

# PERSONAL DATA PROTECTION ACT

In force since 1 January 2002

Promulgated in State Gazette No. 1/ 4 January 2002, Amended State Gazette No. 70/10 August 2004, Amended State Gazette No. 93/19 October 2004, Amended State Gazette No. 43/20 May 2005, Amended State Gazette No. 103/23 December 2005

## Chapter One GENERAL

Art. 1. (Amended - SG, No. 103/2005) (1) This Act shall be laying down the protection of physical persons' rights in processing their personal data.

(2) The objective of this Act shall be to guarantee the personality's and the personal life inviolability by ensuring protection of the physical persons in the case of unlawful processing of personal data referring to them, in the process of free circulation of such data.

(3) This Act shall apply to personal data processing, making or intended to make part of a register, performed by a personal data administrator:

1. who is established in the territory of Republic of Bulgaria;
2. who is not established in the territory of Republic of Bulgaria, but is obliged to apply this Act by virtue of the international public law;

3. (In force as from the date of entry into force of the Treaty of Bulgaria's Accession to the European Union) who not shall be established in the territory of a European Union Member State, or in another European Economic Area Member State, but for the purposes of processing makes use of resources located in the Bulgarian territory, save for cases where such resources are used for transit purposes only; in this case the administrator must designate a representative established in the territory of Republic of Bulgaria, which shall not exonerate such administrator from responsibility.

(4) Personal data processing for the purposes of defense, national security and public order, as well as for the needs of the punitive proceeding shall be laid down in special acts.

(5) The conditions and procedure for processing the personal identification number and of other identification numbers of general application are laid down in special acts.

(6) This Act shall not apply to personal data processing, performed by physical persons for their personal or domestic activities.

Art. 2. (Suppl. SG, No. 70/2004, in force since 01.01.2005, Amended - SG, No. 103/2005) (1) Personal data shall be any information referring to a physical person, who has been identified or may be identified directly or indirectly through an identification number or through one or more specific features referring to the person's physical, physiological, genetical, psychical, psychological, economic, cultural or social identity.

(2) Personal data must be:

1. processed lawfully and conscientiously;
2. collected for concrete, precisely defined and legal purposes and to be not processed additionally in a way which shall be inconsistent with such purposes; additional personal data processing for historical, statistical or scientific purposes shall be admissible provided that the administrator ensures appropriate protection as a guarantee that the data will not be processed for other purposes;

3. proportionate to the purposes of processing;

4. precise and, if required, be updated;

5. deleted or corrected, if it shall be established that they are imprecise or non-proportionate in respect to the purposes, for which they are processed;

6. maintained in a form allowing identification of the relevant physical persons for a period not longer than the required one for the purposes, for which such data are processed; personal data, which will be stored for a longer period for historical, statistical or scientific purposes, shall be maintained in a form, not allowing identification of physical persons.

Art. 3. (1) (Amended - SG, No. 103/2005) A personal data administrator, called hereinafter "administrator", shall be a physical or juridical person, state or local authority processing data, at which the form of the data subject to processing, the purposes and resources for processing shall be determined by law.

(2) (New - SG, No. 103/2005) The administrator shall be a physical or juridical person, state or local authority determining alone the form of the personal data subject to processing, the purposes and resources for their processing.

(3) (Previous para. 2 SG, No. 103/2005) The personal data administrator shall process personal data independently or by assigning the job to a data processor.

(4) (New SG, No. 103/2005) The administrator shall ensure the observation of the requirements of Art. 2, para. 2.

Art. 4. (Amended - SG, No. 103/2005) (1) Personal data processing shall be admissible only in cases, where at least one of the following conditions is present:

1. such processing is required for the performance of normatively established obligation of the personal data administrator;

2. the physical person, to whom the data concern, has explicitly expressed his/her consent;

3. such processing is required for the conclusion and fulfillment of a contract and the relevant physical person is party to such contract;

4. such processing is required, in order to protect the life and health of the physical person, to whom the data concern;

5. such processing is required for the performance of a task fulfilled in the public interest;

6. such processing is required to exercise powers provided by law to the administrator or to a third person, to whom the data shall be revealed;

7. such processing is required in order to realize the legal interests of a personal data administrator or of a third person, to whom the data are revealed, except for cases where over such interests prevail the interests of the physical person, to whom the data concern.

(2) Personal data processing shall be admissible also in cases, where it is performed solely for the purposes of journalism, literary or artistic works, insofar as such processing will not violate the right of personal life of the person, to whom the data concern. In the above cases the provisions of Chapter Three shall not apply.

Art. 5. (Amended - SG, No. 103/2005) (1) It is prohibited process personal data, which:

1. reveal racial or ethnical origin;

2. reveal political, religious or philosophic views, membership in political parties or organizations, associations with religious, philosophic, political or trade union purposes;

3. relate to health, sexual life or to human genome.

(2) Subparagraph 1 shall not apply, where:

1. processing is required for the purposes of realizing specific rights and obligations of the administrator in the field of labour legislation;

2. the physical person, to whom the data concern, has given consent for their processing, save a special law has provided otherwise;

3. processing is necessary for the protection of the life and health of the physical person, to whom the data concern, or of another person and if the state of the physical person is not allowing to give consent or if there other legal obstacles for that;

4. processing is performed by a non-profit organization, inclusive organizations of political, philosophical, religious or trade-union purpose, in the process of its lawful activity and providing appropriate protection, provided that:

a) such processing is related solely to members of that organization or to persons maintaining regular contacts with it in view of its purposes;

b) the data are not revealed to third persons failing the consent of the physical person, to whom they concern;

5. such processing is referring to data, which are publicly announced by the physical person, or it is required for the establishment, exercise or protection of rights in a judicial procedure;

6. processing is required for the purposes of preventive medicine, medical diagnostics, provision or management of health services provided that the data are processed by a medical specialist who is obliged under law to keep professional secret, or by another person bound to similar obligation of keeping secret;

7. processing is made solely for the purposes of journalism, literary or artistic works, insofar as is not violating the right of personal life of the person, to whom the data concern.

## Chapter Two COMMISSION FOR PERSONAL DATA PROTECTION

Art. 6. (1) The Commission for Personal Data Protection, called hereinafter "the Commission", is an independent public authority realizing protection of the persons in processing their personal data and in accessing such data, as well as control over the observation of this Act.

(2) The Commission is a state-subsidized juridical person having its registered headquarters in Sofia.

Art. 7. (1) The Commission shall be a collective authority and comprises a President and 4 members.

(2) The Commission's members and the President shall be elected by the National Assembly on proposal by the Council of Ministers for a 5-year term and may be reelected for a second mandate. In the decision, the amount of their remuneration shall be fixed.

(3) The President and the members of the Commission shall perform their activity under labour contract.

(4) (Amended - SG, No. 103/2005) The Commission shall by 31 January every year submit an annual report on its activity to the National Assembly.

Art. 8. (1) For members of the Commission Bulgarian citizens may be elected, who:

1. have higher education in information science, in law or are masters of information technologies;

2. their length of service is not less than 10 years;

3. (Suppl. SG, No. 103/2005) have not been convicted to imprisonment for premeditated indictable crimes, irrespective if rehabilitated or not;

(2) The members of the Commission may not:

1. (Amended - SG, No. 103/2005) be persons who are sole traders, managers/procurators or members of managerial or supervising authorities of trade companies, cooperative societies or personal data administrators for the purposes of this Act;

2. take another paid post, save for performing scientific or teaching activity.

(3) For President of the Commission a capable jurist shall be elected meeting the requirements under para. 1 and 2.

(4) The mandate of the President or of a member of the Commission shall be terminated ahead of term in the following cases:

1. death or placement under judicial disability;

2. on a decision by the National Assembly, where:

a) he/she has lodged application for resignation;

b) he/she has committed gross violation to this Act;

c) he/she has committed a premeditated indictable crime, for which there is absolute verdict;

d) the person is unable to perform his/her obligations for a term longer than six months.

(5) (Amended and Suppl. SG, No. 103/2005) In the cases under para. 4 the Council of Ministers shall suggest to the National Assembly to elect a new member for a term until the end of the primary mandate of the relevant member of the Commission.

(6) The time, in which the person has worked as President or member of the Commission, shall be recognized as length of service under the Public Servant Act .

Art. 9. (1) The Commission shall be permanent authority assisted by administration.

(2) The Commission shall lay down in rules its activity and the activity of the administration and shall promulgate the rules in the State Gazette.

(3) The Commission shall take its decisions with majority of the total number of its members.

(4) The sessions of the Commission shall be open. The Commission may decide that individual sessions be closed.

Art. 10. (1) The Commission shall:

1. analyze and realize complete control over the adherence to the normative acts in the field of personal data protection;

2. (Suppl. SG, No. 103/2005) keep a register of personal data administrators and of the personal data registers kept by them;

3. perform inspections of personal data administrators in view of its activity under p. 1;

4. express opinions and give permissions in cases provided by this Act;

5. issue compulsory instructions to administrators in view of personal data protection;

6. following a notification, impose provisional prohibition for processing of data violating the norms concerning personal data protection;

7. (Amended - SG, No. 103/2005) consider appeals against acts and actions by administrators violating the rights of physical persons under this Act, as well as appeals by third persons in view of their rights under this Act;

8. (Amended - SG, No. 103/2005) participate in the preparation and shall compulsorily deliver opinions on bills and sublegislative normative acts in the field of personal data protection;

9. (New - SG, No. 103/2005 - in force as from the date of entry into force of the Treaty of Bulgaria's Accession to the European Union) provide for implementation of the European Commission's Decisions in the field of personal data protection.

(2) (Amended - SG, No. 103/2005) The procedure of keeping the register under para. 1, p. 2 concerning notification of the Commission, granting of permissions and expression of opinions, consideration of appeals, as well as the issue of compulsory instructions and imposing of provisional prohibitions for personal data processing, shall be laid down in the rules under Art. 9, para. 2.

(3) (Suppl. SG, No. 103/2005) The Commission shall issue a newsletter, where it shall publish information concerning its activity and the decisions made. In this newsletter, also the report under Art. 7, para. 4 shall be published.

(4) (New SG, No. 103/2005) The Commission shall adopt a Code of Ethical Behaviour for personal data administrators, taking into account the specific features of their activity.

Art. 11. President of the Commission shall:

1. organize and direct the activity of the Commission in conformity with the Act and the Commission's decisions and shall be responsible for the performance of its obligations;

2. represent the Commission vis-à-vis third persons;

3. (Suppl. - SG, No. 103/2005) appoint and dismiss public servants, and conclude or terminate labour contracts of servants under labour contracts working at the administration, following a Commission's decision.

4. (New - SG, No. 103/2005) issue punitive enactments under Art. 43, para. 2.

Art. 12. (1) The President and the members of the Commission or persons from its administration empowered by it shall carry out inspections for the implementation of this Act.

(2) (Repealed - SG, No. 103/2005)

(3) (Amended - SG, No. 103/2005) The inspections under para. 1 shall be carried out on demand by interested persons or on initiative by the Commission on the grounds of a monthly plan on its controlling activity adopted by it.

(4) (Amended - SG, No. 103/2005) The controlling persons shall legitimate themselves by official identification cards and an order by the Commission's President concerning the relevant control.

(5) (Amended - SG, No. 103/2005) In performance of such inspections the persons under para. 1 may assign elaboration of examinations under the procedure of Code of Civil Procedure.

(6) (Amended - SG, No. 103/2005) Such control shall be finalized by an act of statement and, if a violation under this Act is found - by an act of findings.

Art. 13. (Amended - SG, No. 103/2005) (1) The President and the members of the Commission and the servants from its administration shall be obliged to not reveal and not benefit themselves or other persons from the information representing secret protected by law, which they happened to learn in realizing their activity, until expiration of the term of its protection.

(2) On entrance into office the persons under para. 1 shall deliver declaration of their obligations under para. 1.

Art. 14. (Amended - SG, No. 103/2005) (1) In the register under Art. 10, para. 1, p. 2, the data under Art. 18, para. 2 shall be entered.

(2) The entry in the register under Art. 10, para. 1, p. 2 shall be verified by identification number.

(3) The register under para. 1 shall be public.

Art. 15. (Repealed - SG, No. 103/2005)

Art. 16. (Amended - SG, No. 103/2005) (1) Within 14 days following lodging of the application for registration under Art. 18 the Commission shall enter the personal data administrator in the register under Art. 10, para. 1, p. 2, if the requirements of this Act concerning personal data processing were met.

(2) In advance to perform the entry under para. 1, the Commission may accomplish a preliminary control and deliver compulsory instructions concerning the conditions for personal data processing and keeping a register by the personal data administrator.

### Chapter Three OBLIGATIONS OF THE PERSONAL DATA ADMINISTRATOR (TITLE AMENDED - SG, NO. 103/2005)

Art. 17. (Amended - SG, No. 103/2005) (1) The personal data administrator shall be obliged to lodge application for registration, if at least one of the following conditions exists:

1. the administrator is involved in personal data processing revealing racial or ethnical origin, political, religious or philosophic views, membership in political parties or organizations, associations with religious, philosophic, political or trade-union purposes, as well as personal data referring to health, sexual life or to human genome;

2. he/she is processing data to exercise of powers provided by law;

3. he/she is maintaining a register comprising data about not less than 100 physical persons;

4. he/she has received compulsory instruction on registration made by the Commission.

(2) An administrator may register also voluntarily, not having the obligation to do so.

Art. 18. (Amended - SG, No. 103/2005) (1) The administrator or his/her representative shall lodge application for registration under Art. 17, and documents upon a model approved by the Commission, in advance of beginning personal data processing.

(2) The application shall comprise:

1. data identifying the personal data administrator and his/her representative, if available;

2. the purposes of personal data processing;

3. the categories of physical persons subject to data processing, and the categories of personal data referring to them;

4. the recipients or categories of recipients to whom such personal data may be revealed;

5. the provision of data as provided in foreign states;

6. general description of the measures undertaken under Art. 23 enabling preliminary assessment concerning their advisability.

(3) The administrator shall notify the Commission of any modification of data under para. 2 in advance to its realization. In cases, where such modification was provided by law, the notification shall be made within 7 days since entry into force of the relevant act.

(4) In cases, where the administrator has not been entered in the register under Art. 10, para. 1, p. 2, he/she shall be obliged to provide the data under para. 2 to any person, on demand.

Art. 19. (Suppl. SG, No. 93/2004, Amended - SG, No. 103/2005) (1) In cases, where personal data are collected by the person to whom they relate, the administrator or his/her representative shall be obliged to provide to that person:

1. data identifying the administrator and his/her representative;

2. the purposes of personal data processing;

3. the recipients or categories of recipients, to whom such personal data may be revealed;  
4. data on the compulsory or voluntary nature of data provision and the consequences if such provide is denied;

5. information concerning the right of access and the right of correcting collected data.

(2) The data under para. 1 shall not be provided, if the physical person, to whom they relate, has them already available or if there is an explicit prohibition for their provision provided by law.

Art. 20. (Amended - SG, No. 103/2005) (1) If the personal data were not obtained from the physical person, to whom they relate, the administrator or his/her representative shall be obliged to provide to such person:

1. data identifying the administrator and his/her representative;

2. the purposes of personal data processing;

3. the categories of personal data referring to the relevant physical person;

4. the recipients or categories of recipients to whom such personal data may be revealed;

5. information concerning the right of access and the right of correcting collected data.

(2) The data under para. 1 shall be provided to the person to whom they relate by the time of their entry in the relevant register or, if revealing of such data to a third person is provided for - not later than by the time of their first revealing.

(3) Subparagraph 1 shall not apply, if:

1. such processing is for statistical, historical or scientific purposes and provision of data under para. 1 is impossible or requires excessive efforts;

2. the entry or revealing of data have been explicitly provided by law;

3. the physical person, to whom the personal data refer, has already available the information under para. 1;

4. if there is explicit prohibition for it by law.

Art. 21. (Amended - SG, No. 103/2005) (1) Any another information beyond the one under Art. 19, para. 1 and Art. 20, para. 1, linked to such data processing, shall be delivered following an assessment of the necessity of its provision in view to guarantee impartial data processing concerning the physical person, to whom the personal data refer.

(2) The assessment under para. 1 shall be made by the administrator for each specific case.

Art. 22. (Amended - SG, No. 103/2005) (1) The personal data administrator shall be obliged to ensure access of the persons under Art. 12, para. 1 to the registers kept by him/her and to not prevent control over the process of personal data processing.

(2) The personal data administrator shall be obliged to provide to the persons under Art. 12, para. 1 the requested information in oral or written form or on other information carriers.

(3) If the information comprises data representing classified information, the procedure of access under the Classified Information Act shall apply.

(4) All persons involved in personal data processing shall be obliged to render assistance to the Commission to exercise its powers.

## Chapter Four PERSONAL DATA PROTECTION

Art. 23. (Amended - SG, No. 103/2005) (1) The personal data administrator shall undertake the necessary technical and organizational measures, in order to protect data from accidental or illegal destruction, or from accidental loss, unlawful access, modification or dissemination, as well as from other illegal forms of processing.

(2) The administrator shall take special measures for protection, if processing involves electronic data transfer.

(3) The measures under para. 1 and 2 shall be in conformity with modern technological achievements and shall ensure a level of protection corresponding to the risks associated with processing and the essence of the data subject to protection.

(4) The measures under para. 1 and 2 shall be defined in a personal data administrator's instruction.

(5) The Commission shall lay down in a regulation the minimum level of technical and organizational measures, as well as the admissible type of protection. Such regulation shall be promulgated in the State Gazette.

Art. 24. (1) (Amended - SG, No. 103/2005) The administrator may process the data alone or by assigning such data processing. If required for organizational reasons, processing may be assigned to more than one person processing the data, inclusive in order to make distinction between their specific obligations.

(2) In the cases where data processing is not performed by the administrator, he/she shall be obliged to designate a person processing the data and to ensure sufficient guarantees for their protection.

(3) (Repealed - SG, No. 103/2005)

(4) (Amended - SG, No. 103/2005) The relations between the administrator and the person processing data shall be laid down in a normative act, an agreement in writing or in another act of the administrator, where the volume of obligations shall be defined, which the administrator assigned to the person processing the data.

(5) (Amended - SG, No. 103/2005) For damages, caused to third persons resulting from actions or inactions on the part of a data processor, the administrator shall respond jointly with the latter.

(6) (Amended - SG, No. 103/2005) The data processor, as well as any person acting under the guidance of the administrator or the data processor having access to personal data, may process them only upon instruction by the administrator, if not otherwise provided by law.

Art. 25. (1) (Amended - SG, No. 103/2005) Following the achievement of the objective of personal data processing, the administrator shall be obliged to:

1. destruct them, or

2. transfer them to another administrator, by notifying the Commission in advance, if such transfer has been provided by law and if there is identity concerning the objectives of processing.

(2) (Suppl. SG, No. 93/2004, Amended - SG, No. 103/2005) Following the achievement of the objective of personal data processing the administrator shall store them only in the cases provided by law.

(3) (Amended - SG, No. 103/2005) In the cases where, following the achievement of the objective of personal data processing, the administrator wishes to store the processed personal data as anonymous data for historical, scientific or statistical purposes, he/she shall notify the Commission of it.



(4) The Commission for Personal Data Protection may prohibit storage for the purposes under para. 3, if the administrator has not ensured sufficient protection of the processed data as anonymous data.

(5) The decision of the Commission under para. 4 shall be subject to appeal to the Supreme Administrative Court. In case the Supreme Administrative Court rejects the appeal against the decision of the Commission, the personal data administrator shall be obliged to destruct such data.

## Chapter Five RIGHTS OF PHYSICAL PERSONS (TITLE AMENDED - SG, NO. 103/2005)

Art. 26. (1) Any physical person shall be entitled to access to personal data referring to him/her.

(2) (Amended - SG, No. 103/2005) In cases, where in realizing the right of access granted to a physical person, personal data concerning a third person may be revealed, the administrator shall be obliged to provide to the relevant physical person access only to that part of the data, which refer only to that person.

Art. 27. (Amended - SG, No. 103/2005) Exercising the right of access to personal data may not undermine the rights of another physical person or be directed against the national security and public order.

Art. 28. (Amended - SG, No. 103/2005) (1) In exercising his/her right of access a physical person shall be entitled to any time request from the personal data administrator:

1. confirmation of the fact of processing data referring to such person, information about the purposes of such processing, the categories of data and the recipients or categories of recipients, to whom the data will be revealed;

2. a message addressed to him/her in understandable form comprising his/her personal data subject to processing, as well as any available information concerning the source of data;

3. information concerning the logics of any automated processing of personal data referring to such person, at least in cases of automated decisions under Art. 34b

(2) The physical person may exercise for free his/her right of obtaining information under para. 1 once in 12 months.

(3) In the case of death of the physical person, his/her rights under para. 1 and 2 shall be exercised by his/her heirs.

Art. 28a. (New - SG, No. 103/2005) The physical person shall be entitled to any time request from the administrator to:

1. delete, correct or lock his/her personal data whose processing fails to meet the requirements of this Act;

2. notify the third persons to whom his/her personal data have been revealed, of any deletion, correction or locking made in compliance with p. 1, save for the cases where it is impossible to do it or is associated with excessive efforts.

Art. 29. (1) (Amended - SG, No. 103/2005) The right of access under Art. 26 and the rights under Art. 28a shall be realized upon application in writing to the personal data administrator.

(2) (Amended - SG, No. 103/2005) An application may be made also electronically, under the procedure of the Electronic Documents and Electronic Signature Act.

(3) (Amended - SG, No. 103/2005) The application under para. 1 shall be made personally by the physical person or by a person explicitly empowered by the latter and holding a notarized power of attorney.

(4) (Repealed - SG, No. 103/2005).

Art. 30. (Amended - SG, No. 103/2005) (1) The application under Art. 29 shall comprise:

1. name, address and other data of identification of the relevant physical person;
2. description of the request;
3. the preferred form of provision the information under Art. 28, para. 1;
4. signature, date of lodging the application and correspondence address.

(2) Where the application is lodged by the empowered person, the notarized power of attorney shall be enclosed with it.

(3) Applications under Art. 29 shall be recorded in a register by the administrator.

Art. 31. (1) (Amended - SG, No. 103/2005) The information under Art. 28, para. 1 may be provided in the form of an oral or written inquiry or of a review of the data made by the relevant physical person or by another person explicitly empowered by the latter.

(2) The physical person may request a copy of the personal data processed on a preferred carrier or electronically, except for the cases where this is prohibited by law.

(3) (Amended - SG, No. 103/2005) The personal data administrator shall be obliged to take into consideration the form preferred by the declarer for provision the information under Art. 28, para. 1.

Art. 32. (Amended - SG, No. 103/2005) (1) In cases under Art. 28, para. 1 the personal data administrator or another person explicitly empowered by the latter shall consider the application under Art. 29 and pronounce decision within 14 days following its lodging.

(2) The term under para. 1 may be extended by the administrator to 30 days in the cases under Art. 28, para. 1, p. 1 and 2, if objectively a longer term is needed for the collection of all requested data and this is seriously impeding the administrator's activity.

(3) Within 14 days the administrator shall make decision on provision complete or partial information under Art. 28, para. 1 to the declarer or shall motivatedly deny such provision.

(4) In the cases under Art. 28a, p. 1 the administrator shall make decision and perform the relevant action within 14 days since lodging of the application under Art. 29 or shall motivatedly deny its performance.

(5) In the cases under Art. 28a, p. 2 the personal data administrator shall make decision within 14 days and shall without delay notify the third persons or shall motivatedly deny to make notification.

Art. 33. (1) (Amended - SG, No. 103/2005) The personal data administrator shall notify in writing the declarer of his/her decision or denial under Art. 32, paragraphs 3 to 5 within the term set.

(2) Notification under para. 1 shall be made personal against signature or by registered mail, with acknowledgement of receipt.

(3) (New SG, No. 103/2005) A failing notification under para. 1 shall be considered denial.

Art. 34. (1) (Amended - SG, No. 103/2005) The administrator shall deny access to personal data, if such are not available or their provision is prohibited by law.

(2) (Repealed - SG, No. 103/2005).

(3) (New SG, No. 93/2004, Amended - SG, No. 103/2005) The administrator shall deny complete or partial provision of data to the person to whom they refer, if danger could arise to the defense or the national security or to the classified information protection. Such denial shall not be motivated, but only the legal reasoning shall be specified.

Art. 34a. (New - SG, No. 103/2005) (1) The physical person, to whom the personal data refer, shall be entitled to:

1. make objections to the administrator concerning the processing of his/her personal data, if there is legal reasoning for such objection; if such objection is grounded, the personal data of the relevant physical person may not be further processed;

2. make objections against processing of his/her personal data for the purposes of direct marketing;

3. be notified prior to a first revelation of his/her personal data to third persons or used in their name for the purposes under p. 2, at which he/she shall be granted the opportunity to object against such revelation or use.

(2) The administrator shall notify the physical person of his/her rights under para. 1, p. 2 and 3.

Art. 34b. (New SG, No. 103/2005) (1) The administrator's decision shall be inadmissible, if:

1. there will be legal or other considerable consequences for the physical person, and

2. it was grounded solely on automated processing of personal data intended to assess personal characteristics of the physical person.

(2) Subparagraph 1 shall not apply, if the decision has been:

1. made during conclusion or fulfillment of a contract provided that the application lodged by the relevant physical person and concerning the conclusion or fulfillment of the contract has been satisfied or that appropriate measures exist which can guarantee his/her legal interests;

2. regulated by law providing for also measures for protection of the person's legal interests.

(3) The physical person shall be entitled to request from the administrator to reconsider the decision adopted in violation of para. 1.

## Chapter Six PROVISION OF PERSONAL DATA TO THIRD PERSONS

Art. 35. (Amended - SG, No. 103/2005) (1) Provision of personal data by the administrator to third persons shall be admitted, if:

1. any of the reasons under Art. 4 exist;

2. the data sources are public registers or documents comprising public information to which access is provided under a procedure specified by law.

(2) In the cases under para. 1, p. 1, a request in writing shall be made giving the reasoning for provision of personal data.

(3) The administrator shall pronounce decision on the request within 14 days, by provision the requested data or motivatedly denying such provision.

(4) The administrator shall notify in writing the third person of his/her decision under para. 3.

(5) Provision of personal data or a denial may be appealed by the interested persons under the procedure of Chapter Seven.

Art. 36. (Amended - SG, No. 103/2005 – it shall be applied until entry into force of the Treaty of Bulgaria’s Accession to the European Union) (1) Provision of personal data by the administrator to foreign physical and juridical persons or to foreign public authorities shall be admitted with the permission the Commission for Personal Data Protection, if the normative acts of the recipient country secure better or equal protection of data provided under this Act.

(2) For personal data transferring in the cases under para. 1, the requirements of this Act shall be observed.

Art. 36a. (New SG, No. 103/2005 - in force as from the date of entry into force of the Treaty of Bulgaria’s Accession to the European Union) (1) Provision of personal data in a European Union Member State or in another European Economic Area Member State shall be made freely, by observing the requirements of this Act.

(2) Provision of personal data in a Third State shall be admitted only if such State is able to ensure an adequate level of personal data protection in its territory.

(3) The assessment concerning the adequacy of the level of personal data protection in a Third State shall be made by the Commission for Personal Data Protection, taking into consideration all circumstances related to the action or the aggregate of actions concerning the provision of data, inclusive the nature of the data, the objective and duration of their processing, their legal regulation and the security measures secured in such Third State.

(4) The assessment under para. 3 shall not be made, if the European Commission has pronounced decision concerning the level of personal data protection in the Third State to which such data are provided.

(5) The requirement under para. 2 shall not apply, if the provision of personal data is made under a Treaty - ratified, promulgated and enforced for Republic of Bulgaria.

(6) Beyond the cases under para. 2 and 4, the administrator may provide personal data in a Third State, if:

1. the person to whom the personal data refer, has given explicit consent for it;
2. such provision is necessary for the fulfillment of a contract between the physical person and administrator or is made upon request by the person;
3. such provision is necessary for the fulfillment of a contract concluded in the interest of the physical person between the administrator and another subject;
4. such provision is necessary or is required by law due to significant public interest or for establishing, exercising or protecting of rights in a judicial procedure;
5. such provision is necessary, in order to protect the life and health of the person, to whom the personal data refer;
6. publicly accessible data are provided.

(7) Provision of personal data in Third States shall be admitted in all cases, where it is made solely for the purposes of journalism, literary or artistic works, insofar such processing will not violate the right of personal life of the person to whom the personal data refer.

Art. 36b. (New SG, No. 103/2005 - in force as from the date of entry into force of the Treaty of Bulgaria’s Accession to the European Union) (1) Beyond the cases under Art. 36a, the provision of personal data in a Third State shall be made with the permission of the Commission

for Personal Data Protection provided that the administrator providing the data and the administrator obtaining them submit sufficient guarantees for their protection.

(2) The Commission shall notify the European Commission and the competent authorities of the other Member States of the permissions provided under para. 1.

Art. 37. (Repealed - SG, No. 103/2005).

## Chapter Seven APPELLATION AGAINST ACTIONS OF THE PERSONAL DATA ADMINISTRATOR

Art. 38. (1) (Amended - SG, No. 103/2005) In the case of violation of his/her rights under this Act, any physical person shall be entitled to approach the Commission for Personal Data Protection within 30 days following the establishment of such violation, but not later than one since its commitment.

(2) (Amended - SG, No. 103/2005) The Commission shall pronounce decision within 30 days following its approach and may give compulsory instructions; may fix a term for elimination of the violation or impose an administrative punishment.

(3) (Repealed - SG, No. 103/2005).

(4) The Commission for Personal Data Protection shall send a copy of its decision to the physical person as well.

(5) (Amended - SG, No. 103/2005) The Commission's decision under para. 2 shall be subject to appeal to the Supreme Administrative Court within 14 days since its receipt.

Art. 39. (1) (Amended - SG, No. 103/2005) In case of violation of his/her rights under this Act any physical person may appeal against the administrator's actions and acts in a judicial procedure to the relevant regional court or to the Supreme Administrative Court under the general rules on jurisdiction, within the term fixed under Art. 38, para. 1.

(2) (Amended - SG, No. 103/2005) In the proceeding under para. 1 the physical person may request compensation for the damages incurred in consequence of unlawful processing of his/her personal data by the administrator.

(3) (New SG, No. 103/2005) The physical person may not approach the court, if there is a pending proceeding to the Commission concerning the same violation or if a Commission's decision concerning the same violation has been appealed and there is no effective judgement yet. On request by the physical person the Commission shall certify the absence of a pending proceeding to the latter concerning the same dispute.

(4) (Previous para. 3, Amended - SG, No. 103/2005) In cases of non-fulfillment of the instructions under Art. 38, para. 2 within the term set the Commission for Personal Data Protection may within 14 days approach the relevant regional court or the Supreme Administrative Court concerning the violation committed by the personal data administrator, in conformity with the general rules on jurisdiction.

(5) (Previous para. 4, Amended - SG, No. 103/2005) When considering disputes under para. 4 the Administrative Procedure Act shall apply or the Supreme Administrative Court Act.

Art. 40. (Repealed - SG, No. 103/2005).

Art. 41. (Repealed - SG, No. 103/2005).

## Chapter Eight

## ADMINISTRATIVE PENAL PROVISIONS

Art. 42. (Amended - SG, No. 103/2005) (1) For violations under Art. 2, para. 2 and Art. 4 the personal data administrator shall be punished with a fine or property sanction from 10 000 to 100 000 Lev.

(2) For violations under Art. 5 the administrator shall be punished with a fine or property sanction from 10 000 to 100 000 Lev.

(3) For violations under Art. 19, para. 1 and Art. 20, para. 1 the administrator shall be punished with a fine or property sanction from 5000 to 30 000 Lev.

(4) An administrator who fails to fulfill his/her obligation for registration under Art. 17, para. 1, shall be punished with a fine or property sanction from 1000 to 10 000 Lev.

(5) An administrator who fails to pronounce within the term set on an application under Art. 29, shall be punished with a fine or property sanction from 1000 to 20 000 Lev., if not subject to a more severe punishment.

(6) For denial to collaborate with the Commission in view of its controlling powers the persons shall be punished with a fine or property sanction from 1000 to 10 000 Lev.

(7) For other violations under this Act the guilty persons shall be punished with a fine or property sanction from 500 to 5000 Lev.

Art. 42a. (New SG, No. 103/2005) If violations under this Act were committed repeatedly, the fine or property sanction imposed shall be the double amount of the initially imposed ones

Art. 43. (1) (Amended - SG, No. 103/2005) The acts of statement on administrative violations shall be drafted by a member of the Commission for Personal Data Protection or by officials empowered by the Commission.

(2) (Suppl. SG, No. 103/2005) The punitive enactments shall be issued by the President of the Commission for Personal Data Protection based on the Commission's decision under Art. 38, para. 2.

(3) The establishment of violations, the issue, appellation and execution of punitive enactments shall be made under the procedure of the Administrative Violations and Punishments Act.

## Supplementary Provisions

§ 1. For the purposes of this Act:

1. (Amended - SG, No. 103/2005) "Personal data processing" shall be any action or aggregate of actions which may be performed in respect to personal data by employing automatic or other means, e.g. collection, registration, organization, storage, adaptation or modification, restoration, consultation, use, revelation through transmission, dissemination, provision or in another way, updating or combining, locking, deleting or destructing.

2. (Amended - SG, No. 103/2005) "Personal data register" shall be any structured aggregate of personal data accessible under specific criteria, centralized, decentralized or distributed based on a functional or geographic principle.

3. (Amended - SG, No. 103/2005) "Data processor" shall be a physical or juridical person, state or local authority processing personal data on behalf of a personal data administrator.

4. (Repealed - SG, No. 103/2005).

5. "Provision of personal data" shall be actions of entire or partial transfer of personal data from one administrator to another or to a third person in the territory of the country or abroad.

6. (Amended - SG, No. 103/2005) "Anonymous data" shall be personal data produced in a form not allowing that they be linked to the relevant physical person, to whom they refer.

7. "Locking" shall be the storage of personal data and suspension of their processing.

8. (Repealed - SG, No. 103/2005).

9. "Repeated" shall be a violation committed within one year from the entry into force of the punitive enactment imposing a punishment for the same type of violation.

10. (New - SG, No. 70/2004, in force since 01.01.2005) "Human genome" shall be the aggregate of all genes in a single (diploid) set of chromosomes of a specific person.

11. (New - SG, No. 103/2005) "Third person" shall be a physical or juridical person, state or local authority differing from the physical person to whom the personal data refer, from the personal data administrator, from the personal data processor and from the persons who – under the immediate guidance of the administrator or the processor shall be entitled to process personal data.

12. (New - SG, No. 103/2005) "Recipient" shall be a physical or juridical person, state or local authority to whom personal data may be revealed, irrespective if this is a third person or not. The authorities entitled to obtain data within the framework of a concrete investigation, shall not be considered recipients.

13. (New - SG, No. 103/2005) "Consent by the physical person" shall be any freely expressed, concrete and informed will, by which the physical person to whom the personal data refer, agrees to their processing.

14. (New - SG, No. 103/2005 in force as from the date of entry into force of the Treaty of Bulgaria's Accession to the European Union) "Third State" shall be any state which is not member of the European Union and is not a party to the Agreement on the European Economic Area.

15. (New - SG, No. 103/2005) "Direct marketing" shall be offering of commodities and services to physical persons by mail, phone or in another direct form, as well as by questioning in view of investigations concerning the commodities and services offered.

### Transitional and Final Provisions

§ 2. (1) Within one month from entry into force of this Act the Council of Ministers shall propose to the National Assembly the staff of the Commission for Personal Data Protection.

(2) Within 14 days from introducing the proposal under para. 1 the National Assembly shall elect the staff of the Commission for Personal Data Protection.

(3) Within three months from its election the Commission for Personal Data Protection shall adopt and promulgate in the State Gazette the rules under Art. 9, para. 2.

(4) The Council of Ministers shall within one month from entry into force of the National Assembly's decision under para. 2 provide for the needed property and financial resources for beginning the Commission's work.

§ 3. (1) Within six months from entry into force of the rules under Art. 9, para. 2 the persons who by the time of entry into force of this Act are maintaining personal data registers, shall bring them in compliance with the requirements under this Act and shall notify the Commission of it.

(2) The Commission shall perform preliminary inspections, register or deny registration as administrators of persons who are maintaining registers by the time of entry into force of this Act and the registers they keep within three months from receipt of the application under para. 1.

(3) The Commission's decisions concerning denial of registration shall be subject to appeal to the Supreme Administrative Court, within 14 days.

(4) Upon entry into force of the Commission's decision concerning denial of registration or of the Supreme Administrative Court's decision confirming the Commission's denial, the person keeping a register unlawfully shall be obliged to destruct the personal data comprised in his/her register or shall with the Commission's consent transfer them to another administrator who has registered his/her register and is processing personal data for the same purposes.

(5) The Commission shall realize control over the fulfillment of the obligation under para. 4.

(6) Within three months from registration the administrator under Art. 3, para. 1 shall be obliged to publish in the newsletter issued by the Commission for Personal Data Protection the information under Art. 22, para. 1.

§ 4. In the Access to Public Information Act (SG, No. 55/2000) the following amendments were made:

1. In Art. 2, para. 3 the words "personal information" shall be replaced by "personal data".

2. In § 1 p. 2 shall be amended as follows:

"2. "Personal data" shall be information concerning a physical person revealing the person's physical, psychological, mental, family, economic, cultural or public identity."

§ 5. This Act shall enter into force on 1 January 2002.

This act has been adopted by the 39<sup>th</sup> National Assembly on 21 December 2001 and was sealed with the official seal of the National Assembly.

#### Transitional and Final Provisions TO THE PRIVATE JUDICIAL EXECUTORS ACT

(Promulg. - SG, No. 43/2005)

§ 23. This Act shall enter into force on 1 September 2005.

#### Transitional and Final Provisions TO ACT FOR MODIFICATION AND SUPPLEMENT OF ACT FOR PERSONAL DATA PROTECTION

(Promulg. - SG, No. 103/2005)

§ 50. The provision of § 38 concerning Art. 36 shall apply until entry into force of the Treaty of Bulgaria's Accession to the European Union.

§ 51. The provisions of § 1 concerning Art. 1, para. 3, p. 3, § 8, p. 1, letter "c" concerning Art. 10, para. 1, p. 9, § 39 concerning Art. 36a, § 40 concerning Art. 36b, and § 48, p. 5 concerning p. 14 of the supplementary provision, shall enter into force on the date of entry into force of the Treaty of Bulgaria's Accession to the European Union.



§ 52. Within three months from entry into force of this Act the Commission for Personal Data Protection shall adopt the Code of Behaviour under Art. 10, para. 4 and the Regulation under Art. 23, para. 5.