

LAW no. 102/2005
regarding the setting up, organisation and functioning
of the National Supervisory Authority for Personal Data Processing

CHAPTER 1
GENERAL PROVISIONS

Article 1

- (1) The National Supervisory Authority for Personal Data Processing, hereafter named *the National Supervisory Authority*, is set up as a public authority, autonomous and independent in relation with any other public authority, natural or legal person, with legal personality, exercising the attributions it has been invested with by the present law, as well as by the special laws regulating the activity of personal data processing and the free movement of the data.
- (2) The National Supervisory Authority for Personal Data Processing aims at protecting the fundamental human rights and liberties of the natural persons, in particular the right to private and family life, with regard to personal data processing and free movement of these data.
- (3) The National Supervisory Authority's powers and duties are set up by Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data.
- (4) The National Supervisory Authority's headquarters is in Bucharest.

Article 2

- (1) While carrying out its duties, *the National Supervisory Authority* is independent in relation with any other public authority and exercises its attributions in a transparent and impartial manner.
- (2) While performing its duties, *the National Supervisory Authority* may not substitute to the public authorities.
- (3) *The National Supervisory Authority* shall not be subject to any imperative or representative mandate or to instructions and dispositions from other authorities.

Article 3

- (1) *The National Supervisory Authority* is headed by a President, whose position is similar to a Secretary of State, from the point of view of the representation, salary and ranking.
- (2) The President heads the entire activity of the National Supervisory Authority and represents it in front of the Chamber of Deputies and Senate, in relation with the Government, ministries, other public administration authorities, organisations, as well as Romanian and foreign, natural and legal persons.
- (3) While managing the National Supervisory Authority, the President is assisted by a vice/president, whose function is similar to the function of a Undersecretary of State, from the point of view of the representation, salary and ranking.
- (4) The President of the National Supervisory Authority is main credit co-ordinator.
- (5) While performing his duties, the President issues Decisions and Instructions mandatory for all institutions and units whose activity makes the object of the acts above mentioned.

- (6) The Decisions and the Instructions with normative character are published in the Official Journal of Romania, Part I.
- (7) The public authorities are compelled to communicate or, as the case may be, by law, to provide the National Supervisory Authority with the information, the documents or the acts they hold, related to the requests submitted to the National Supervisory Authority, supporting thus the Authority in exercising its duties.

Article 4

- (1) The activity of the National Supervisory Authority's President, vice-president and the staff has a public character.
- (2) Upon the request of the persons whose rights and liberties were prejudiced or due to well-grounded reasons, the National Supervisory Authority's President may decide for the confidential character of his activity.

Article 5

- (1) The National Supervisory Authority's President submits yearly activity reports in the plenary session of the Senate. The reports shall contain information regarding the National Supervisory Authority's activity. They may contain recommendations regarding the legislation amendment or other measures aiming at the protection of the citizens' rights and liberties with regard to personal data processing.
- (2) The yearly report is published in the Official Journal of Romania, Part II, after presenting it in the plenary session of the Senate.

CHAPTER 2

Appointing and dismissing the National Supervisory Authority's President and vice-president

Article 6

- (1) The Senate, for a 5 years mandate appoints the National Supervisory Authority's President and vice-president. The President and vice-president's mandate can be renewed only once.
- (2) The President or vice-president of the National Supervisory Authority shall be Romanian citizens, with a law degree from a high educational institution, under the law. The President and the vice-president must enjoy real independence, must have a good professional competence, a good reputation and a high civic probity.
- (3) The presidency or vice-presidency of the supervisory authority is incompatible with any other public or private function, except for the academic ones.
- (4) While exercising these functions, the president or vice-president of the supervisory authority can not be a member of political parties or other political structures and is not allowed to hold, directly or indirectly, shares of companies carrying out activities in fields under its responsibility.

Article 7

- (1) The proposals regarding the candidates for President and vice-president shall be made by the Standing Bureau of the Senate, at the recommendation of the parliamentary groups of the two Chambers of the Parliament.

- (2) The candidates shall submit to the Committee for legal affairs, appointment, ethics, immunity and validation within the Senate, the acts certifying that they do fulfil the conditions under law in order to exercise the presidency or vice-presidency of the national supervisory authority. The candidates will be interviewed by the Committee for legal affairs, appointment, ethics, immunity and validation. The Senate passes a judgment upon over the plenary hearing.
- (3) The appointment of the President of the national supervisory authority is made with the majority vote of the senators. If during the first scrutiny the above mentioned majority is not reached, new elections must be organized and only the first two candidates of the previous scrutiny may participate.

Article 8

- (1) The president and vice-president's mandate starts on the appointment date and lasts until the installation of the new president, respectively vice-president.
- (2) Before starting the exercise of the mandate, the President of the national supervisory authority shall be sworn in before Senate:
"I swear to respect the Constitution and the law of the country, and to defend the rights and liberties of the citizens, carrying out my attributions as president of the national supervisory authority for the processing of personal data, in good faith and impartiality. So help me God!".
- (3) The oath may be taken without the religious part.
- (4) The refusal to take the oath prevents the president (the vice/president, respectively) of the national supervisory authority from starting her/his activity and opens the procedure for a new appointment.

Article 9

- (1) The President's mandate, the one of the vice-president, respectively, ends before the expiration of it's term in case of resignation, revocation or incompatibility with other public or private functions, incapacity of carrying out the attributions for more than 90 days, attested by a medical examination, or death.
- (2) The removal from office of the President or the vice-president of the national supervisory authority, as a result of infringing the Constitution and the laws or in case of failure to carry out his/her duties, shall be carried out at the proposal of the Standing Bureau of the Senate, on the basis of the report of the Committee for legal affairs, appointment, ethics, immunity and validation, with the majority vote of the senators.
- (3) The resignation, incompatibility, incapacity of carrying out the attributions or the death shall be ascertained by the Standing Bureau of the Senate no later than 10 days from the appearance of the cause determining the ceasing of the mandate.

CHAPTER 3 THE ATTRIBUTIONS OF THE NATIONAL SUPERVISORY AUTHORITY'S PRESIDENT

Article 10

The President of the National Supervisory Authority has the following attributions:

- a) organizes and coordinates the activity of the National Supervisory Authority for the Personal Data Processing;

- b) informs the operators and the data subjects of the rights and obligations incumbent to them and independently oversees the way of the legislation regarding the personal data processing and the free movement of such data is implemented;
- c) informs the operators of their incumbent obligations and the individuals of their rights regarding the processing of personal data;
- d) oversees the way of the legislation regarding the personal data processing and the free movement of such data is implemented;
- e) receives and distributes the requests of individuals who have suffered damage as a result of the breach of the citizens' rights and freedoms regarding the personal data processing and the free movement of such data; and passes judgement upon these requests;
- f) aims at the legal conclusion of the requests and requests to the natural and legal persons to stop violating the citizens' rights and freedoms, and to restore the petitioner's rights and repair the damages;
- g) employs the National Supervisory Authority's personnel and exerts the administrative and disciplinary authority's right upon them.
- h) exercises the function of principal credit coordinator (ordonnateur de crédits);
- i) co-operates with similar national and international institutions;
- j) fulfils the attributions requested by the present law, the special laws that govern the activity of personal data process and the free movement of such data and the Regulation on the organisation and functioning of the National Supervisory Authority.

Article 11

- (1) The attributions of the vice-president of the National Supervisory Authority are set out in the Regulation on the organisation and functioning of the National Supervisory Authority.
- (2) The vice-president of the National Supervisory Authority may exert the President's attributions in case of temporary incapacity.

Article 12

- (1) The President of the National Supervisory Authority exerts the attributions ex officio or upon request of the persons who have suffered damage stipulated in art. 10, letters e) and f).
- (2) The requests can be made by any individual, regardless of the citizenship, age, sex, political affiliation and religious belief and also by any legal person.

Article 13

- (1) The National Supervisory Authority has the right to make personal investigations, to request the public administration authority the necessary information and documents for the investigation, to interrogate and to take declarations from the leaders of the public administration authority and from any other civil servant who can give the necessary information for solving the request addressed to the National Supervisory Authority regarding the personal data processing and free movement of these data.
- (2) The provisions of the paragraph (1) apply to the other public authorities and institutions, public services under the authority of the public administration authority, as well as to the natural and legal persons subject to the legislation regarding the personal data processing and free movement of such data.

Article 14

- (1) The President of the National Supervisory Authority and its personnel have access, under the law, to the secret documents held by the public authorities or other legal persons, in the degree they are deemed necessary in order to exert his attributions, under law.
- (2) The president of the National Supervisory Authority and its personnel are bound not to divulge or make public the information or secret documents they had had access to. This obligation is maintained even after the person concerned has ceased its activity within the National Supervisory Authority, under the sanction provided by criminal law.

CHAPTER 4

The organisation and functioning of the National Supervisory Authority

Article 15

- (1) The organisational structure of the National Supervisory Authority is approved by its President, with the approval of the Standing Bureau of the Senate.
- (2) The maximum number of positions, except the dignitaries, is 50. Until the budget recalculation for 2005, the National Supervisory Authority will have 37 positions, except the dignitaries.
- (3) The Regulation for organisation and functioning is drafted by the National Supervisory Authority, and it is approved by the Standing Bureau of the Senate.
- (4) The payroll and the structural departments are approved by the National Supervisory Authority's President.

Article 16

- (1) The National Supervisory Authority's staff consists of civil servants or hired personnel, appointed after examination, under law.
- (2) The National Supervisory Authority's staff attributions, tasks and personal liabilities are set up by the job description, in accordance with the provisions of the Regulation for organisation and functioning.
- (3) The employment, promotion, as well as the modification and cessation of the activity of the National Supervisory Authority's hired personnel is approved by the President's Decision, in accordance with the law.
- (4) The National Supervisory Authority's employees can not hold shares of companies carrying out activities in fields under its responsibility and can not be members of those companies' management boards.
- (5) Breaching the provisions of this law, of the special laws ruling this field of activity or the National Supervisory Authority's Regulation for the organisation and functioning entails criminal, disciplinary and administrative liability, on a case by case basis.

Article 17

- (1) The National Supervisory Authority has its own budget, stipulated as a distinct part of the state budget.
- (2) The draft budget is elaborated by the National Supervisory Authority and it is submitted to the Government in order to be included distinctly in the draft state budget. The President's objections to the draft budget elaborated by the Government are submitted to the Parliament in order to be solved.

Article 18

The National Supervisory Authority's payroll is elaborated, under law, in accordance with the similar structure of the two Chambers of Parliament.

CHAPTER 5 FINAL AND TRANSITORY DISPOSITIONS

Article 19

- (1) The entire data base, including the archive and all other documents regarding the protection of personal data, held and managed by The People's Advocate will be submitted to the National Supervisory Authority, in accordance with a "take over protocol" due to be carried out in 45 days after the present law enters into force.
 - (2) When the time frame set up in paragraph (1) is fulfilled, the National Supervisory Authority shall take over the entire activity regarding the protection of personal data, as well as the staff carrying out this activity, from the People's Advocate.
 - (3) Until the time frame set up in paragraph (1) is fulfilled, the Government shall provide the National Supervisory Authority with headquarters and all other facilities required, in order to ensure its proper functioning.
 - (4) After the Regulation mentioned in article 15 paragraph (3) is adopted, but no longer after the time frame set up in paragraph (1), the National Supervisory Authority will hire the required staff, in order to properly fulfil its legal attributions.
- *Chapter 5 of Law No. 102/2005, Article 19, paragraph (1) was amended by Governemt's Ruling No. 131/2005: the time frame set up in paragraph (1) was delayed until 31st of December 2005.*

Article 20

- (1) The 37 positions and the necessary funds required by the functioning of the National Supervisory Authority will be ensured by the appropriate deduction of them from the People's Advocate number of positions and funds.
- (2) The Ministry of Public Finance will bring the necessary modifications to the state budget, as required by the provisions of paragraph (1), as well as to the budgets and annexes of the People's Advocate and the National Supervisory Authority.

Article 21

Until the time frame set up in article 19, paragraph (1) is reached, the People's Advocate will carry out its legal attributions regarding the protection of personal data.

Article 22

Law no. 677/2001 on individuals protection with regard to personal data processing and free movement of these data, published in the OJ, part I, no. 790/12.12.2001 is amended as follows:

1. Article 21 paragraph (1) shall provide:
"Article 21

- (1) The supervisory authority, as provided by the this law, is the National Supervisory Authority for Personal Data Processing.”
2. Article 21, paragraph (3) is amended with a new letter, letter d1, as follows:
“ d1) Informs individuals and companies in this field of activity of their legal requirements, as set out by this law.”
3. Article 21, paragraph (3) is amended with a new letter, letter m, as follows:
“m) The organisation and functioning of the National Supervisory Authority for Personal Data Processing are established by law.”
4. Article 27, paragraph (5) is annuled.

Article 23

The Declaration set out in Article 2, paragraph (3) of Law No.682/2001 regarding the ratification of the Convention on the individuals’ protection with regard to personal data automatic processing, adopted in Strasbourg on 28.01.1981, published in OJ, part I, no. 830/21.12.2001, is amended as follows:

“Article 3, paragraph (2), letter c):

The present Convention is applied also to personal data processing carried out in other ways than automatic ones, which are part of a recording system or which are to be included in such a system.

The competent national authority is the National Supervisory Authority for Personal Data Processing.”

Article 24

From the date of the entering into force of the present law, the Standing Bureau of the Senate will sent its proposals for the candidates to the National Supervisory Authority for Personal Data Processing’s President position to the Committee for Legal Affairs, Appointment, Ethics, Immunity and Validation, , in no longer than 10 days, according to article 7 of this law.

This law was adopted by the Romanian Parliament in accordance with the provisions of articles 75 and 76 paragraph (1) of the Romanian Constitution.