

## **Personal Data Protection Act**

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### Chapter One

#### GENERAL PROVISIONS

##### **Article 1**

(Amended, SG No. 103/2005)

(1) This Act shall regulate the protection of rights of individuals with regard to the processing of their personal data.

(2) The purpose of this Act is to guarantee the inviolability of personality and privacy by ensuring protection of individuals in case of unauthorised processing of personal data relating to them, in the process of free movement of data.

(3) This Act shall apply to the processing of personal data which are, or are designed to become, part of a register where such processing is performed by a personal data administrator:

1. having an establishment on the territory of the Republic of Bulgaria;
2. not having an establishment on the territory of the Republic of Bulgaria but bound to apply this Act by virtue of international public law;
3. (in force as of the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union) not having an establishment on the territory of an European Union Member State, nor in another member country of the European Economic Area but, for the purposes of such processing, making use of means located on the territory of the Republic of Bulgaria, unless such means are being used exclusively for transit purposes; in such a case the administrator must designate a representative having an establishment on the territory of the Republic of Bulgaria, this, however, shall not render it harmless.

(4) Processing of personal data for defence, national security and public order purposes, and for the purposes of criminal justice shall be governed by special laws.

(5) The terms and procedure for processing uniform civil registry personal identification numbers and other identification numbers of general application shall be governed by special laws.

(6) This Act shall not apply to the processing of personal data by individuals for their personal or household activity.

##### **Article 2**

(Supplemented, SG No. 70/10.08.2004, amended, SG No. 103/2005)

(1) "Personal data" shall refer to any information relating to an individual who is identified or identifiable, directly or indirectly, by reference to an identification number or to one or more specific features relating to his or her physical, physiological, genetic, mental, psychological, economic, cultural or social identity.

(2) Personal data must be:

1. processed in legal compliance and in a bona fide manner;

2. captured for specific, precisely defined and legal purposes and not be submitted to additional processing in a manner incompatible with such purposes; additional processing of personal data for historical, statistical or research purposes shall be allowable provided the administrator has ensured proper protection guaranteeing that such data are not being processed for any other purposes;
3. proportional to the purposes for which they are being processed;
4. accurate, and updated as needed;
5. destroyed or adjusted when found to be imprecise or disproportional to the purposes for which they are being processed;
6. maintained in a form that enables identification of the respective individuals for a period not to exceed the time necessary for the purposes for which such data are being processed; personal data which are to be retained for a longer period of time for historical, statistical or research purposes shall be stored in a format precluding the identification of individuals.

### **Article 3**

- (1) (Amended, SG No. 103/2005) Personal data administrator, hereinafter referred to as "administrator", shall refer to any natural or legal person, or a central or local government authority which processes personal data, and the purposes and means of processing shall be determined by law.
- (2) (New, SG No. 103/2005) "An administrator" shall also refer to any natural or legal person, or a central or local government authority which determines by itself the type of personal data processed, and the purposes and means of processing
- (3) (Repealed, renumbered from Paragraph (2), SG No. 103/2005) The personal data administrator shall process personal data on its own or through assignment to a data processor.
- (4) (New, SG No. 103/2005) The administrator shall ensure compliance with the requirements laid out in Article 2 paragraph (2).

### **Article 4**

(Amended, SG No. 103/2005)

- (1) Personal data may be processed only provided at least one of the following conditions is met:
  1. processing is necessary in order to comply with an obligation imposed on the personal data administrator by a piece of legislation;
  2. the individual to whom such data relate has given his or her explicit consent;
  3. processing is necessary for the execution and performance of a contract to which the individual to whom such data relate is party;
  4. processing is necessary in order to protect the life and health of the individual to whom such data relate;
  5. processing is necessary for the performance of a task carried out in the public interest;
  6. processing is necessary for the exercise of an official authority vested by law in the administrator or in a third party to whom the data are disclosed;
  7. processing is necessary for the realisation of the legitimate interests of the personal data administrator or a third party to whom the data are disclosed, except where such interests are overridden by the interests of the individual to whom such data relate.
- (2) Personal data processing shall be allowable also in cases when performed exclusively for the

purposes of journalism, literary or artistic expression to the extent to which such processing does not violate the right to privacy of the person to whom the data relate. In such cases, the provisions of Chapter Three shall not apply.

#### **Article 5**

(Amended, SG No. 103/2005)

(1) It shall be forbidden to process personal data which:

1. reveal racial or ethnic origin;
2. reveal political, religious or philosophical convictions, membership in political parties or organisations, associations having religious, philosophical, political or trade-union goals;
3. refer to health, sex life or human genome.

(2) Paragraph (1) shall not apply where:

1. processing is necessary for the purposes of carrying out specific rights and obligations of the administrator in the field of labour law;
2. the individual to whom such data relate has given his or her consent to the processing of such data, except where otherwise provided by a special law;
3. processing is necessary to protect the life and health of the individual to whom such data relate, or of another person, and the physical condition of such individual render him incapable of giving his or her consent, or there are legal impediments to doing so;
4. processing is carried out by a non-profit organisation, including such with a political, philosophical, religious or trade-union goal, in the course of its legitimate activities and with appropriate protection, on condition that:
  - (a) the processing relates exclusively to the members of such organisation or to persons who have regular contact with it in connection with its goals;
  - (b) the data are not disclosed to a third party without the consent of the individual to whom such data relates;
5. the processing relates to data which have been made public by the individual to whom such data relate, or it is necessary for the establishment, exercise or defence of legal claims;
6. processing of the data is required for the purposes of preventive medicine, medical diagnostics, the provision or management of health-care services provided that such data are processed by a medical professional who is bound by law to professional secrecy, or by another person under a similar obligation of secrecy;
7. processing is performed exclusively for the purposes of journalism, literary or artistic expression to the extent to which it does not violate the right to privacy of the person to whom such data relate.

#### Chapter Two

#### COMMISSION FOR PERSONAL DATA PROTECTION

#### **Article 6**

(1) The Commission for Personal Data Protection, hereinafter referred to as "the Commission", is an independent government body ensuring the protection of individuals in the processing of their personal data and in the access thereof, as well as the monitoring of the observance of this Act.

(2) The Commission is a budget-supported legal entity with its head office in Sofia.

## **Article 7**

(1) The Commission is a college body, consisting of a chairperson and four members.

(2) The members of the Commission and its chairperson shall be elected by the National Assembly at the proposal of the Council of Ministers for a five-year term and they may seek re-election for another term of office. The decision shall specify also the amount of their remuneration.

(3) The chairperson and the members of the Commission shall work on the basis of employment contracts.

(4) (Amended, SG No. 103/2005) The Commission shall submit an annual report on its activities to the National Assembly before the 31st day of January every year.

## **Article 8**

(1) Eligible members of the Commission may be Bulgarian citizens who:

1. hold university degree in information science or law or master's degree in information technologies;
2. have at least ten years of service in their subject;
3. (Supplemented, SG No. 103/2005) have not been convicted to imprisonment for a willful indictable offence regardless of whether rehabilitated.

(2) Members of the Commission may not:

1. (Amended, SG No. 103/2005) be persons who are sole proprietors, managers/procurators or members of management or supervisory bodies of commercial undertakings, cooperatives or personal data administrators in the meaning of this Act;
2. occupy other paid jobs, except for research or teaching.

(3) A qualified member of the legal profession meeting the requirements laid down in Paragraphs 1 and 2 shall be elected as the chairperson of the Commission.

(4) The term of office of the chairperson or a member of the Commission shall be terminated earlier in any of the following cases:

1. death or legal incapacity;
2. at a decision of the National Assembly, where:
  - (a) a request for discharge from duties has been served;
  - (b) the person has committed a gross violation of this Act;
  - (c) the person has committed a willful indictable offence and an enforceable judgement has been issued;
  - (d) impossibility for discharge of duties for more than six months.

(5) (Amended and supplemented, SG No. 103/2005) In the cases under Paragraph 4, the Council of Ministers shall propose to the National Assembly to select a new member until the expiration of the original term of office of the respective member of the Commission.

(6) The service as a chairperson or a member of the Commission shall be recognised also as length of service for the purposes of the Civil Servants Act .

## **Article 9**

(1) The Commission shall operate as a standing body assisted by an administration.

(2) The Commission shall issue regulations for its work and the work of its administration and promulgate these regulations in The State Gazette.

(3) The Commission shall make decisions by a majority vote of the total number of its members.

(4) The Commission shall sit in public meetings. The Commission may decide to hold certain meetings in camera.

#### **Article 10**

(1) The Commission shall:

1. review and monitor the observance of the legal framework in the field of the personal data protection;

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

3. investigate personal data administrators in connection with its activities under Item 1;

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

5. issue mandatory instructions to administrators in connection with the personal data protection;

6. suspend, upon prior notification, the processing of personal data that will violate the provisions on the protection of personal data;

7. (amended, SG No. 103/2005) handle complaints against acts and actions of administrators which infringe the rights of individuals under this Act, as well as third parties' complaints in relation to their rights under this Act;

8. (amended, SG No. 103/2005) participate in the drafting of and must issue an opinion in regard to drafts of laws and regulations in the field of personal data protection;

9. (New, SG No. 103/2005, in force as of the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union) ensure enforcement of European Commission decisions in the field of personal data protection.

(2) (Amended, SG No. 103/2005) The terms and conditions for keeping the register under paragraph (1), item (2), for notifying the Commission, with regard to permissions and opinions, for examining complaints, and issuing mandatory instructions or suspending personal data processing shall be laid down in the regulations under Article 9, Paragraph 2.

(3) (Supplemented, SG No. 103/2005) The Commission shall issue a newsletter to publish information about its activities and decisions. The bulletin shall also contain the report referred to in Article 7, paragraph (4).

(4) (New, SG No. 103/2005) The Commission shall adopt a Code of Ethics for the behaviour of personal data administrators taking into consideration the specifics of their activity.

#### **Article 11**

The chairperson of the Commission shall:

1. organise and guide the activities of the Commission as prescribed by law and the decisions of the Commission and be responsible for the fulfilment of its duties;

2. represent the Commission before third parties;

3. (supplemented, SG No. 103/2005) appoint and discharge civil servants and sign and terminate the employment contracts with the employees in the administration upon a decision of the Commission.

4. (New, SG No. 103/2005) issue penal provisions as provided for in Article 43, paragraph (2).

#### **Article 12**

(1) The chairperson and the members of the Commission or persons from the administration designated by the Commission shall monitor the implementation of this Act.

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

(3) (Amended, SG No. 103/2005) The examinations referred to in paragraph (1) shall be carried out at the request of the persons concerned, as well as on the Commission's initiative based on a monthly control activity plan adopted by it.

(4) (Amended, SG No. 103/2005) The examiners shall produce their official identity papers and the order issued by the Commission chairman for the relevant examination.

(5) (Amended, SG No. 103/2005) In conducting examinations, the persons referred to in paragraph (1) may contract the preparation of expert opinions following the procedure laid down in the Code of Civil Procedure .

(6) (Amended, SG No. 103/2005) An examination shall end in a memorandum of findings, and in case a violation of this Act has been found, it shall end in issuing a memorandum establishing such violation.

#### **Article 13**

(Amended, SG No. 103/2005)

(1) The Chairman and members of the Commission, and the staff of its administration must not disclose and not make use, for their own or any third party's benefit, of any information constituting a secret protected by a law of which they have become aware in the performance of their official duties, until the period provided for the protection of such information has expired.

(2) When hired, the persons referred to in paragraph (1) shall submit a declaration concerning their obligations provided for in paragraph (1).

#### **Article 14**

(Amended, SG No. 103/2005)

(1) The data provided for in Article 18, paragraph (2) shall be recorded in the register referred to in Article 10, paragraph (1), Item 2.

(2) Data entry in the register referred to Article 10, paragraph (1), Item 2 shall be certified by an identification number.

(3) The register referred to in paragraph (1) shall be public.

#### **Article 15**

(Repealed, SG No. 103/2005)

#### **Article 16**

(Amended, SG No. 103/2005)

(1) Within 14 days from filing a registration notification as referred to in Article 18, the Commission shall enter the personal data administrator in the register referred to in Article 10, paragraph (1), Item 2, if the requirements of this Act with regard to the personal data processing have been met.

(2) Before making the entry referred to in paragraph (1), The Commission shall be free to make a

preliminary examination and issue mandatory prescriptions as to the conditions for personal data processing and register keeping by the personal data administrator.

### Chapter Three

## OBLIGATIONS OF PERSONAL DATA ADMINISTRATORS

(Heading amended, SG No. 103/2005)

### **Article 17**

(Amended, SG No. 103/2005)

(1) The personal data administrator must file a application for registration when at least one of the following conditions are met:

1. it processes personal data that reveal racial or ethnic origin, political, religious or philosophical convictions, membership in political parties or organisations, associations having religious, philosophical, political or trade-union goals, and personal data that refer to health, sex life or human genome;
2. it processes personal data in the exercise of an official authority vested by law;
3. it maintains a register containing data on not less than 100 individuals;
4. it has been issued a binding prescription for registration by the Commission.

(2) An administrator shall be free to register at its own initiative without being obliged to do so.

### **Article 18**

(Supplemented, SG No. 93/2004, amended, SG No. 103/2005)

(1) Any personal data administrator or its representative shall file a registration application as referred to in Article 17 and documents in a set format approved by the Commission before they begin to process personal data.

(2) The application shall contain:

1. the data identifying the personal data administrator and its representative, if any;
2. the purposes of personal data processing;
3. the categories of individuals whose data are processed, and the categories of personal data relating to them;
4. the recipients or categories of recipients to whom the personal data may be disclosed;
5. proposed provision of data in other countries;
6. the general description of measures undertaken in accordance with Article 23 enabling a preliminary assessment of their appropriateness.

(3) The administrator shall notify the Commission of any change in the data referred to in paragraph (2) prior to making such change. In cases where such change is provided for in a law, notification must be made within 7 days following the effective date of such law.

(4) In cases where the administrator is not registered in the register referred to in Article 10, paragraph (1), subparagraph (2), it must provide the data referred to in paragraph (2) to every person upon request.

## **Article 19**

(Supplemented, SG No. 93/2004, amended, SG No. 103/2005)

(1) Where personal data are collected from the individual to whom such data relate, the administrator or its representative must provide him with:

1. the data which identify the administrator and its representative;
2. the purposes for which the data are being processed;
3. the recipients or categories of recipients to whom the personal data may be disclosed;
4. the data concerning the obligatory or voluntary nature of data provision and the consequences of a failure to provide them;
5. information about the right of access to and the right to rectify the data collected.

(2) The data referred to in paragraph (1) shall not be provided when the individual to whom they relate already has such data, or if a law provides for an express prohibition on providing them.

## **Article 20**

(Amended, SG No. 103/2005)

(1) Where personal data have not been collected from the individual to whom they relate, the administrator or its representative must provide him with:

1. the data which identify the administrator and its representative;
2. the purposes for which the data are being processed;
3. the categories of personal data relating to the respective individual;
4. the recipients or categories of recipients to whom the personal data may be disclosed;
5. information about the right of access to and the right to rectify the data collected.

(2) The data referred to in paragraph (1) shall be provided to the individual to whom they relate at the time they are recorded in the respective register or, if data are to be disclosed to a third party, not later than at the time of their first disclosure.

(3) Paragraph (1) shall not apply where:

1. processing is done for statistical purposes or for the purposes of historical or scientific research and the provision of the data referred to in paragraph (1) is impossible or would involve a disproportionate effort;
2. recording or disclosure of data is explicitly laid down by law;
3. the individual to whom such data relate already has the information referred to in paragraph (1);
4. this is explicitly prohibited by law.

## **Article 21**

(Amended, SG No. 103/2005)

(1) Any other information beyond that referred to in Article 19, paragraph (1) and Article 20, paragraph (1) relating to data processing shall be provided upon an assessment of the need to provide it, in order to ensure fair processing of data in regard to the individual to whom they relate.



(2) The assessment referred to in paragraph (1) shall be made by the administrator on a case by case basis.

#### **Article 22**

(Amended, SG No. 103/2005)

(1) The personal data administrator must provide access for the persons referred to in Article 12, paragraph (1) to registers maintained by it and must not impede control of the process of personal data processing.

(2) The personal data administrator must provide the information requested by the persons referred to in Article 12, paragraph (1) orally or in writing, or on other information carriers.

(3) Where such information contains data constituting classified information, the access procedure provided for in the Classified Information Protection Act shall apply.

(4) All persons engaged in personal data processing must cooperate with the Commission in the exercise of its powers.

#### Chapter Four

#### PERSONAL DATA PROTECTION

#### **Article 23**

(Amended, SG No. 103/2005)

(1) The personal data administrator must implement appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, or against accidental loss, unauthorised access, alteration or dissemination, and against other unlawful forms of processing.

(2) The administrator shall implement special protection measures where processing involves the transmission of data over an electronic network.

(3) Measures referred to in paragraph (1) and paragraph (2) shall take into account state-of-the-art technology and ensure a level of security corresponding to the risks involved in processing, and the nature of the data to be protected.

(4) The measures referred to in paragraph (1) and paragraph (2) shall be determined in an instruction issued by the personal data administrator.

(5) The Commission shall specify the minimum level of technical and organisational measures, as well as the admissible type of protection in a regulation. Such regulation shall be published in the State Gazette.

#### **Article 24**

(1) (Amended, SG No. 103/2005) Administrators may process data on their own or through assignment to data processors. When this is needed for organisational reasons, the processing may be assigned to more than one data processor with a view to, inter alia, to delimitate their specific tasks.

(2) Where the data processing is not performed by the administrator, the latter shall designate the data processor and provide sufficient data protection guarantees.

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

(4) (Amended, SG No. 103/2005) The relationship between the administrator and the personal data processor must be governed by a piece of legislation, a written contract or another act of the administrator defining the scope of duties assigned by the administrator to the data processor.

(5) (Amended, SG No. 103/2005) The administrator shall be jointly and severally liable for any damages caused to any third party resulting from any action or failure to act on behalf of the data processor.

(6) (Amended, SG No. 103/2005) The personal data processor or any person acting under the guidance of the administrator or of the processor who has access to personal data may process them only on instructions from the administrator, unless otherwise provided for by law.

#### **Article 25**

(1) (Amended, SG No. 103/2005) Upon the achievement of the purpose of personal data processing, the personal data administrator must:

1. either destroy the data, or
2. having given prior notification to the Commission, transfer them to another administrator provided that such transfer is provided for in a law and the purposes of processing are identical.

(2) (Supplemented, SG No. 93/2004, amended, SG No. 103/2005) Upon the achievement of the intended purposes of personal data processing, the personal data administrator shall store data only in the cases laid down by law.

(3) (Amended, SG No. 103/2005) In cases where, having achieved the purpose of personal data processing, the administrator wishes to store the personal data processed as anonymous data for historical, statistical or research purposes, it must inform the Commission thereof.

(4) The Commission for Personal Data Protection may prohibit the storage of data for the purposes under Paragraph 3 if the administrator has failed to provide sufficient protection of the anonymous storage of the data processed.

(5) The decision of the Commission under Paragraph 4 shall be subject to appeal before the Supreme Administrative Court. Where the Supreme Administrative Court fails to grant an appeal against the decision of the Commission, the personal data administrator shall destroy the data.

### Chapter Five

#### RIGHTS OF INDIVIDUALS

(Heading amended, SG No. 103/2005)

#### **Article 26**

(1) Any individual shall be entitled to access to personal data related to him or her.

(2) (Amended, SG No. 103/2005) In the cases when the right of access granted to an individual may lead to disclosure of personal data of third parties as well, administrators shall provide the relevant individual with access only to that part of the data that relates to himself or herself.

#### **Article 27**

(Amended, SG No. 103/2005)

The exercise of the right of access to personal data may not prejudice the rights of any other individual or be aimed against national security and public order.

#### **Article 28**

(Amended, SG No. 103/2005)

(1) When exercising his or her right of access, an individual shall be entitled to request, at any time, from the personal data administrator:

1. a confirmation as to whether or not data relating to him are being processed, information as to the purposes of such processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;
2. communication to him, in an intelligible form, containing his or her personal data undergoing processing, and any available information as to their source;
3. information concerning the logic involved in any automatic processing of data concerning him, at least in case of automated decisions referred to in Article 34b.

(2) The individual may exercise his or her right of obtaining the information referred to in paragraph (1) free of charge once every twelve months.

(3) In case the individual dies, his or her rights referred to in paragraph (1) and paragraph (2) shall be exercised by his or her heirs.

#### **Article 28a**

(New, SG No. 103/2005)

An individual shall be entitled to require, at any time, from the personal data administrator:

1. to remove, rectify or block his or her personal data the processing of which does not comply with the provisions of this Act;
2. notify any third parties to whom his or her personal data have been disclosed of any removal, rectification, or blocking carried out in compliance with paragraph (1), unless this is impossible or involves a disproportionate effort.

#### **Article 29**

(1) (Amended, SG No. 103/2005) The right of access referred to in Article 26 and the rights referred to in Article 28a shall be exercised by submitting an application in writing to the personal data administrator.

(2) (Amended, SG No. 103/2005) The application may also be submitted in electronic form under the procedure laid down in the Electronic Document and Electronic Signature Act .

(3) (Amended, SG No. 103/2005) The application referred to in paragraph (1) shall be filed personally by the individual to whom such data relate or by his or her representative expressly authorised with a power of attorney certified by a notary public.

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

#### **Article 30**

(Amended, SG No. 103/2005)

(1) The application referred to in Article 29 shall contain:

1. the name, address and other data necessary for identifying the respective individual;
2. statement of the request;
3. preferred form of provision of the information referred to in Article 28, paragraph (1);
4. signature, date of submission of the application and mailing address.

(2) In cases where the application is submitted by a duly authorised person, the application shall

enclose the power of attorney certified by a notary public.

(3) The personal data administrator shall keep a register of the applications referred to in Article 29.

### **Article 31**

(1) (Amended, SG No. 103/2005) The information referred to in Article 28, paragraph (1) may be provided as a statement orally or in writing, or in the form of a review of the data by the individual concerned or by his or her duly authorised representative.

(2) Individuals may request copies of the personal data processed on a preferred carrier or electronically, unless this is prohibited by law.

(3) (Amended, SG No. 103/2005) The personal data administrator must take into consideration the preferences stated by the applicant as to the form of provision of the information referred to in Article 28, paragraph (1).

### **Article 32**

(Amended, SG No. 103/2005)

(1) In the cases provided for in Article 28, paragraph (1), the personal data administrator or a person explicitly authorised by it shall consider the application referred to in Article 29 and shall respond within 14 days from the submission thereof.

(2) The limit referred to in paragraph (1) may be reasonably extended by the administrator up to 30 days in the cases provided for in Article 28, paragraph (1), items (1) and (2), where the collection of all requested data objectively requires a longer period and this would place a serious burden on the activities of the administrator.

(3) Within 14 days, the administrator shall decide whether to provide full or partial information as laid down in Article 28, paragraph (1) to the applicant, or to deny the provision thereof stating the reasons for such denial.

(4) In the cases referred to in Article 28a, paragraph (1), the administrator shall decide and take the relevant action within 14 days from the submission of the application referred to in Article 29, or shall deny to take action stating the reasons for such denial.

(5) In the cases referred to in Article 28a, paragraph (2), the personal data administrator shall decide within 14 days and shall forthwith notify the third parties concerned or shall deny to make such notification, stating reasons.

### **Article 33**

(1) (Amended, SG No. 103/2005) The personal data administrator shall notify the applicant in writing of its decision or denial under Article 32, paragraphs (3) to (5) within the relevant time limit.

(2) The notice under Paragraph 1 shall be delivered personally against signature or by registered mail.

(3) (New, SG No. 103/2005) The absence of notification as referred to in paragraph (1) shall be deemed to constitute a denial.

### **Article 34**

(1) (Amended, SG No. 103/2005) The administrator shall deny access to personal data where such data do not exist or the provision thereof 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 full or partial

access to data to the individual to whom such data relate where such access would jeopardise defence or national security, or the protection of classified information. There is no need to state other reasons than the legal grounds justifying such denial.

#### **Article 34a**

(New, SG No. 103/2005)

(1) The individual to whom such data relate shall be entitled:

1. to object to the administrator to the processing of his or her personal data on the basis of legitimate grounds; where such objection is justified, the personal data of the relevant individual may no longer be processed;
2. to object to the processing of his or her personal data for the purposes of direct marketing;
3. to be informed before his or her personal data are disclosed for the first time to third parties or used on their behalf for the purposes set out in subparagraph (2), and to be given the opportunity to object to such disclosure or use.

(2) The administrator shall inform the individual of his or her rights referred to in paragraph (1), subparagraphs (2) and (3).

#### **Article 34b**

(New, SG No. 103/2005)

(1) The administrator's decision shall be inadmissible where:

1. it engenders legal effects or significantly affects the individual, and
2. it is based solely on automated processing of personal data designed to evaluate certain personal aspects of the individual.

(2) Paragraph (1) shall not apply where the decision is:

1. taken in the course of the execution or performance of a contract, provided that the request for the execution or the performance of such contract lodged by the individual concerned has been satisfied, or provided that there are appropriate measures safeguarding his or her legitimate interests;
2. is regulated for in a law which also lays down measures to safeguard the individual's legitimate interests.

(3) The individual shall be entitled to request the administrator to review any decision made in breach of the provisions of paragraph (1).

### Chapter Six

#### PROVISION OF PERSONAL DATA TO THIRD PARTIES

#### **Article 35**

(Supplemented, SG No. 43/2005, amended, SG No. 103/2005)

(1) The provision of personal data by the administrator to any third party shall be allowed:

1. in the presence of any of the grounds provided for in Article 4;
2. if the sources of data are public registers or documents containing public information for which access is ensured in a procedure laid out in a law.

(2) In the cases referred to in paragraph (1) item (1), a request in writing shall be submitted with an indication of the grounds for the provision of personal data.

(3) The administrator shall respond with a decision on the request within 14 days, providing the data requested or denying the provision thereof stating the reasons for such denial.

(4) The administrator shall notify the third party concerned in writing of his or her decision under paragraph (3).

(5) The parties concerned may appeal against the provision of personal data or the denial thereof following the procedure laid down in Chapter Seven.

### **Article 36**

(Amended, SG No. 103/2005, in force till the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union)

(1) The provision of personal data by the administrator to foreign natural or legal persons or to foreign government authorities shall be allowed upon approval by the Commission for Personal Data Protection, if the legislation of the recipient country guarantee a level of data protection that is better or equivalent to that provided by this Act.

(2) In the transfer of personal data in cases referred to in paragraph (1), the requirements of this Act shall apply.

### **Article 36a**

(New, SG No. 103/2005, in force as of the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union)

(1) The transfer of personal data in any Member State of the European Union and in any other member country of the European Economic Area shall be done freely, in compliance with the requirements of this Act.

(2) The transfer of personal data to a third country shall be allowed only such third country ensures an adequate level of personal data protection within its territory.

(3) The adequacy of the level of protection of personal data afforded by a third country shall be assessed by the Commission for Personal Data Protection in consideration of all the circumstances relating to the data transfer operation or the set of data transfer operations, including the nature of data, the purpose and duration of their processing, the legal basis and security measures provided in such third country.

(4) The assessment referred to in paragraph (3) shall not apply where the European Commission has issued a decision as to the level of personal data protection in such third country to which data is transferred.

(5) The requirement referred to in paragraph (2) shall not apply where the transfer of personal data is carried out on the basis of an international treaty which has been ratified, published and has effectively entered into force for the Republic of Bulgaria.

(6) Except for the cases referred to in paragraph (2) and paragraph (4), the administrator may transfer personal data in a third country if:

1. the individual to whom such data relate has given his or her explicit consent;
  2. the transfer is necessary for the performance of a contract executed between the individual and the administrator or performed at such person's request;
  3. the transfer is necessary for the performance of a contract executed in the interest of the individual between the administrator and another contract party;
  4. the transfer is necessary or required by law due to an important public interest, or for the establishment, exercise or defence of legal claims;
  5. the transfer is necessary in order to protect the life and health of the individual to whom such data relate;
  6. the transfer concerns data which are openly accessible to the public.
- (7) The transfer of personal data in third countries shall be admissible in all cases where performed exclusively for the purposes of journalism, literary or artistic expression to the extent to which it does not violate the right to privacy of the person to whom such data relate.

#### **Article 36b**

(New, SG No. 103/2005, in force as of the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union)

(1) Except for the cases provided for in Article 36a, the transfer of personal data in a third country shall take place upon approval by the Commission for Personal Data Protection provided that both the administrator transferring the data and the administrator receiving the data have provided adequate safeguards for the protection of such data.

(2) The Commission shall notify the European Commission and the competent authorities of the other Member States of approvals issued under paragraph (1).

#### **Article 37**

(Repealed, SG No. 103/2005)

Chapter Seven

APPEAL AGAINST ACTIONS OF PERSONAL DATA ADMINISTRATORS

#### **Article 38**

(1) (Amended, SG No. 103/2005) In case his or her rights under this Act are infringed, any individual may cease the Commission for Personal Data Protection within 30 days from the date when he has become aware of such infringement but not later than one year from the date when such infringement has taken place.

(2) (Amended, SG No. 103/2005) The Commission shall pass a decision within 30 days from the date when the matter was referred to it and may issue binding prescriptions, set a time limit to remedy the infringement or impose an administrative penalty.

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

(4) The Commission for Personal Data Protection shall send a copy of the decision also to the individual.

(5) (Amended, SG 103/2005) The decision of the Commission as referred to in paragraph (2) shall be

subject to appeal before the Supreme Administrative Court within 14 days of its receipt.

### **Article 39**

(1) (Amended, SG No. 103/2005, amended, SG No. 30/2006, effective 1.03.2007) Any individual may, in case of an infringement of his or her rights under this Act, appeal against actions and acts of the administrator before the relevant administrative court or the Supreme Administrative Court, as the case may be, in accordance with the general rules governing jurisdiction, within the time limit set in Article 38, paragraph (1).

(2) (Amended, SG No. 103/2005) In the proceedings referred to in paragraph (1), the individual may claim compensation for any damages incurred as a result of unlawful processing of personal data by the administrator.

(3) (New, SG No. 103/2005) The individual concerned may not cease the court in case of pending proceedings before the Commission concerning the same violation or in case where the Commission's decision concerning the same violation has been appealed against but there is no court judgement which has the force of res judicata yet. The Commission shall verify, at the request of the individual concerned, whether proceedings concerning the same dispute are pending or not before it.

(4) (Renumbered from Paragraph (3), amended, SG No. 103/2005) In the cases of failure to fulfill the prescriptions under Article 38, paragraph (2) within the indicated time limits, the Commission for Personal Data Protection may seize the relevant regional court or the Supreme Administrative Court for the violation committed by the personal data administrator within 14 days, depending on the general jurisdiction rules.

(5) (Renumbered from paragraph (4), amended, SG No. 103/2005, SG No. 30/2006) In the hearing of disputes under Paragraph (4), the Administrative Procedure Code , as the case may be, shall apply.

### **Article 40**

(Repealed, SG No. 103/2005)

### **Article 41**

(Repealed, SG No. 103/2005)

## Chapter Eight

### ADMINISTRATIVE PENAL PROVISIONS

### **Article 42**

(Amended, SG No. 103/2005)

(1) For any violation of the provisions of Article 2, paragraph (2) and Article 4, the personal data administrator shall be penalized by a fine or pecuniary sanction in the range of BGN 10 000 to BGN 100 000.

(2) For any violation of the provisions of Article 5, the administrator shall be penalized by a fine or pecuniary sanction in the range of BGN 10 000 to BGN 100 000.

(3) For any violation of the provisions of Article 19, paragraph (1) and Article 20, paragraph (1), the administrator shall be penalized by a fine or pecuniary sanction in the range of BGN 5 000 to BGN 30 000.

(4) An administrator which has failed to meet its obligation to register as provided for in Article 17, paragraph (1) shall be penalized by a fine or pecuniary sanction in the range of BGN 1 000 to BGN 10 000.



(5) An administrator failing to act in a timely manner in regard to an application as referred to in Article 29, shall be penalized by a fine or pecuniary sanction in the range of BGN 1 000 to BGN 20 000, unless subject of a more severe sanction.

(6) Persons who refuse to cooperate with the Commission in regard to its control powers shall be penalized by a fine or pecuniary sanction in the range of BGN 1 000 to BGN 10 000.

(7) For any other violation of the provisions of this Act, the offenders shall be penalized by a fine or pecuniary sanction in the range of BGN 500 to BGN 5 000.

#### **Article 42a**

(New, SG No. 103/2005)

In cases of violations under this Act committed as repeated violations, a fine or pecuniary sanction shall be imposed in an amount twice higher than the original penalty imposed.

#### **Article 43**

(1) (Amended, SG No. 103/2005) Memoranda establishing administrative violations shall be drawn up by a member of the Commission for Personal Data Protection or officials authorised by the Commission.

(2) (Supplemented, SG No. 103/2005) Penal orders shall be issued by the chairperson of the Commission for Personal Data Protection based on the Commission's decision as referred to in Article 38, paragraph (2).

(3) The establishment of violations and the issuance, appeal and execution of penal orders shall comply with the provisions of the Administrative Violations and Penalties Act .

#### **ADDITIONAL PROVISIONS**

**§ 1.** Within the meaning of this Act:

1. (Amended, SG No. 103/2005) "Processing of personal data" shall mean any operation or set of operations which can be performed in respect to personal data, whether by automatic means or otherwise, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, provision, transfer or otherwise making available, updating or combination, blocking, deletion or destruction.

2. (Amended, SG 103/2005) "Personal data register" shall mean any structured set of personal data which is accessible according to specific criteria, whether centralised, decentralised or deployed on a functional or geographical basis.

3. (Amended, SG 103/2005) "Personal data processor" shall mean any natural or legal person, a central or local government authority which processes personal data on behalf of the personal data administrator.

4. (Repealed, SG 103/2005) .

5. "Provision of personal data" is actions for the full or partial transfer of personal data from one administrator to another or to a third party within the territory of the country or abroad.

6. (Amended, SG 103/2005) "Anonymous data" shall mean any personal data put in a form which does not allow such data to be related to the respective individual to whom such data relate.

7. "Blocking" is the storage of personal data with suspended processing.

8. (Repealed, SG 103/2005) .

9. "Repeated" violation is the one committed within a year of the effective date of the penalty order on the imposition of a penalty for the same type of violation.
10. (New, SG No. 70/2004 - effective 1.01.2005) "Human genome" is the sum total of all genes in a single (diploid) set of chromosomes of an individual.
11. (New, SG 103/2005) "Third party" shall mean any natural or legal person, central or local government authority other than the individual to whom the data relate, the personal data administrator, the personal data processor and the persons who, under the direct guidance of the administrator or the processor, are authorised to process personal data.
12. (New, SG 103/2005) "Recipient" shall mean a natural or legal person, an authority of central or local government to whom personal data are disclosed, whether a third party or not. Authorities which can receive data in the framework of a particular inquiry shall not be regarded as recipients.
13. (New, SG 103/2005) "Consent of the individual" shall mean any freely given, specific and informed statement of volition by which the individual to whom personal data relate signifies his or her agreement to such data being processed.
14. (New, SG 103/2005, in force as of the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union) "Third country" shall mean any state which is not a member of the European Union and is not a country signatory to the European Economic Space Agreement.
15. (New, SG 103/2005) "Direct marketing" shall mean the offering of goods and services to individuals by mail, telephone, or in another direct way, and a survey aimed at research regarding the goods and services offered.

#### TRANSITIONAL AND CONCLUDING PROVISIONS

**§ 2.** (1) The Council of Ministers shall propose the membership of the Commission for Personal Data Protection to the National Assembly within a month of the effective date of this Act.

(2) The National Assembly shall elect the membership of the Commission for Personal Data Protection within 14 days of the date of the proposal under Paragraph 1.

(3) The Commission for Personal Data Protection shall adopt and promulgate in The State Gazette the regulations under Article 9, Paragraph 2 within three months of its election.

(4) The Council of Ministers shall provide the property and financial resources needed for the Commission to start its work within a month of the effective date of the decision of the National Assembly under Paragraph 2.

**§ 3.**(1) The persons maintaining personal data registers as of the effective date of this Act shall adjust them to the requirements of this Act and advise the Commission thereof within six months of the effective date of the regulations under Article 9, Paragraph 2.

(2) The Commission shall conduct preliminary checks and register or refuse to register as administrators persons maintaining personal data registers as of the effective date of this Act and their registers within three months of the reception of the notice under Paragraph 1.

(3) The decisions of the Commission to refuse registration shall be subject to appeal before the Supreme Administrative Court within 14 days.

(4) Upon the enforceability of the decision of the Commission to refuse registration or the judgement of the Supreme Administrative Court confirming the refusal by the Commission, the person maintaining a register unlawfully shall destroy the personal data therein or, with the consent of the Commission, transfer the data to another administrator who has registered its register and processes personal data for the same purposes.

(5) The Commission shall monitor the observance of the obligation under Paragraph 4.

(6) Within three months of their registration, the administrators under Article 3, Paragraph 1 shall publish the details under Article 22, Paragraph 1 in the newsletter of the Commission for Personal Data Protection.

§ 4. The Access to Public Information Act (SG, No. 55 of 2000) shall be amended as follows:

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

2. § 1, Item 2 shall be amended as follows:

"2. Personal data shall mean the information of an individual, revealing his or her physical, psychological, mental, marital, economic, cultural or social identity."

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

#### TRANSITIONAL AND CONCLUDING PROVISIONS

of the Act Amending

the Personal Data Protection Act

(SG 103/2005)

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§ 50. The provision of § 38 concerning Article 36 shall apply until the Treaty of Accession of the Republic of Bulgaria to the European Union takes effect.

§ 51. The provisions of § 1 concerning Article 1, paragraph (3), subparagraph (3), § 8, item (1), section (c) concerning Article 10, paragraph (1), subparagraph (9), § 39 concerning Article 36a, § 40 concerning Article 36b, and § 48, item (5) concerning item (14) of the Additional Provision shall take force as of the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union.

§ 52. Within three months following the effective date of the Act, the Commission for Personal Data Protection shall adopt the Code of Ethics referred to in Article 10, paragraph (4), and the regulation referred to in Article 23, paragraph (5).