment is used only for purposes of transit over the Belgian territory.

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

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

Article 4

§ 1. Personal data shall be:

1° processed fairly and lawfully;

2° collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes, taking into account all relevant factors, in particular the reasonable expectations of the data subject and the applicable legal and regulatory provisions. Under the terms established by the King after the advice of the Commission for the protection of privacy further processing of data for historical, statistical or scientific purposes shall not be considered incompatible.

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

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

5° kept in a form that permits identification of data subjects for no longer than is necessary for the purposes for which the data are collected or for which they are further processed. After advice of the Commission for the protection of privacy the King shall lay down appropriate safeguards for personal data that are stored for a period longer than stated above for historical, statistical or scientific purposes.

§2. It shall be for the controller to ensure that § 1 is complied with.

Article 5

Personal data shall only be processed in one of the following cases:

- a) if the data subject has unambiguously given his consent;
- b) if processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- c) if processing is necessary for compliance with an obligation to which the controller is subject by or by virtue of a law, decree or ordinance;
- d) if processing is necessary in order to protect the vital interests of the data subject;
- e) if processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;
- f) if processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party to whom the data are disclosed, provided that the interests or fundamental rights and freedoms of the data subject who has a claim to protection under this law, do not prevail.

The King may specify in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy in which circumstances the condition laid down sub f) shall be considered not being complied with.

Article 6

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

§ 2. The prohibition of processing data referred to in § 1 shall not apply in one of the following cases:

- a. if the data subject has given his written consent to the processing of those data, on the understanding that the consent may be withdrawn by the data subject at any time; the King may lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, in which cases the prohibition of processing data referred to in this Article may not be lifted by the explicit consent of the data subject;
- b. if processing is necessary for the purposes of carrying out the specific obligations and rights of the controller in the field of employment law;
- c. if processing is necessary to protect the vital interests of the data subject or another person, provided that the data subject is physically or legally incapable of giving his consent;
- d. if processing is carried out in the course of its legitimate activities by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious, mutual-benefit or trade-union aim provided that the processing relates solely to the members of the foundation, association or body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the persons concerned;
- e. if processing relates to data that are apparently made public by the data subject;
- f. if processing is necessary for the establishment, exercise or defence of legal claims;
- g. if processing is necessary for scientific research and carried out under the terms established by the King in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy;
- h. if the processing is necessary for the realisation of an objective laid down by or by virtue of the law in view of the application of social security;

- i. if processing is carried out in pursuance of the law of July 4, 1962 on public statistics;
- j. if processing is necessary for the purposes of preventive medicine or medical diagnosis, the provision of care or treatment to the data subject or one of his relatives, or the management of health-care services operating in the interest of the data subject, and if those data are processed under the supervision of a health professional;
- k. if processing is carried out by associations with legal personality or public utility institutions, of which the main objective is the protection of human rights and fundamental freedoms, for purposes of the realisation of that objective, provided that the processing has been authorised by the King after advice of the Commission for the protection of privacy;
- l. if processing of personal data referred to in § 1 is permitted by a law, decree or ordinance for another important reason of public interest.

The health professional and his appointees or agents shall be obliged to secrecy with regard to the case referred to sub j).

§ 3. Without prejudice to the application of the Articles 7 and 8 of this law, the processing of personal data relating to sexual life is permitted if the processing is carried out by an association with legal personality or by a public utility institution of which the main objective is the evaluation, support and treatment of persons of whom the sexual conduct may be qualified as a criminal offence, and that has been recognised and subsidised for that purpose by the competent authority; for such processing, of which the objective shall consist of the evaluation, support and treatment of the persons referred to in this paragraph and that solely concerns personal data relating to those persons, a specific, individualised authorisation has to be given by the King in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy.

The decree referred to in this paragraph shall specify the duration of the authorisation, the modalities for the supervision of the authorised association or body by the competent authority, and the way in which the said authority has to report to the Commission for the protection of privacy on the processing of personal data under the conditions of the given authorisation.

§ 4. The King shall lay down in an decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, the specific conditions with which the processing of personal data referred to in this Article, has to comply.

Article 7

§ 1. The processing of health-related personal data shall be prohibited.

§ 2. The prohibition of processing data referred to in § 1 shall not apply in the following cases:

- a. if the data subject has given his written consent to the processing of those data, on the understanding that the consent may be withdrawn by the data subject at any time; the King may lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, in which cases the prohibition of processing health-related data may not be lifted by the explicit consent of the data subject;
- b. if processing is necessary for the purposes of carrying out the specific obligations and rights of the controller in the field of employment law;
- c. if the processing is necessary for the realisation of an objective laid down by or by virtue of the law in view of the application of social security;
- d. if processing is necessary for the promotion and protection of public health, including examination of the population;
- e. if processing is made obligatory by or by virtue of a law, decree or ordinance for reasons of an important public interest;

- f. if processing is necessary to protect the vital interests of the data subject or another person, provided that the data subject is physically or legally incapable of giving his consent;
- g. if processing is necessary for the prevention of a concrete danger or the suppression of a specific criminal offence;
- h. if processing relates to data that are apparently made public by the data subject;
- i. if processing is necessary for the establishment, exercise or defence of legal claims;
- j. if processing is necessary for the purposes of preventive medicine or medical diagnosis, the provision of care or treatment to the data subject or to one of his relatives, or the management of health-care services operating in the interest of the data subject, and if those data are processed under the supervision of a health professional;
- k. if processing is necessary for scientific research and carried out under the conditions established by the King in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy.

§ 3. The King shall lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, the specific conditions with which the processing of personal data referred to in this Article, has to comply.

§ 4. Health-related personal data shall only be processed under the responsibility of a health professional, except for the written consent of the data subject or if the processing is necessary for the prevention of a concrete danger or for the suppression of a specific criminal offence.

The King may lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, which categories of persons are to be considered health professionals in the meaning of this law.

The health professional and his appointees or agents shall be obliged to secrecy with regard to the processing of personal data referred to in the first section.

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

They may solely be collected from other sources if this is in compliance with the paragraphs 3 and 4 of this Article and necessary for the purposes of the processing or if the data subject is incapable of procuring the data.

Article 8

§ 1. The processing of personal data relating to litigations that have been submitted to courts and tribunals⁴ as well as to administrative judicial bodies, relating to suspicions, persecutions or convictions in matters of criminal offences, administrative sanctions or security measures, shall be prohibited.

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

- a. under supervision of a public authority or ministerial officer in the meaning of the Code of Civil Procedure, if processing is necessary for the fulfilment of their duties;
- b. by other persons, if processing is necessary for the realisation of objectives that have been laid down by or by virtue of a law, decree or ordinance;
- c. by natural persons or private or public legal persons, as far as necessary for the management of their own litigations;
- d. by attorneys at law or other legal advisers, as far as necessary for the protection of the interests of their clients;

⁴ *Court* (Hof / Cour) is the technical legal term used to designate the five courts of appeal in Belgium, whereas *tribunal* (rechtbank / tribunal) corresponds to a court of first instance.

- e. that is necessary for scientific research and carried out under the conditions established by the King in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy.

§ 3. Persons authorised on the basis of § 2 to process personal data referred to in § 1 shall be obliged to secrecy.

§ 4. The King shall lay down in an decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, the specific conditions, with which the processing of the personal data referred to in § 1 Article has to comply.

Chapter III - Rights of the data subject.

Article 9

§ 1. If personal data are obtained directly from the data subject, the controller or his representative shall provide the data subject no later than the moment on which the data are obtained, with at least the following information, unless he already has it:

- a. name and address of the controller and, if such is the case, of his representative;
- b. the purposes of the processing;
- c. the existence of a right to object on request and free of charges against the intended processing, if personal data are obtained for purposes of direct marketing;
- d. other additional information, in particular:
 - the recipients or categories of recipients of the data,
 - whether or not replies to the questions are obligatory as well as possible consequences of a failure to reply,
 - the existence of the right of access to and the right to rectify the personal data concerning him,

unless such additional information is not necessary to guarantee fair processing towards the data subject, taking into account the specific circumstances in which the data are obtained.

- a. further information, dependent on the specific nature of the processing, that will be specified by the King after advice of the Commission for the protection of privacy.

§ 2. If personal data are not obtained from the data subject, the controller or his representative shall at the time of undertaking the recording of personal data or, if a communication to a third party is envisaged, no later than the moment on which the data are first disclosed, provide the data subject with at least the following information, unless he already has it:

- a. name and address of the controller and, if such is the case, of his representative;
- b. the purposes of the processing;
- c. the existence of a right to object on request and free of charges against the intended processing, if personal data are obtained for purposes of direct marketing; in that case, the data subject has to be informed before the personal data are for the first time disclosed to a third party or used for purposes of direct marketing on behalf of third parties;
- d. other additional information, in particular:
 - the recipients or categories of recipients of the data,
 - whether or not replies to the questions are obligatory as well as possible consequences of a failure to reply,
 - the existence of the right of access to and the right to rectify these data,

unless such further information is not necessary to guarantee fair processing towards the data subject, taking into account the specific circumstances in which the data are collected,.

- a. further information, dependent on the specific nature of the processing, that will be specified by the King after advice of the Commission for the protection of privacy.

The controller shall be exempt from the obligation to inform referred to in this paragraph:

- a. if, in particular for statistical purposes or for the purposes of historical or scientific research or for the purpose of public health screening with the intention of public health protection and promotion, the provision of such notification appears to be impossible or involves a disproportionate effort;
- b. if the recording or communication of personal data is carried out in view of the application of a provision laid down by or by virtue of a law, decree or ordinance.

The King shall lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, the conditions for the application of the previous section.

[transitory provision]

Article 10

§ 1. The data subject proving his identity, has the right to obtain from the controller:

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

For that purpose the data subject shall submit a signed and dated request to the controller or to any other person indicated by the King.

The information shall be communicated immediately and no later than forty-five days after receipt of the request.

The King may specify the modalities relating to the exercise of the right referred to in the first section.

§ 2. Any person shall have the right to get knowledge of the personal data that are processed relating to his health, either directly or with the assistance of a health professional.

Upon request of the controller or of the data subject, communication may be done through mediation of a health professional who has been chosen by the data subject.

If there is apparently no risk of offending against the privacy of the data subject and if the data are not used for taking measures and decisions with regard to an individual data subject, communication may be postponed if the health-related data are processed for purposes of medical scientific research, yet only to the extent that communication would interfere seriously with the research and no later than the moment on which the research is terminated.

In that case the data subject must have given in advance his explicit consent to the controller that the personal data relating to him may be processed for purposes of medical scientific research and that communication of the personal data relating to him may be postponed for that reason.

§ 3. No effect shall be given to a request referred to in § 1 and § 2 but after expiration of a reasonable period of time, counting from the date of a prior request of the same person that has been answered or from the date on which the data have been disclosed to him on own initiative.

Article 11

[cancelled]

Article 12

Any person shall have the right to obtain free of charge rectification of inaccurate personal data relating to him.

In addition any person shall have the right to object against the processing of data relating to him for serious and legitimate reasons that have regard to his particular situation, unless the lawfulness of the processing is based on grounds referred to in Article 5 b) and c).

If personal data are obtained for purposes of direct marketing the data subject may object free of charge and without any grounds against the intended processing of personal data relating to him.

In case of legitimate objection the processing carried out by the controller may no longer relate to these personal data.

Any person shall also have the right to obtain free of charge the erasure of all personal data relating to him or the prohibition of using such data that are incomplete or irrelevant in view of the purpose of the processing, or of which the recording, communication or storage are prohibited, or that have been stored longer than the authorised period of time.

§ 2. In order to exercise the right referred to in § 1 the data subject shall submit a signed and dated request to the controller or to any other person as the King may indicate.

§ 3. Within a period of one month counting from the time of submission of the request in accordance with § 2, the controller shall disclose the corrections or erasures of data in accordance with § 1 to the data subject himself as well as to the persons to whom the inaccurate, incomplete or irrelevant data have been disclosed, as far as he still has knowledge of the addressees of the communication and the notification to these addressees does not appear to be impossible or does not involve a disproportionate effort.

If the data subject objects against the processing or the intended processing of personal data relating to him in application of § 1, first and second section, the controller shall communicate within the same period of time to the data subject which effect he has given to the request.

§ 4. [cancelled]

Article 12bis

A decision resulting into legal effects for a person or affecting him seriously, may not be taken purely on the basis of automatic data processing that is destined for the evaluation of certain aspects of his personality.

The prohibition laid down in the first section is not applicable if the decision is taken in the context of an agreement or if it has its ground in a provision laid down by or by virtue of a law, decree or ordinance. In such agreement or provision appropriate measures shall be taken for the protection of the legitimate interests of the data subject. At least he shall be allowed to bring up his standpoint in a useful way.

Article 13

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

The King shall lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, the way in which these rights are exercised.

The Commission for the protection of privacy shall communicate to the data subject only that the necessary verifications have been carried out.

Nevertheless the King shall lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy, which information the Commission may communicate to the data subject if the request of the data subject relates to the processing of personal data by police services in view of identity verification.

Article 14

§ 1. The President of the tribunal of first instance⁵, sitting as in summary proceedings, shall take cognisance of claims relating to the right of access to personal data granted by or by virtue of the law, as well as of claims for the correction, erasure or prohibition of the use of inaccurate personal data or personal data that are incomplete or irrelevant for the purposes of the processing, or of which the recording, communication or storage is prohibited, or against the processing of which the data subject has objected, or that have been stored longer than the authorised period of time.

§ 2. The President of the tribunal in the district of the place of residence of the plaintiff shall have jurisdiction over the claims referred to in § 1. If the plaintiff has no place of residence in Belgium, the President of the tribunal in the district of the place of residence of the controller shall have jurisdiction, if the latter is a natural person. If the controller is a legal person, the President of the tribunal in the district of the registered or administrative office shall have jurisdiction.

The order shall be delivered in open court. It shall be immediately enforceable notwithstanding any appeal or opposition.

§ 3. The claim shall be submitted in the form of an application for a court hearing.

The petition shall contain the following elements and shall be declared null and void in the event of failure to do so:

1° date, month and year;

2° surname, first name, occupation and place of residence of the plaintiff

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

4° object of the claim and brief summary of the arguments;

⁵ See footnote 4.

5° signature of the plaintiff or his attorney at law.

§ 4. The petition shall be sent by recorded delivery letter to the registrar of the court or be deposited in person in the registrar's office.

Following payment of the fee to enter the case on the case listing, if applicable, the parties shall be summoned by letter of the registrar to appear in a session fixed by the judge. A copy of the petition shall be attached to the summons.

§ 5. The claim made in accordance with § 1 is only admissible if the request referred to in Article 10 § 1 or referred to in Article 12 § 2 has been rejected or if no effect has been given to it within a period of time as prescribed in Article 10 §1 second section or Article 12 § 3 first section, according to the case.

§ 6. If inaccurate, incomplete or irrelevant data or data of which the storage is prohibited, are disclosed to third parties or if communication of data has taken place after expiration of the period of time during which the storage of these data was permitted, the President of the tribunal may order that the controller shall notify the third parties concerned about the correction or erasure of these data.

§ 7. If urgent reasons raise the fear that evidence that may be presented under a claim referred to in § 1 might be concealed or disappear, the President of the tribunal of first instance shall direct all measures to prevent such concealment or disappearance, upon unilateral request signed and submitted by the party or his attorney at law.

§ 8. The provisions of §§ 6 and 7 do not limit the general competence of the President of the tribunal of first instance, sitting in summary proceedings.

Article 15

Immediately upon receipt of the request for correction, erasure or prohibition of the use or disclosure of personal data or upon notification of the introduction of the claim referred to in Article 14 and until a decision has become final, the controller shall clearly indicate that, whenever communication of a personal data is made, the data concerned is in dispute.

Article 15bis

If the data subject suffers damage from an act in violation of the provisions as determined by or by virtue of this law, the second and third sections below apply, without prejudice to claims that are based on other legal provisions.

The controller shall be responsible for the damage resulting from an act in violation of the provisions as determined by or by virtue of this law.

He shall be exempted from responsibility if he proves that the fact that has caused the damage, may not be imputed to him.

Chapter IV - Confidentiality and security of processing.

Article 16

§ 1. If the processing is consigned to a processor, the controller or his representative in Belgium, if such is the case, shall:

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

2° supervise the compliance with these measures, in particular by laying them down in contractual stipulations;

3° lay down in the contract the responsibility of the processor in respect to the controller;

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

5° lay down in writing or on electronic carrier the elements of the contract with regard to the protection of data and the requirements with regard to the measures referred to in paragraph 3.

§ 2. The controller or, if such is the case, his representative in Belgium, shall:

1° watch carefully that the data are updated, that inaccurate, incomplete and irrelevant data, as well as data that have been obtained or further processed in violation of the Articles 4 to 8, are corrected or erased;

2° take care that the access to the data and possibilities of processing for the persons who are acting under his authority, are limited to what is necessary for the fulfilment of their duties or for the requirements of the service;

3° notify all persons acting under his authority about the provisions of this law and its implementing decrees, as well as about all relevant provisions in respect of the protection of the privacy with regard to the processing of personal data;

4° ascertain that the programmes for the automatic processing of personal data are in accordance with the statements in the notification referred to in Article 17 and that no unlawful use is made thereof.

§ 3. Any person acting under the authority of the controller or of the processor, as well as the processor himself having access to the personal data, may only process them on the instructions of the controller, except for the case of an obligation imposed by or by virtue of a law, decree or ordinance.

§ 4. In order to guarantee the security of personal data the controller or, if such is the case, his representative in Belgium, as well as the processor shall take the appropriate technical and organisational measures that are necessary for the protection of personal data against accidental or unauthorised destruction, accidental loss, as well as against alteration of, access to and any other unauthorised processing of personal data.

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

On the advice of the Commission for the protection of privacy the King may promulgate appropriate standards in the matter of informatics security for all or certain categories of processing.

Chapter V - Prior notification and public nature of the processing.

Article 17

§ 1. Before carrying out any wholly or partly automatic processing operation or set of such operations intended to serve a single purpose or several related purposes the controller or, if

such is the case, his representative, shall notify the Commission for the protection of privacy thereof.

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

§ 2. The Commission shall return within three working days a written receipt of the notification.

If the notification is incomplete the Commission shall inform the person submitting the notification thereof.

§ 3. The notification shall mention:

1° the date of the notification and, if such is the case, the law, decree, ordinance or regulatory instrument establishing the automatic processing;

2° surname, first names and full address or name and registered office of the controller and, if such is the case, his representative in Belgium;

3° [cancelled]

4° the name of the automatic processing;

5° the purpose or the entirety of related purposes of the automatic processing;

6° the categories of the personal data that are processed with a specific description of the data referred to in the Articles 6 to 8;

7° the categories of recipients who may be provided with the data;

8° the guarantees to be linked to the communication of data to third parties;

9° the manner in which the persons to whom the data relate are informed thereof, the service where the right of access may be exercised and the measures taken to facilitate the exercise of that right;

10° the period of time, after the expiration of which the data may no longer be stored, used or disclosed, if such is the case;

11° a general description permitting a preliminary assessment of the appropriateness of the security measures taken pursuant to Article 16 of this law;

12° the grounds that the controller is relying upon for the application of Article 3 § 3 of this law, if such is the case.

§ 4. Within the scope of its power of supervision and investigation referred to in the Articles 31 and 32, the Commission for the protection of privacy is entitled to demand other items of information, in particular the origin of the personal data, the automation technology selected and the security measures provided for.

§ 5. Notification is required for any purpose or entirety of related purposes, for which recurrence is taken to a wholly or partly automatic processing operation or set of such operations.

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

§ 6. If the data that are processed are intended, even on an occasional basis, to be transferred to a foreign country, the notification shall mention the following elements, regardless of the carrier that has been used:

1° the categories of data that are transferred;

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

§ 7. If an automatic processing operation is terminated or if any item of information referred to in § 3 is modified, notification has to be made thereof.

§ 8. The King may exempt after advice of the Commission for the protection of privacy certain categories from the notification referred to in this Article, if there is, taking into account the data that are processed, apparently no risk of violating the rights and freedoms of the persons concerned, and the purposes of the processing, the categories of data that are processed, the categories of the persons concerned, the categories of the recipients and the period of time during which the data are stored, are specified.

If in accordance with the previous section an exemption from the obligation of notification has been granted for automatic processing operations, the items of information enumerated in §§ 3 and 6 shall be communicated to any person requesting so.

§ 9. Upon submission of the notification the controller shall pay a sum to a person who has been appointed as accountable by the Commission for the protection of privacy in accordance with the laws on Government accounts. The King shall determine the amount of this sum that may not exceed ten thousand francs. He shall also lay down the modalities of payment.

Article 17bis

The King shall determine after advice of the Commission for the protection of privacy the categories of processing operations that imply specific risks with regard to the personal rights and freedoms of the persons concerned and shall lay down in respect of these processing operations, also on the proposal of the Commission for the protection of privacy, the specific conditions for guaranteeing the rights and freedoms of the persons concerned.

In particular he may determine that the controller, alone or along with other persons responsible for the processing⁶, shall designate an appointee for the protection of data, who shall take care in an independent manner of the application of this law and of its implementing measures.

Article 18

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

Any entry in the register shall include the information referred to in Article 17, §§ 3 and 6.

The register is open to consultation by the public in the manner as laid down by the King.

Article 19

If the Commission for the protection of privacy holds the view that a non-automatic processing operation of personal data that are contained in a filing system or that are intended to be contained therein, implies a possible violation of the privacy, it may either on its own initiative

⁶ The passage 'alone or along with other persons responsible for the processing' only figures in the Dutch version of the law and not in the French. Apparently this is a lapsus of the legislator.

or on the request of a data subject oblige the controller to disclose the entirety or part of the items of information as enumerated in Article 17 to it.

Article 20

If a specific system of prior authorisations or notifications of data processing operations has been provided by or by virtue of a law, prescribing the communication of the information referred to in Article 17 §§ 3 and 6 to a special supervisory committee and the entry in a public register of the items of information referred to in Article 17 §§ 3 and 6, the obligations laid down in the Articles 17, 18 and 19 shall be considered to have been complied with, if the entirety of this information is kept on a permanent basis at the disposal of the Commission for the protection of privacy.

Article 17 § 9 shall be applicable.

Chapter VI - Transfer of personal data to countries outside the European Community

Article 21

§ 1. Personal data that are undergoing processing or that are intended for processing after transfer may be transferred to a country outside the European Community only if, without prejudice to compliance with the provisions laid down by or by virtue of this law, the third country in question ensures an adequate level of protection.

The adequacy of the level of protection shall be assessed in the light of all the circumstances surrounding a data transfer operation or a category of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the intended processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the country in question and the professional rules and security measures that are complied with in that country.

§ 2. The King shall lay down after advice of the Commission for the protection of privacy and in accordance with Article 25 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, for which categories of processing operations of personal data and under which circumstances the transfer of personal data to countries outside the European Community is not authorised.

Article 22

§ 1. As a derogation from Article 21 a transfer or category of transfers of personal data to a country outside the European Community that does not ensure an adequate level of protection may take place in one of the following cases:

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

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

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

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

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

6° the transfer is made from a public register that according to legal or regulatory provisions is intended to provide information to the public and that is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, to the extent that the conditions laid down in law for consultation are fulfilled in the particular case.

§ 2. Without prejudice to the provisions of the previous section the King may after advice of the Commission for the protection of privacy authorise a transfer or a category of transfers to a country outside the European Community that does not ensure an adequate level of protection, if the controller adduces adequate safeguards with regard to the protection of the privacy and fundamental rights and freedoms of individuals as well as with regard to the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

Chapter VII - The Commission for the protection of privacy

Article 23

An independent Commission shall be established at the House of Representatives, called "Commission for the protection of privacy", that shall be composed of members, including the chairman and vice-chairman, to be appointed by the House of Representatives⁷.

The Commission shall have its seat in the administrative district Brussels-Capital.

Article 24

§ 1. The Commission shall consist of eight full members, of whom at least one shall be a magistrate, acting as chairman, and of eight substitute members, of whom at least one shall be a magistrate.

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

§ 3. [cancelled]

§ 4. The members of the Commission shall be elected for a renewable term of six years from lists submitted by the Council of Ministers that shall contain two candidates for each seat to be allotted. They may be dismissed from office **by the House of Representatives** for shortcomings in the fulfilment of their duties or for offending against the dignity of their office.

The members shall offer all guarantees with regard to an independent fulfilment of their duties **and shall have full expertise in the field of dataprotection**.

The Commission shall be composed in such way that a balance within the Commission among the various social-economic groups will result there from.

Apart from the chairman, the Commission shall include among its full members and substitute members at least one legal expert, one computer scientist, one person demonstrating professional experience in the management of personal data in the private sector and one person demonstrating professional experience in the management of personal data in the public sector.

§ 5. In order to be appointed chairman, full member or substitute member of the Commission or to maintain such mandate, candidates shall comply with the following requirements:

⁷ The House of Representatives (Kamer van Volksvertegenwoordigers / Chambre des Représentants) is one of the two Chambers of the federal legislative body in Belgium (apart from the Senate (Senaat / Sénat)).

1° hold the Belgian nationality;

2° enjoy the civil and political rights;

3° be no member of the European Parliament, the Legislative Chambers⁸ or a Community or Regional Council⁹.

§ 6. The chairman and members within the limits of their competence shall not be instructed by any person. They may not be dismissed from their office for any opinion expressed or action performed in the fulfilment of their duties.

§ 7. It shall be prohibited for the members of the Commission to be present at any deliberation on subjects in which they themselves, their blood relations or in-laws up to the fourth degree have a personal interest.

Article 25

If a full member is unable to attend or absent or if his office becomes vacant, he shall be replaced by his substitute.

The full or substitute member of whom the term of office expires before the expiration of the six years period shall be replaced in accordance with the procedures referred to in article 24 by a full or substitute member to be elected for the remainder of the term.

Article 26

§ 1. The chairman of the Commission shall fulfil his duties on a full-time basis. He is legally taken from his court of law. He's responsible for the every day management of the Commission, manages the secretariat, chairs the meetings of the Commission in all its different divisions or authorizes another member of the Commission to do so. He regularly reports to the board meeting of the Commission.

During his term of office he shall not exercise any other professional activity. The Chamber that has appointed him, may permit derogations from this incompatibility, provided that they do not interfere with the due fulfilment of his duties.

His seat on the magisterial bench shall be filled through an additional appointment. If the chairman is a corps head, he will be replaced through an additional appointment of a magistrate to a rank immediately below his own.

He shall enjoy a salary equal to that of a First-Advocate-General¹⁰ in the Court of Cassation, as well as the increases and advantages linked thereto.

He shall retake his position on the ranking list upon termination of his office.

§ 2. The chairman shall be assisted in all his duties by a vice-chairman. The latter shall be appointed by the House of Representatives from the full members mentioned in article 24, § 1 and belonging to another linguistic group than the chairman.

The vice-chairman shall fulfil his duties on a full-time basis and the provisions of paragraph 1, sections two and four, are applicable to him. Paragraph 1, sections three and five are applicable if the vice-chairman is a magistrate. When the chairman is unable to attend, the vice-chairman takes over his duties.

⁸ Meant are the federal House of Representatives and Senate.

⁹ Council (Raad / Conseil) is the name for the legislative bodies of the Communities and Regions (See footnote 3).

¹⁰ Member of the public prosecutor's department.

Article 27

Before accepting their office, the chairman and vice-chairman, the other full members and the substitute members shall take the following oath before the President of the House of Representatives: "I hereby swear to fulfil the duties of my office conscientiously and impartially."

Article 28

The Commission for the protection of privacy shall establish its internal rules within a period of one month following its installation. They shall be communicated to the Legislative Chambers.

The Commission shall only deliberate lawfully if at least the majority of its members is present. It shall take decisions by simple majority. In case of equality of votes, the vote of the chairman or, in his absence, his substitute shall be decisive.

Article 29

§ 1. The Commission shall give advice either on its own initiative, either upon request of the Government, the Legislative Chambers, the Community or Regional Executives¹¹, the Community or Regional Councils, the United College or the United Assembly¹² referred to in Article 60 of the Special Law of January 12, 1989 on the institutions in Brussels, or of a supervisory committee, on any matter relating to the application of the fundamental principles of privacy protection, within the scope of this law and any law containing provisions relating to the protection of the privacy with regard to the processing of personal data.

§ 2. Any request shall be submitted to the Commission by recorded mail.

Without prejudice to different legal provisions, the Commission shall give advice within a period of sixty days following upon the communication to the Commission of all information needed therefore.

§ 3. In those cases where the advice of the Commission is required by or by virtue of a law, decree or ordinance, the requirement may be ignored if the advice is not delivered within the period of time referred to in paragraph 2.

In those cases where the advice of the Commission is required by a provision of this law, except for Article 11, the period of time referred to in § 2 may be reduced to at least fifteen days in urgent, specially motivated cases.

§ 4. The advices of the Commission shall contain the grounds relied upon.

§ 5. The Commission shall communicate its advice to the public body concerned.

A copy of the advice shall be communicated to the Minister of Justice.

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

Article 30

§ 1. The Commission may make recommendations either on its own initiative, either upon request of the Government, the Legislative Chambers, the Community or Regional Governments, the Community or Regional Councils, the United College or the United

¹¹ Executives (Executieven / Exécutifs) is the name for the governments of the Communities and Regions (See footnote 3).

¹² These institutions, the one legislative, the other executive, have competence in the Region of Brussels-Capital for community matters that are common to the Dutch-speaking and French-speaking part of the population of the Region of Brussels-Capital (See footnote 3).

Assembly referred to in Article 60 of the Special Law of January 12, 1989 on the institutions in Brussels, or of a supervisory committee, on any matter relating to the application of the fundamental principles of privacy protection, within the scope of this law and any law containing provisions relating to the protection of the privacy with regard to the processing of personal data.

§ 2. Before making a recommendation to a controller, the Commission shall offer the controller the opportunity to explain his point of view.

§ 3. The recommendations of the Commission shall contain the grounds relied upon. A copy of each recommendation shall be communicated to the Minister of Justice.

Article 31

§ 1. Without prejudice to any legal action and any different legal provision, the Commission shall investigate the signed and dated complaints that are submitted to it. These complaints may relate to its duties relating to the protection of the privacy with regard to the processing of personal data or to other duties that have been assigned to it by the law.

§ 2. The proceedings shall be regulated in the internal rules. These rules shall provide for the exercise of a right of defence.

§ 3. The Commission shall examine whether the complaint may be admitted. In respect to the complaints that are admissible, the Commission shall accomplish any mission of mediation that it considers useful. If an amicable settlement between the parties is reached on grounds of respect for the privacy, it shall draft a report in which it explains the solution that has been reached. If no amicable settlement is reached, the Commission shall give advice on the merits of the complaint. The advice may be accompanied by recommendations to the controller.

§ 4. The decisions, advices and recommendations of the Commission shall contain the grounds relied upon.

§ 5. The Commission shall communicate its decision, advice or recommendation to the complainant, the controller and any other party involved in the proceedings. A copy of the decision, advice or recommendation shall be communicated to the Minister of Justice.

Article 31bis

§ 1. The law establishes within the Commission sectoral committees competent to examine requests concerning the processing or the notification of data to which special legislation applies and to decide on the given case within the limits set out by law.

§ 2. Without prejudice to article 37 of the law of 15 January 1990 concerning the formation and organization of a Crossroads Bank of the social security, every sectoral committee consists of three full or substitute members of the Commission, among which the chairman or a member appointed as chairman by the Commission, as well as three external members appointed by the House of Representatives in accordance with the conditions and further rules stipulated in or under the special legislation regulating the committee in question. In case of equality of votes the chairman has the casting vote.

The leading official of the supervising organization of the sector concerned can be invited to take part to the meetings of the committee with an advisory vote.

§ 3. The filed requests concerning the processing or the notification of data to which special legislation applies are sent by the Commission to the competent sectoral committee, if any such committee has been set up, and to the supervising organization of the sector concerned. The latter transmits a technical and legal advice to the committee, within fifteen days from receipt of the request and provided the file is prepared. With the same reservation, the

committee decides within thirty days from receipt of the said advice or, when the occasion arises, when the aforesaid term of fifteen days has expired. Otherwise, its decision is considered to be in accordance with the technical and legal advice of the supervising organization.

In case a request, as referred to in the previous section, needs to be dealt with for urgent reasons and within a period of time shorter than the one stipulated in that section, the chairman transmits the request, the technical and legal advice and the draft decree to the members as soon as possible. The members are then requested to inform the chairman of their opinion concerning the draft decree, within the time limit prescribed by the chairman.

The draft decree will only become enforced when not a single member, within the time limit prescribed by the chairman, raises an objection with reference to the essential elements of the decree. When necessary, the chairman schedules a special session of the sectoral committee. In consultation with the leading official of the organization concerned, the chairman checks the existence of urgent reasons justifying the application of the two previous sections.

Without prejudice to article 44 of the aforesaid law of 15 January 1990, the chairman of the committee can suspend the examination of the file for it to be handed over to the Commission who will give a decision within a month.

§ 4. The chairmanship of a department gives rise to a double attendance fee, except when the chairman or the vice-chairman of the Commission hold the chair.

§ 5. Without prejudice to article 41 of the aforesaid law of 15 January 1990, the sectoral committees are established and meetings take place in the main office of the Commission, except when the supervising organization in question requests for the committee to be established and the meetings to be held at its own premises.

The Commission can agree to this request, on the condition that beforehand the supervising organisation places the offices and office equipment necessary for the well functioning of the committee and its chairmanship at the disposal of the chairman of the sectoral committee, as well as a secretary chosen by the chairman in consultation with the leading official of the organisation in question, and a specialised staff, notably jurists and information scientists, insofar the effective conclusion of the sectoral committees duties require this. The chairman of the sectoral committee bears the functional responsibility over the staff with regard to the duties they perform for this committee.

Article 32

For the fulfilment of its duties the Commission may call upon the assistance of experts. It may instruct one or more of its members, accompanied by an expert, if necessary, to carry out investigations on the spot.

In that case the members of the Commission shall have the quality of an officer of judicial police, assisting officer of the procurator of the King¹³.

They may require, among other things, the communication of any document that may be of use for their investigation.

They shall also have access to all the premises of which they may suppose in reason that activities relating to the application of this law are performed therein.

§ 2. Unless otherwise provided for by law the Commission shall inform the Procurator of the King of any offence of which it has knowledge.

¹³ The procurator of the King (procureur des Konings / procureur du Roi) is the head of the public prosecutor's department at the tribunals (See footnote 4).

The Commission shall submit on a yearly basis a report on its activities to the Legislative Chambers.

This report, which has a public nature, shall contain, in addition to the general information on the application of this law and on the activities of the Commission, specific information on the application of the Articles 3 § 3 and 6, 13, 17 and 18.

§ 3. Without prejudice to the competence of the regular courts and tribunals in respect to the application of the general principles concerning the protection of the privacy, the chairman of the Commission may submit to the tribunal of first instance any dispute relating to the application of this law and its implementing measures.

Article 32bis

§ 1. In view of the application of international agreements the King may appoint in a decree agreed upon in the Council of Ministers the Commission for the protection of privacy to fulfil in pursuance of these treaties duties identical to those that are assigned to the Commission by this law.

§ 2. In view of the application of international agreements the Commission shall be authorised to appoint certain of its members or staff members as representatives to international authorities that are in charge of duties identical to those that are assigned to the Commission by this law.

The King shall lay down specific rules relating to the representation after advice of the Commission for the protection of privacy.

Article 33

Without prejudice to Article 32 § 2 the members and staff members of the Commission and the experts of whom the assistance is requested for, are obliged to maintain the confidential nature of the facts, actions or information of which they have knowledge because of their function.

Article 34

Every year, the House of Representatives draws up an estimate, on the proposal of the Commission, which is to be included in the estimate of the state grants.

The Commission attaches a concise management strategy to the proposal of estimate of which it, notwithstanding any remarks of the House of Representatives, determines the content and form; the annual report on its activities, as referred to in article 32, § 2, section two, contains a subdivision in which the compliance with this plan is described.

The contributions referred to in the Articles 17 § 9 and 20, second section, shall be paid by the person appointed as accountable by the Commission on a special item of the ways and means budget.

Article 35

§ 1. The Commission shall have a secretariat at its disposal of which the establishment, the statute and the method of recruitment are prescribed by the House of Representatives, on the proposal of the Commission. The establishment can, to a restricted and reasonably justified extent, provide for the possibility to employ employees with an employment contract for a definite period.

Except when the Commission decides otherwise, for the sake of the well functioning of its services, in an order approved by the House of Representatives, the staff of the secretariat is subordinate to the legal and statutory provisions applicable to full government officials.

§ 2. The personnel in service at the time the law of 26 February 2003 amending the law of 8 December 1992 on privacy protection in relation to the processing of personal data and the law of 15 January 1990 concerning the establishment and organisation of a Crossroads Bank of the social security to adjust the statute of the Commission for the protection of privacy and to extend its powers, comes into force, hold their position and their statute until the measures, taken in implementation of § 1, are approved. If the officials, as a result of the directions given in accordance with the aforesaid measures, aren't confirmed in their position, they return to the services of the Federal Public Service Justice, holding the statute applicable to those services.

Article 36

The chairman shall be entitled to receive an indemnity equal to the salary supplement accorded to an examining magistrate with nine years seniority in a tribunal having jurisdiction over a population of at least 500,000 inhabitants.

The substitute chairman, the substitute vice-chairman and the full and substitute members shall be entitled to receive an attendance fee for an amount of 223,18 EUR (index 1,2682). This figure is linked to the evolution of the price index of the consumption prices.

They shall be entitled to receive indemnities for travel and accommodation expenses in accordance with the provisions applying to the staff members of the Ministries. Those who do not belong to the administration or of whom no ranking of their grade is determined shall be assimilated to civil servants of grade 13.

The chairman shall be assimilated to a civil servant of grade 17.

The experts of whom the assistance is requested for by the Commission or who assist the members in their investigations on the spot, may be indemnified according to the conditions laid down by the Minister of Justice in consultation with the ministers competent for civil service and the budget.

The indemnity referred to in the first section shall be linked to the mobility regulations applicable to the salary of the civil servants on active duty.

Chapter VII bis - Sectoral committees

Article 36bis

Within the Commission for the protection of privacy a sectoral committee for the federal government is established, within the meaning of article 31bis. The Federal Public Service Information and Communication Technology is looked upon as the supervising organization, referred to in article 31bis, of the sectoral committee for the federal government.

The King determines the conditions and further rules applicable to the three external members of the sectoral committee for the federal government, in an order enacted after consultation with the Council of Ministers.

Except for the cases determined by the King, every electronic notification of personal data by a federal public service or a public institution with legal personality that comes under the federal government, requires a fundamental authorization of this sectoral committee, unless

the notification is already subject to a fundamental authorization of another sectoral committee established within the Commission for the protection of privacy.

Before granting its authorization, the sectoral committee for the federal government checks whether the notification is in line with the legal and regulatory provisions.

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

The leading official of the federal public service concerned or of the public institution with legal personality in question that comes under the federal government, or a co-worker designated by him, can take part to the meetings of the sectoral committee for the federal government with an advisory vote.

Chapter VIII - Penalties

Article 37

Any member or staff member of the Commission for the protection of privacy or any expert who has violated the obligation of confidentiality laid down in Article 33 shall be punished with a fine of two hundred to ten thousand francs.

Article 38

Any controller, his representative in Belgium, appointee or agent who does not comply with the obligations laid down in the Articles 15 or 16 § 1 shall be punished with a fine of one hundred to twenty thousand francs.

Article 39

Shall be punished with a fine of one hundred to one hundred thousand francs:

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

2° any controller, his representative in Belgium, appointee or agent who processes personal data in cases other than those permitted in Article 5;

3° any controller, his representative in Belgium, appointee or agent who processes personal data in violation of the Articles 6, 7 and 8;

4° any controller, his representative in Belgium, appointee or agent who has failed to comply with the obligations laid down in Article 9;

5° any controller, his representative in Belgium, appointee or agent who fails to communicate the information referred to in Article 10 § 1 within forty five days upon receipt of the request, or who knowingly communicates inaccurate or incomplete data;

6° any person who resorts to acts of violence or threat with the purpose to force another person to disclose information that is obtained through the exercise of the right as defined in Article 10 § 1 or to give his consent for the processing of personal data relating to him;

7° any controller, his representative in Belgium, appointee or agent who starts, manages, continues to manage or terminates an automatic processing operation of personal data without compliance with the requirements of Article 17;

8° any controller, his representative in Belgium, appointee or agent who communicates incomplete or inaccurate information in the notifications prescribed in Article 17;

9° [cancelled]

10° any controller, his representative in Belgium, appointee or agent who, in violation of Article 19, refuses to communicate to the Commission the information relating to the non-automatic processing of personal data that are contained in a filing system or that are intended to be contained therein;

11° [cancelled]

12° any person who transfers personal data, brings about or permits such transfer to a country outside the European Community that has been entered on the list referred to in Article 21 § 2 in violation of the requirements of Article 22;

13° any person who prevents the Commission, its members or the experts who have been deployed by it from making the verifications referred to in Article 32.

Article 40

Upon conviction for any of the offences defined in the Articles 38 or 39 the court may order that the judgement shall be published in full or by excerpt in one or more newspapers under the conditions as determined by it and at the expenses of the convict.

Article 41

§ 1. Upon conviction for any of the offences defined in Article 39 the judge may pronounce the confiscation of the carriers of personal data to which the offence relates, such as manual filing systems, magnetic discs or tapes, except for the computers or any other equipment, or order the erasure of such data.

The confiscation or erasure may be ordered also if the carriers of personal data do not belong to the convict.

Article 8 § 1 of the law of June 29, 1964 on the suspension of penal sentences, the postponement of their execution and the probation shall apply neither to the confiscation, nor to the erasure ordered in accordance with the first and second section.

The items confiscated shall be destroyed after the decision has become final.

§ 2. Without prejudice to the interdictions laid down in particular provisions the tribunal may upon conviction for an offence defined in Article 39 pronounce the interdiction to manage any processing of personal data, directly or through an agent, for a period up to two years.

§ 3. Any offence to the prohibition laid down in § 2 or any recidivism relating to an offence laid down in the Articles 37, 38 and 39 shall be punished with an imprisonment of three months to two years and with a fine of one hundred to one hundred thousand francs or with only one of these punishments.

Article 42

The controller or his representative in Belgium shall be liable civilly for the payment of the fines incurred by his appointee or agent.

Article 43

All the provisions of Book I of the Penal Code, including Chapter VII and Article 858 shall apply to the offences defined in this law or in its implementing decrees.

Chapter IX - Final provisions

Article 44

The King may lay down in a decree agreed upon in the Council of Ministers after advice of the Commission for the protection of privacy specific rules with regard to the application of the provisions of this law taking into account the specificity of the various sectors.

Professional associations and other organisations representing categories of persons responsible for the processing who have established drafts of codes of conduct or intend to modify or prolong existing codes of conduct may submit them to the Commission for the protection of privacy.

In particular the Commission shall verify whether the drafts that are submitted to it are in accordance with this law and the decrees that have been taken in implementation thereof, and investigate, as far as possible, the standpoints of the persons concerned or of their representatives.

Article 45

The King may appoint the authorities that shall order in times of war or in times that are equated therewith in accordance with Article 7 of the law of May 12, 1927 on military requisitions, as well as during the occupation of the Belgian territory by the enemy, the destruction of data that are processed, or that shall be in charge of the destruction themselves.

The King may also determine the amounts of compensation with regard to the destructions referred to in the previous section.

Any person who offends against the decrees taken in implementation of the first section, makes use in an unlawful way or abuses the right to destroy laid down in it, shall be punished with a fine of hundred to one hundred thousand francs.

Article 46 - 51

[amending provisions]

Article 52

Any provision of this law shall come into effect on the date laid down by the King and at the latest on the first day of the twenty fourth month following publication of this law in the Belgian State Gazette.

The King shall determine the period of time within which the controller shall have to comply with the provisions of this law in respect to the processing operations that exist on the moment of their coming into effect.

Translated by Koen Buyens, 1999.

Updated by Mieke Loncke, October 2003.

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