

08/12/1992 | Belgian Law of 8 December 1992 *on the protection of privacy in relation to the processing of personal data*

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Unofficial English Translation November 2008

This translation has not been finalized. Modifications to the present document consequently remain possible.

Chapter I. Definitions, Principle and Scope

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

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

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

§ 4. "Controller" shall mean any natural or legal person, un-associated organization or public authority which alone or jointly with others determines the purposes and means of the processing of personal data. If the purposes and means of the processing are determined by or by virtue of a law, decree or ordinance, the controller shall be the natural person, legal person, un-associated organization or public authority that has been designated as such by or by virtue of that law, decree or ordinance.

§ 5. "Processor" shall mean any natural person, legal person, un-associated organization or public authority which processes personal data on behalf of the controller, except for the persons who, under the direct authority of the controller, are authorized to process the data.

§ 6. "Third party" shall mean any natural or legal person, un-associated organization or public authority other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data.

§ 7. "Recipient" shall mean a natural or legal person, un-associated organization or public authority to whom data are disclosed, whether a third party or not; however, administrative or judicial authorities which may receive data in the framework of a particular enquiry shall not be regarded as recipients.

§ 8. "The data subject's consent" shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his or his legal representative's agreement to personal data relating to him being processed.

Art 2. Any natural person shall be entitled to protection of his fundamental rights and freedoms, especially the protection of his privacy, with regard to the processing of personal data relating to him.

Art 3. § 1. The present Law shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system.

§ 2. The present Law shall not apply to the processing of personal data by a natural person in the course of a purely personal or household activity.

§ 3. a) Articles 6, 7 and 8 shall not apply to the processing of personal data solely for the purposes of journalism or the purposes of artistic or literary expression, if the processing relates to personal data which are manifestly made public by the data subject or which are closely related to the public nature of the data subject or of the facts in which the data subject is involved.

b) Article 9, § 1, shall not apply to the processing of personal data solely for journalistic purposes or the purpose of artistic or literary expression, if the application of the said article would interfere with the collection of data from the data subject. Article 9, § 2, shall not apply to the processing of personal data solely for the purposes of journalism or the purposes of artistic or literary expression, if the application of the said article would have one or more of the following effects:

- the application would interfere with the collection of the data;
- the application would interfere with an intended publication;
- the application would provide indications as to the sources of information.

c) Articles 10 and 12 shall not apply to the processing of personal data solely for the purposes of journalism or for the purposes of artistic or literary expression, to the extent that the application of the said articles would interfere with an intended publication or provide indications as to the sources of information.

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

§ 4. Articles 6 to 10, 12, 14, 15, 17, 17*bis*, paragraph one, 18, 20 and 31, §§ 1 to 3 shall not apply to the processing of personal data by the State Security Service, the General Intelligence and Security Service of the Armed Forces, by the Authorities referred to in articles 15, 22*ter* and 22*quinquies* of the Law of 11 December 1998 *on classification and security clearances, security certificates and security recommendations* and the Appeal Authority created by the Law of 11 December 1998 *creating an appeal authority in respect of security authorizations, security certificates and security recommendations*, by the Security Officers and the Standing Police Monitoring Committee and its Inquiry Service, and the Coordinating Authority for Threat Analysis, if the processing is necessary for the fulfilment of their duties.

§ 5. Articles 9, 10 § 1 and 12 shall not apply:

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

2° to the processing of personal data managed by the police services referred to in article 3 of the Law of 18 July 1991 *regulating police and intelligence service supervision* with a view to the fulfilment of their administrative police duties;

3° to the processing of personal data managed by any other public authority that has been designated by Royal Decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, with a view to the fulfilment of that authority's administrative police duties;

4° to the processing of personal data that has become necessary as a result of the application of the Law of 11 January 1993 *preventing the use of the financial system for money laundering*;

5° to the processing of personal data managed by the Standing Police Monitoring Committee and its Inquiry Service with a view to the fulfilment of their legal duties.

§ 6. Articles 6, 8, 9, 10, § 1, and 12 shall not apply after royal authorization by decree following deliberation in the Council of Ministers of the processing managed by the European Centre for Missing and Sexually Abused Children, hereinafter "the Centre", an organization of public utility founded by deed on 25 June 1997 and recognised by Royal Decree on 10 July 1997 *on the collection, transmission to the judicial authority and follow-up of data relating to persons who are under suspicion of a crime or misdemeanour in a specific dossier concerning a missing person or sexual abuse*. The said decree shall establish the duration and conditions of the authorization, following the opinion of the Commission for the protection of privacy.

The Centre must not keep any file of persons suspected of a crime or misdemeanour or of convicted persons.

The Board of Directors of the Centre shall designate among the staff members of the Centre a data protection officer in charge of data processing, who is familiar with personal data management and protection. The fulfilment of his duties must not result in any adverse effect on him. More particularly, he must not be dismissed or replaced as data protection officer on the grounds of the fulfilment of the

duties that have been assigned to him. By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King shall lay down the duties of the data protection officer and the way in which they shall be fulfilled as well as the way in which the Centre shall report to the Commission for the protection of privacy on the processing of personal data in the framework of the authorization granted.

The members of staff as well as the individuals processing personal data on behalf of the Centre shall be bound to secrecy.

Any violation of the obligation of secrecy shall be punished in accordance with the provisions of article 458 of the Belgian Penal Code.

In the context of its supporting role during the search for children reported missing or abducted the Centre may only record telephone conversations if the caller is informed of the recording and to the extent that he has not objected thereto.

Art 3bis. The present Law shall apply:

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

2° to the processing of personal data by a controller who is not permanently established on European Community territory, if the equipment, automatic or otherwise and situated on Belgian territory, which is not the same as the equipment used for processing personal data only for the purposes of transit of personal data through Belgian territory.

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

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

Art 4. § 1. Personal data must be:

1° processed fairly and lawfully;

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

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

4° accurate and, where necessary, kept up-to-date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete with respect to the purposes for which they are collected or for which they are further processed, are erased or rectified;

5° kept in a form that allows for the identification of data subjects, for no longer than necessary for the purposes the data are collected or further processed for. Following the opinion of the Commission for the protection of privacy the King shall establish appropriate safeguards for personal data stored longer than stated above for historical, statistical or scientific purposes.

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

Art 5. Personal data may only be processed in one of the following cases:

- a) if the data subject has unambiguously given his consent;
- b) if the processing is necessary for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject prior to entering into a contract;
- c) if the processing is necessary for compliance with an obligation to which the controller is subject by or by virtue of a law, decree or ordinance;
- d) if the processing is necessary in order to protect the vital interests of the data subject;
- e) if the processing is necessary for the performance of a task carried out in the public interest or in the exercise of the official authority vested in the controller or in a third party to whom the data are disclosed;
- f) if the processing is necessary for the promotion of the legitimate interests of the controller or the third party to whom the data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection under the present Law.

By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King may specify the circumstances in which the condition stipulated under f) shall be considered as not having been complied with.

Art 6. § 1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership as well as the processing of data concerning sex life, shall be prohibited.

§ 2. The prohibition to process the data referred to in § 1 shall not apply where:

- a) the data subject has given his consent in writing to such processing, on the understanding that this consent may be withdrawn by the data subject at all times; by decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King may determine the cases in which the prohibition to process the data referred to in the present article may not be lifted by the data subject's giving his consent;
- b) the processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law;

- c) the processing is necessary to protect the vital interests of the data subject or of another person, where the data subject is physically or legally incapable of giving his consent;
- d) the processing is carried out in the course of its legitimate activities by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious, public health insurance or trade union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of data subjects;
- e) the processing relates to data which are manifestly made public by the data subject;
- f) the processing is necessary for the establishment, exercise or defence of legal claims;
- g) the processing is necessary for the purposes of scientific research and carried out under the conditions established by the King by decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy;
- h) the processing is necessary to achieve an objective laid down by or by virtue of the law with a view to the application of social security;
- i) the processing is carried out in pursuance of the Law of 4 July 1962 *on Public Statistics*;
- j) the processing is necessary for the purposes of preventive medicine or medical diagnosis, the provision of care or treatment to the data subject or one of his relatives, or the management of health-care services provided in the interest of the data subject, and where the data are processed under the supervision of a health professional;
- k) the processing is carried out by associations with legal personality or organizations of public utility whose main objective is the protection and promotion of human rights and fundamental freedoms, with a view to achieving that objective, provided that the processing has been authorized by the King, by decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy;
- l) the processing of personal data referred to in § 1 is authorized by a law, decree or ordinance for another reason of substantial public interest.

In the case referred to in j), the health professional and his appointees or agents shall be subject to an obligation of secrecy.

§ 3. Without prejudice to the application of articles 7 and 8 of the present Law, the processing of personal data relating to sex life is permitted if it is carried out by an association with a legal personality or by an organization of public utility whose main objective, according to its articles of association, is the evaluation, guidance and treatment of persons whose sexual conduct can be qualified as an offence, and that has been recognized and subsidized for the realization of that objective by the competent public authority; for such processing, the objective of which must consist of the evaluation, guidance and treatment of the persons referred to in this paragraph, and for which the processing of personal data, if it concerns sex life, only relates to the aforementioned persons, the King must grant a specific, individualised authorization by decree after deliberation in the Council of

Ministers, following the opinion of the Commission for the protection of privacy. The decree referred to in the present paragraph shall specify the duration of the authorization, the conditions for the supervision of the authorized association or organization by the competent authority, and the way in which the said authority must report to the Commission for the protection of privacy on the processing of personal data under the conditions of the authorization granted.

§ 4. By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King shall lay down the specific conditions to be met when processing personal data referred to in this article.

Art 7. § 1. The processing of health-related personal data is prohibited.

§ 2. The prohibition to process the data referred to in § 1 shall not apply where:

- a) the data subject has given his written consent to such processing, on the understanding that the consent may be withdrawn by the data subject at any time; by decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King may establish the cases in which the prohibition to process health-related data cannot be lifted by the written consent of the data subject;
- b) the processing is necessary for the purposes of carrying out the specific obligations and rights of the controller in the field of employment law;
- c) the processing is necessary to achieve an objective laid down by or by virtue of the law with a view to the application of social security;
- d) the processing is necessary for the promotion and protection of public health, including medical examination of the population;
- e) the processing is required by or by virtue of a law, decree or ordinance for reasons of substantial public interest;
- f) the processing is necessary to protect the vital interests of the data subject or another person, where the data subject is physically or legally incapable of giving his consent;
- g) the processing is necessary for the prevention of real danger or the suppression of a specific criminal offence;
- h) the processing relates to data which are manifestly made public by the data subject;
- i) the processing is necessary for the establishment, exercise or defence of legal rights;
- j) the processing is necessary for the purposes of preventive medicine or medical diagnosis, the provision of care or treatment to the data subject or to one of his relatives, or the management of health-care services in the interest of the data subject, and the data are processed under the supervision of a health professional;
- k) the processing is required for the purposes of scientific research and carried out under the conditions established by the King by decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy.

§ 3. By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy the King shall lay down the specific conditions to be met when processing the personal data referred to in this article.

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

By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King may establish the categories of persons who shall be considered health-care professionals for the purposes of the present law.

The health-care professional and his appointees or agents shall be subject to an obligation of secrecy with regard to the processing of personal data referred to in the present article.

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

They may only be collected from other sources if paragraphs 3 and 4 of the present article are complied with, and if such is necessary for the purposes of the processing, or if the data subject is incapable of providing the data.

Art 8. § 1. The processing of personal data relating to litigations that have been submitted to courts and tribunals as well as to administrative judicial bodies, relating to suspicions, prosecutions or convictions in matters of crime, administrative sanctions or security measures, shall be prohibited.

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

- a) under the supervision of a public authority or ministerial civil servant in the meaning of the Belgian Judicial Code, if the processing is necessary for the fulfilment of their duties;
- b) by other persons, if the processing is necessary to achieve purposes that have been established by or by virtue of a law, decree or ordinance;
- c) by natural persons, private or public legal persons, to the extent that the processing is necessary to manage their own litigations;
- d) by lawyers or other legal advisors, to the extent that the processing is necessary for the protection of their clients' interests;
- e) if the processing is required for scientific research and carried out under the conditions established by the King by decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy.

§ 3. Persons authorized under § 2 to process personal data referred to in § 1 shall be subject to an obligation of secrecy.

§ 4. By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King shall establish the specific conditions to be met when processing the personal data referred to in § 1.

Chapter III - Rights of the data subject

Art 9. § 1. If personal data relating to the data subject are obtained directly from him, the controller or his representative shall provide the data subject with at least the following information, no later than the moment the data are obtained, unless the data subject has already received such information:

- a) the controller's name and address and of his representative, if any;
- b) the purposes of the processing;
- c) the existence of the right to object, by request and free of charge, to the intended processing of personal data relating to him, if they are obtained for the purposes of direct marketing;
- d) other additional information, in particular:
 - the recipients or categories of recipients of the data,
 - whether it is compulsory to reply, and what the possible consequences of the failure to reply are;
 - the existence of the right to access and rectify the personal data relating to him; except where such additional information, taking into account the specific circumstances in which the data are collected, is not necessary to guarantee fair processing in respect of the data subject.
- e) other information dependent on the specific nature of the processing, which shall be specified by the King, following the opinion of the Commission for the protection of privacy.

§ 2. If the personal data are not collected from the data subject, the controller or his representative shall provide the data subject with at least the information below when recording the personal data or when considering communication to a third party, and at the very latest when the data are first disclosed, unless the data subject has already received such information:

- a) the controller's name and address and of his representative, if any;
- b) the purposes of the processing;
- c) the existence of a right to object, by request and free of charge, to the intended processing of personal data relating to him, if they are obtained for the purposes of direct marketing; in that case, the data subject must be informed prior to the first disclosure of the personal data to a third party or prior to the first use of the data for the purposes of direct marketing on behalf of third parties;
- d) other additional information, in particular:
 - the categories of data concerned;
 - the recipients or categories of recipients of the data;
 - whether compliance with the request for information is compulsory or not, as well as what the consequences of the failure to comply may be;

- the existence of the right to access and rectify the personal data relating to him, unless such additional information, taking into account the specific circumstances in which the data are provided, is not necessary to guarantee fair processing in respect of the data subject.

e) other information dependent on the specific nature of the processing, which shall be specified by the King, following the opinion of the Commission for the protection of privacy.

The controller shall be exempt from the duty of information under this paragraph where:

a) informing the data subject proves impossible or would involve a disproportionate effort, in particular for statistical purposes or for the purpose of historical or scientific research, or for the purpose of medical examination of the population with a view to protecting and promoting public health;

b) personal data are recorded or provided with a view to the application of a provision laid down by or by virtue of of a law, decree or ordinance. By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King shall establish the conditions for the application of the previous paragraph.

If the first disclosure of the data took place before this stipulation took effect, the data subject must be informed, by way of derogation from the first paragraph, at the very latest within 3 years of the date of the entry into force of this provision. The data subject does not have to be informed, however, if the controller was exempt from the duty to inform the data subject of the recording of the data by virtue of legal and regulatory provisions applicable on the day preceding the date this stipulation took effect.

Art 10. § 1. Any data subject proving his identity shall have the right to obtain from the controller:

a) information on whether or not data relating to him are being processed, as well as information at least regarding the purposes of the processing, the categories of data the processing relates to, and the categories of recipients the data are disclosed to;

b) communication of the data being processed in an intelligible form, as well as of any available information as to their source;

c) information about the basic logic involved in any automatic processing of data relating to him in case of automated decision making in the meaning of article 12*bis*;

d) knowledge of the possibility to lodge an appeal under articles 12 and 14 and, possibly, to consult the public register referred to in article 18.

To obtain such information the data subject shall submit a signed and dated request to the controller or to any other person designated by the King. The information shall be communicated without delay, at the very latest forty-five days after receipt of the request. The King may specify further rules relating to the exercise of the right referred to in paragraph one.

§ 2. Without prejudice to the stipulations of article 9, § 2 of the Law of 22 August 2002 *on Patient Rights*, any person shall have the right to be informed of the personal data that are processed in relation to his health, either directly or with the help of a health professional.

Without prejudice to the stipulations of article 9, § 2 of the above-mentioned Law, such data may be provided at the controller's or the data subject's request, through the intervention of a health professional designated by the data subject.

If there is no evident risk of infringing the protection of the data subject's privacy and if the data are not used in order to take measures and decisions with regard to an individual data subject, informing the data subject may be postponed at the latest until the moment the research is ended if the health-related data are processed for the purposes of medical-scientific research, but only to the extent that informing the data subject would seriously prejudice the research.

In that case the data subject must have given the controller his previous written consent to the processing of personal data relating to him for medical-scientific purposes and to postponing, for that reason, the moment on which he is informed.

§ 3. The requests referred to in § 1 and § 2 shall be complied with only after the expiration of a reasonable period of time, starting from the date of a prior request submitted by the same person that has already been answered, or starting from the date the data were officially provided to him.

Art 11. [...] Repealed.

Art 12. § 1. Any person shall be entitled to the rectification of incorrect personal data relating to him free of charge.

In addition, any person shall have the right to object to the processing of data relating to him, for material and legitimate reasons related to his particular situation, unless the lawfulness of the processing is based on the reasons referred to in article 5, b) and c). If personal data are obtained for the purposes of direct marketing, the data subject may object to the intended processing of personal data relating to him, free of charge and without reason.

In case of legitimate objection, the processing carried out by the controller must no longer involve these personal data.

Any person shall also have the right to obtain free of charge the erasure of or the prohibition to use all personal data relating to him that are incomplete or irrelevant with a view to the purpose of the processing, or where the recording, disclosure or storage of the data is prohibited, or where they have been stored for longer than the authorized period of time.

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

§ 3. Within a period of one month starting from the submission of the request referred to in § 2, the controller shall communicate the rectifications or erasures of data, carried out in accordance with § 1, to the data subject as well as to all recipients of the incorrect, incomplete or irrelevant data, to the extent that he still knows the recipients of the information and that informing these recipients does not prove impossible or involves a disproportionate effort.

If the data subject objects to the processing or the intended processing of personal data relating to him on the basis § 1, paragraphs two and three, the controller shall inform the data subject of the effect he has given to the request within the same period of time.

§ 4. [...]

Art 12bis. A decision having legal effects on a person or significantly affecting him, must not be taken purely on the basis of automatic data processing with a view to evaluating certain aspects of his personality.

The prohibition referred to in the first paragraph shall not be applicable if the decision is taken in the context of an agreement or if it is based on a provision established by or by virtue of a law, decree or ordinance. That agreement or provision appropriate must contain suitable measures to safeguard the legitimate interests of the data subject. The latter shall be at least to defend his point of view efficiently.

Art 13. Any person proving his identity shall have the right to address the Commission for the protection of privacy without charge to exercise the rights referred to in articles 10 and 12 with regard to the processing of personal data referred to in article 3, paragraphs 4, 5 and 6.

By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King shall establish the manner in which these rights are to be exercised.

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

However, by decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King shall establish the information the Commission may disclose to the data subject if the latter's request relates to the processing of personal data by the police services with a view to an identity check.

Art 14. § 1. The President of the Court of First Instance, in session as for summary proceedings, shall familiarize himself with claims relating to the right of access to personal data granted by or by virtue of the law, as well as with claims regarding the rectification of, erasure of or prohibition to use incorrect personal data or personal data that are incomplete or irrelevant with a view to the purposes of the processing, or regarding personal data that must not be recorded, communicated or stored, or

personal data to the processing of which the data subject has objected, or that have been stored for longer than the authorized period of time.

§ 2. The President of the Court in the complainant's place of residence shall be competent for the claims referred to in § 1. If the complainant has no place of residence in Belgium, the President of the Court in the controller's place of residence shall be competent if the latter is a natural person. If the controller is a legal person, the President of the Court where the legal person's registered or administrative offices are located, shall be competent.

The court order shall be issued in an open session. It shall be immediately enforceable notwithstanding higher appeal or opposition.

§ 3. The claim shall be submitted in the form of an application *inter partes*.

The application must contain the following information under penalty of nullity:

- 1° the day, month and year;
- 2° the surname, first name, profession and place of residence of the complainant;
- 3° the surname, first name and place of residence of the person to be summoned;
- 4° the object of the claim and a brief summary of the particulars of the claim;
- 5° the signature of the complainant or his lawyer.

§ 4. The application shall be sent to the Court Registrar by registered letter or deposited at the Registrar's Office.

Following the payment of the court fees, if necessary, the Court Registrar shall summon the parties by court letter to appear in court for a hearing, at a date and time determined by the judge. The summons shall be sent with an enclosed copy of the application.

§ 5. The claim made in accordance with § 1 shall only be admissible if the request referred to in article 10, § 1, or under article 12, § 2 has been rejected or if no effect has been given to it within the period of time prescribed in article 10, § 1, paragraph two or, according to the case, article 12, § 3, paragraph one.

§ 6. If incorrect, incomplete or irrelevant data or data that must not be stored, have been disclosed to third parties or if the disclosure took place after the authorized data retention period expired, the President of the Court may order the controller to inform the third parties concerned of the rectification or erasure of the data.

§ 7. If due to compelling reasons the fear arises that evidence which may be produced for a claim referred to in § 1, might be concealed or disappear, the President of the Court of First Instance, upon receipt of an *ex parte* application signed and submitted by the party or its lawyer, shall order that any measure be taken in order to prevent such concealment or disappearance.

§ 8. The provisions of §§ 6 and 7 shall not limit the general jurisdiction of the President of the Court of First Instance in session as for summary proceedings.

Art 15. When the controller receives the request for rectification, erasure or prohibition of the use or disclosure of personal data, or when he is informed of the initiation of the proceedings referred to in article 14 and until a decision has become final, the controller, when disclosing personal data shall immediately and clearly indicate that the data concerned are contested.

Art 15 bis. If the data subject incurs damage from an act of violation of the provisions established by or by virtue of the present Law, paragraphs two and three hereinafter shall apply, without prejudice to claims made on the grounds of other legal provisions.

The controller shall be held liable for any damage as a result of an act of violation of the provisions laid down by or by virtue of the present Law.

He shall be exempt from the said liability if he proves that the fact which caused the damage cannot be ascribed to him.

Chapter IV - Confidentiality and Security of the Processing

Art 16. § 1. If a processor is entrusted with the processing, the controller or his representative in Belgium, if any, shall:

- 1° select a processor providing sufficient safeguards in respect of the technical and organizational measures governing the processing to be carried out;
- 2° ensure compliance with these measures, in particular by laying them down in contractual stipulations;
- 3° lay down the processor's liability towards the controller in that contract;
- 4° agree with the processor that the latter shall only act on behalf of the controller and that he is bound by the same duties as the controller pursuant to paragraph 3;
- 5° establish, in writing or on an electronic carrier, the elements of the contract with regard to the protection of data and the requirements with regard to the measures referred to in paragraph 3.

§ 2. The controller or his representative in Belgium, if any, shall:

- 1° ensure with due care that the data are kept up-to-date, and that incorrect, incomplete and irrelevant data, as well as data that were obtained or further processed in violation of articles 4 to 8, are rectified or erased;
- 2° ensure that the number of individuals acting under his authority, as well as the access to the data and the possible operations carried out on it, are limited to what is necessary for these individuals to fulfil their duties or to whatever is necessary for the requirements of the service;

3° inform all individuals acting under his authority of the provisions of the present Law and its implementing decrees, and of all relevant provisions in respect of the protection of privacy in relation to the processing of personal data;

4° ensure that the programmes used for the automatic processing of personal data are in accordance with the information provided in the notification referred to in article 17, and that they are not used unlawfully.

§ 3. Any person having access to the personal data and acting under the authority of the controller or of the processor, as well as the processor himself, may fulfil this duty only as instructed by the controller, without prejudice to a duty imposed by or by virtue of a law, decree or ordinance.

§ 4. In order to safeguard the security of the personal data the controller or his representative in Belgium, if any, as well as the processor, must take the appropriate technical and organizational measures that are necessary to protect personal data from accidental or unauthorized destruction, accidental loss, as well as from alteration, access and any other unauthorized processing of the personal data.

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

Following the opinion of the Commission for the protection of privacy the King may issue appropriate standards relating to computer security for all or certain categories of processing.

Chapter V - Prior Notification and Publicity of the Processing.

Art 17. § 1. Before carrying out any wholly or partly automatic operation or set of operations intended to serve a single purpose or several related purposes, the controller or his representative, if any, shall notify the Commission for the protection of privacy thereof.

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

§ 2. The Commission shall provide a receipt of the notification within three working days. If the notification is incomplete, the Commission must inform the person having submitted the notification of this fact.

§ 3. The notification must mention:

- 1° the date of notification and the law, decree, ordinance or regulatory instrument introducing automatic processing, if any;
- 2° the surname, first names and complete address or the name and registered offices of the controller and of his representative in Belgium, if any;
- 3° [...](repealed);
- 4° the name of the automatic processing;
- 5° the purpose or the set of related purposes of the automatic processing;
- 6° the categories of personal data being processed and a detailed description of the data referred to in articles 6 to 8;
- 7° the categories of recipients the data may be disclosed to;
- 8° the safeguards that must be linked to the disclosure of data to third parties;
- 9° the manner in which the persons to whom the data relate are informed thereof, the service providing for the exercise of the right to access and the measures taken to facilitate the exercise of that right;
- 10° the period of time, if any, after the expiration of which the data may no longer be stored, used or disclosed;
- 11° a general description allowing for preliminary assessment of whether the security measures taken pursuant to article 16 of the present Law are adequate;
- 12° the grounds supporting the controller's application of article 3, § 3 of the present Law, if such is the case.

§ 4. In the context of its powers of supervision and investigation referred to in articles 31 and 32, the Commission for the protection of privacy is authorized to demand other information, in particular the origin of the personal data, the automation technology selected and the security measures that are in place.

§ 5. Notification is required for any purpose or set of related purposes with a view to which wholly or partly automatic operations are carried out.

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

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

- 1° the categories of data being transferred;
- 2° for each category of data, the country of final destination.

§ 7. Notification is also required if the automatic processing is terminated or if any item of information referred to in § 3 is modified.

§ 8. Following the opinion of the Commission for the protection of privacy, the King may exempt certain categories from notification under this article if, taking into account the data being processed, there is no apparent risk of infringement on the data subjects' rights and freedoms, and if the purposes of the processing, the categories of data being processed, the categories of data subjects, the categories of recipients and the data retention period are specified.

If exemption from the duty of notification has been granted for automatic processing in accordance with the previous paragraph, the controller must disclose the items of information enumerated in §§ 3 and 6 to any person requesting them.

§ 9. Upon submission of the notification, the controller shall pay a fee to the person designated as the accountable party for the Commission for the protection of privacy, in accordance with the Laws on Public Accounts. The King shall determine the amount for this fee, which may not exceed ten thousand francs. [...] He shall also establish the terms of payment.

Art 17bis. Following the opinion of the Commission for the protection of privacy, the King shall determine the categories of processing that imply specific risks with regard to the data subjects' personal rights and freedoms and shall establish the specific conditions for these processing operations, safeguarding the data subjects' rights and freedoms, once again following the proposal of the Commission for the protection of privacy.

He may lay down in particular that the controller, alone or jointly with other controllers, designates a data protection officer, who shall independently ensure the application of the present Law and of its implementing measures.

By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King shall lay down the statute of the data protection officer.

Art 18. The Commission for the protection of privacy shall keep a register of all automatic processing operations of personal data.

Any entry in the said register must include the information mentioned in article 17, §§ 3 and 6.

The register shall be open to consultation by all members of the public, in the manner determined by the King.

Art 19. If the Commission for the protection of privacy is of the opinion that non-automatic processing of personal data that form part or are intended to form part of a filing system, possibly infringes upon privacy, it may either by virtue of its office, or at the data subject's request, impose upon the controller the duty to disclose to the data subject all or part of the information listed in article 17.

Art 20. If a specific system of prior authorization or notification of data processing has been provided for by or by virtue of a law, prescribing the disclosure of the information referred to in article 17, §§ 3

and 6 to a special supervisory committee as well as the entry into a public register of the information referred to in article 17 §§ 3 and 6, the obligations laid down in articles 17, 18 and 19 shall be considered to have been complied with if all of this information is permanently kept at the disposal of the Commission for the protection of privacy.

Article 17, § 9 shall be applicable accordingly.

Chapter VI - Transfer of Personal Data to Countries outside the European Community

Art 21. § 1. Personal data being processed after they have been transferred to a country outside the European Community may only be transferred if the country in question ensures an adequate level of protection and if the other provisions of the present Law and its implementing decrees have been complied with.

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

§ 2. Following the opinion of the Commission for the protection of privacy and pursuant to article 25 of Directive 95/46/EC *on the protection of individuals with regard to the processing of personal data and on the free movement of such data*, the King shall lay down the categories of processing operations for which and the circumstances in which the transfer of personal data to countries outside the European Community is not authorized.

Art 22. § 1. By way of derogation from article 21, a transfer or a set of transfers of personal data to a country outside the European Community which does not ensure an adequate level of protection may take place in one of the following cases:

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

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

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

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

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

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

Without prejudice to the provisions of the previous paragraph, following the opinion of the Commission for the protection of privacy, the King may authorize a transfer or a set of transfers of personal data to a country outside the European Community which does not ensure an adequate level of protection, if the controller adduces adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals, and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

Chapter VII - The Commission for the protection of privacy

Art 23. An independent Commission shall be established under the auspices of the Belgian Chamber of Representatives, called "Commission for the protection of privacy", composed of members appointed by the Chamber of Representatives, including the President and the Vice President. The seat of the Commission shall be located in the administrative district of Brussels-Capital.

Art 24. § 1. The Commission shall consist of eight permanent members, at least one of whom shall be a magistrate acting as President, and of eight substitute members, at least one of whom shall be a magistrate.

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

§ 3. [...] (repealed)

§ 4. The members of the Commission shall be elected for a renewable six-year term from lists submitted by the Council of Ministers, which shall propose two candidates for each vacant mandata. They may be removed from office by the Belgian Chamber of Representatives for shortcomings in the fulfilment of their duties or for insufficient respect of the dignity of their office.

Members must offer all possible guarantees with a view to the independent discharge of their functions and have full expertise in the field of data protection.

The Commission shall be composed in such a manner that there is a balance between the various socio-economic groups its members belong to.

In addition to the President, the Commission's permanent members and substitute members shall include at least one legal expert, one computer scientist, one person capable of demonstrating professional experience in the management of personal data in the private sector and one person

capable of demonstrating professional experience in the management of personal data in the public sector.

§ 5. To be appointed as permanent member or substitute member of the Commission and to maintain such mandate, candidates shall meet the following conditions:

1° have Belgian nationality;

2° have civil and political rights;

3° not be a member of the European Parliament, of the Legislative Chambers nor of a Community or Regional Parliament.

§ 6. Within the limits of their competences, the members shall not be instructed by anyone. They cannot be removed from office for any opinion they have expressed or any action they have performed in the fulfilment of their duties.

§ 7. The members of the Commission shall not be allowed to attend any deliberation on matters in which they, their relatives or in-laws to the fourth degree have a personal interest.

Art 25. When a permanent member is excused, absent, or when his mandate falls vacant, this member shall be replaced by his substitute.

The previous paragraph applies to the calculation of the quorum of presence and, if such is the case, to the vote referred to in article 28, paragraph two. The fact that the Commission meets in a formation uniting permanent and substitute members shall not constitute an obstacle.

Any permanent or substitute member whose mandate falls vacant before the expiration of the six-year term, shall be replaced by a permanent or substitute member to be elected for the remainder of the term, in accordance with the procedures referred to in article 24.

Art 26. § 1. The President of the Commission shall fulfil his duties on a full-time basis. His Court of Justice shall second him by law. He shall be in charge of the day-to-day management of the Commission, supervise the secretariat, preside over the meetings of the Commission in its various sections or authorize another member of the Commission to do so, and represent the Commission. He shall regularly report to the Commission during its Board meetings.

For the duration of his mandate, he must not exercise any other professional activity. The Chamber that has appointed him may authorize derogations from this incompatibility, provided that they do not interfere with the proper fulfilment of his duties.

His replacement as magistrate shall take place through supernumerary appointment. If the President is in charge of a police district, he shall be replaced through the supernumerary appointment of a magistrate from the next lower rank.

He shall enjoy a salary equal to that of the First Advocate General of the Court of Cassation, as well as the corresponding pay rises and advantages.

He shall return to his position in rank at the moment his mandate ends.

§ 2. The President shall be assisted in the discharge of his functions by a Vice President appointed by the Chamber of Representatives among the permanent members mentioned in article 24, § 1, who shall belong to a linguistic group different from that of the President.

The Vice President shall fulfil his duties on a full-time basis and the provisions of § 1, paragraphs two and four, shall be applicable to him.

Section 1, paragraphs three and five are applicable to the Vice President if he is a magistrate. Whenever the President has other engagements, the Vice President shall take over his duties.

Art 27. Prior to accepting their mandate, the President, the Vice President, the other permanent members and the substitute members shall take the following oath at the hands of the President of the Chamber of Representatives: "I swear to fulfil the duties of my mission conscientiously and impartially."

Art 28. The Commission for the protection of privacy must draw up its Rules of Procedure within a one-month term following its establishment. The Rules shall be transmitted to the Legislative Chambers.

The Commission's deliberations shall only be legitimate when at least the majority of its members are present during its meetings. It shall take decisions by absolute majority. In case of a tie, the President or, in his absence, his substitute shall have the casting vote.

Art 29. § 1. The Commission shall issue its opinion either of its own accord, or at the request of the Government, the Legislative Chambers, the Community or Regional Governments, the Community or Regional Parliaments, the United College or the United Assembly referred to in article 60 of the special Law of 12 January 1989 *on the Brussels Institutions*, or a supervisory committee, on any matter relating to the application of the fundamental principles of the protection of privacy, in the context of the present Law and any law containing provisions relating to the protection of privacy in relation to the processing of personal data.

§ 2. Any request shall be submitted to the Commission by registered letter.

Unless otherwise prescribed by law, the Commission shall issue its opinion within a period of sixty days following the communication of all necessary information to the Commission.

§ 3. In cases requiring the Commission's opinion by or by virtue of a law, decree or ordinance, this requirement may be waived if the opinion was not issued within the period of time referred to in paragraph 2. In cases requiring the Commission's opinion by a provision of the present Law, except for article 11, the period of time referred to in § 2 shall be reduced to a minimum of fifteen days in specially motivated urgent cases.

§ 4. The opinion the Commission issues shall be reasoned.

§ 5. The Commission shall communicate its opinion to the public authority concerned.

A copy of the opinion shall be transmitted to the Minister of Justice.

In cases requiring the Commission's opinion, it shall be published in the Belgian Official Journal along with the regulatory provision to which it relates.

Art 30. § 1. The Commission may make recommendations either of its own accord, or at the request of the Government, the Legislative Chambers, the Community or Regional Governments, the Community or Regional Parliaments, the United College or the United Assembly referred to in article 60 of the special Law of 12 January 1989 *on the Brussels Institutions*, or a supervisory committee, on any matter relating to the application of the fundamental principles of the protection of privacy, in the context of the present Law and any law containing provisions regarding the protection of privacy in relation to the processing of personal data.

§ 2. Prior to making a recommendation to a specific controller, the Commission shall provide the controller with the opportunity to explain his point of view.

§ 3. The Commission's recommendations shall be reasoned. A copy of each recommendation shall be transmitted to the Minister of Justice.

Art 31. § 1. Without prejudice to any claim brought before a court and unless otherwise prescribed by law, the Commission shall investigate the signed and dated complaints it receives. These complaints may concern its duties regarding the protection of privacy in relation to the processing of personal data, or other duties that have been conferred upon it by law.

§ 2. Proceedings shall be regulated in the Rules of Procedure. These rules shall provide for the exercise of a right of defence.

§ 3. The Commission shall examine the admissibility of the complaint. With respect admissible to complaints, the Commission shall fulfil any mission of mediation it sees fit. If an amicable settlement between parties is reached on the basis of respect for privacy, it shall draft a report explaining the solution that has been reached. If the parties concerned cannot come to an amicable settlement, the Commission shall issue an opinion on the legitimacy of the complaint. It may decide to add recommendations for the controller to the opinion.

§ 4. The Commission's decisions, opinions and recommendations shall be reasoned.

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

Art 31 bis. § 1. Within the Commission, the Law shall establish Sectoral Committees authorized to examine requests concerning the processing or the disclosure of data subject to special legal regulations, and to come to a decision on the case in question within the legally determined boundaries.

§ 2. Without prejudice to article 37 of the Law of 15 January 1990 *establishing and organizing a Crossroads Bank of Social Security*, every Sectoral Committee shall consist of three permanent or substitute members of the Commission, among them the President or a member appointed as President by the Commission, as well as three external members appointed by the Chamber of Representatives in accordance with the conditions and further rules stipulated by or by virtue of the special legislation organizing the Committee in question. In case of a tie, the President shall have the casting vote.

The leading civil servant of the managing institution for the sector in question may be invited to take part in the meetings of the Committee with an advisory vote.

§ 3. The Commission shall send the requests it has received concerning the processing or the communication of data regulated by special legislation, to the competent Sectoral Committee, if any such committee has been established, and to the managing institution of the sector concerned. The latter shall transmit a technical and legal opinion to the Committee within fifteen days upon receipt of the request, and to the extent the dossier is complete. Under the same reservations, the Committee shall decide within thirty days upon receipt of the said advice or, if such is the case, when the aforesaid term of fifteen days has expired. Otherwise its decision shall be considered as corresponding with the technical and legal opinion of the managing institution.

In case a request referred to in the previous paragraph has to be treated for urgent reasons and within a shorter period of time than the one stipulated in that paragraph, the President shall transmit the request, the technical and legal opinion and the draft decision to the members as soon as possible. The members shall then be requested to inform the President of their views concerning the draft decision within such period as determined by the President.

The draft decree shall only be final if none of the members raises an objection with regard to the essential elements of the decree, within the period determined by the President. If necessary, the President shall convene an extraordinary meeting of the Sectoral Committee. In consultation with the leading civil servant of the institution concerned, the President shall verify the existence of urgent reasons justifying the application of the two previous paragraphs. Without prejudice to article 44 of the aforesaid Law of 15 January 1990, the President of the Committee may suspend the examination

of the dossier in order to transmit it to the Commission, which shall come to a decision within a month.

§ 4. Any person assuming the Presidency of a section shall be entitled to a double attendance fee, except if that person is the President or the Vice President of the Commission.

§ 5. Without prejudice to article 41 of the aforesaid Law of 15 January 1990, the Sectoral Committees shall be established at the Commission's main offices, where their meetings shall take place, except if the managing institution in question requests for the committee it resorts under to be established and to meet at its own offices.

The Commission may grant this request, on the condition that the managing institution ensures in advance that the offices and office equipment necessary for the proper functioning of the committee and its Presidency, as well as a Secretary selected by the Presidency in consultation with the leading civil servant of the institution in question, and specialised staff, notably legal advisors and computer scientists, are made available to the President, to the extent that this is necessary for the proper fulfilment of the Sectoral Committee's duties. The President of the Sectoral Committee is responsible for the said staff with regard to the duties they perform for this Committee.

Art 32. § 1 The Commission may call upon the assistance of experts for the discharge of its functions. It may instruct one or more of its members, accompanied by an expert if necessary, to carry out investigations on the premises.

In that case Commission members shall have the status of Officers of Judicial Police, Assistant Officers of the Public Prosecutor.

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

They shall also have access to all places they may reasonably suppose to be the location for activities relating to the application of the present Law.

§ 2. Unless otherwise described by law, the Commission shall inform the Public Prosecutor of any offence it is aware of.

The Commission shall submit an annual activity report to the Legislative Chambers.

This report, which is public, shall contain general information on the application of the present Law and on the Commission's activities, as well as specific information on the application of articles 3, §§ 3 and 6, 13, 17 and 18.

§ 3. Without prejudice to the competence of regular courts and tribunals with a view to the application of the general principles concerning the protection of privacy, the President of the Commission may submit any dispute relating to the application of the present Law and its implementing measures to the Court of First Instance.

Art 32bis. § 1. With a view to the application international treaties, the King may appoint the Commission for the protection of privacy by decree after deliberation in the Council of Ministers, to discharge functions by virtue of those treaties, identical to those assigned to the Commission by the present Law.

§ 2. With a view to the application of international treaties the Commission for the protection of privacy shall be authorized to appoint some of its members or members of staff as representatives for international authorities that are in charge of functions identical to those assigned to the Commission by the present Law.

The King shall establish specific rules relating to such representation, following the opinion of the Commission for the protection of privacy.

Art 33. Without prejudice to article 32, § 2, Commission members and members of staff, as well as the experts whose assistance has been requested, shall be bound to secrecy regarding the nature of the facts, the actions or the information they have become familiar with in the discharge of their functions.

Art 34. Without prejudice to the competence of the Chamber of Representatives to examine and approve the detailed budget of the Commission for the protection of privacy, and to supervise its execution as well as to verify and approve detailed accounts, the credits for such budget shall be considered as public grants included in the general budget of Public Expenditure.

In addition to its budget proposal the Commission shall submit a summary management plan, the form and content of which it shall determine without prejudice to the observations of the Chamber of Representatives; the annual activity report referred to in article 32, § 2, paragraph two, shall include a section describing the follow-up of such plan.

[...] (repealed)

Art 35. § 1. The Commission shall have a secretariat at its disposal, the level of staffing, the statute and the recruitment of which shall be prescribed by the Chamber of Representatives, on the proposal of the Commission. The level of staffing may allow for the possibility to hire employees with a fixed-term contract, to a restricted and reasonably justified extent.

Except if the Commission, with a view to the proper functioning of its services, decides otherwise by order, approved by the Chamber of Representatives, secretariat staff is subject to the legal and statutory provisions applicable to appointed Public Servants.

§ 2. Members of staff employed by the Commission when the Law of 26 February 2003 *amending the law of 8 December 1992 on the protection of privacy in relation to the processing of personal data* and the Law of 15 January 1990 *establishing and organizing a Crossroads Bank of Social Security*,

which modifies the statute of the Commission for the protection of privacy and increasing its competences, comes into force, shall retain their function and statute until the measures taken pursuant to § 1 are approved. If the civil servants, as a result of the designations in accordance with the aforesaid measures, are not transferred, they shall return by law to the services of the Federal Public Service of Justice, with the statute applicable thereto.

Art 36. The President shall be entitled to a remuneration equal to the salary of an examining magistrate with nine years of seniority in a Court having jurisdiction over a district of at least 500,000 inhabitants.

The substitute President, the substitute Vice President and the permanent or substitute members shall be entitled to an attendance fee that amounts to EUR 223.18 (index 1.2682). The amount is linked to the evolution of the consumer price index.

They shall be entitled to allowances for travel and accommodation expenses in accordance with the provisions applicable to members of staff of the ministries. Any person who does not belong to the administration or whose grade has not been ranked shall be regarded as a civil servant of rank 13.

The President shall be regarded as a civil servant of rank 17.

Experts whose assistance has been demanded by the Commission or who assist Commission members in their investigations on the premises, may be remunerated in the manner determined by the Minister of Justice in deliberation with the Ministers competent for the Civil Service and the Budget.

The remuneration referred to in paragraph one shall be linked to the mobility regulations applicable to the salary of Public Servants on active duty.

Chapter VIIbis - Sectoral Committees

Art 36bis. Within the Commission for the protection of privacy a Sectoral Committee for the Federal Government shall be established within the meaning of article 31bis. The Federal Public Service for Information and Communication Technology shall be considered as the managing institution for the Sectoral Committee for the Federal Government referred to in article 31bis.

By decree after deliberation in the Council of Ministers the King shall determine the conditions and further rules the three external members of the Sectoral Committee for the Federal Government must comply with.

Except for such cases as determined by the King, any electronic disclosure of personal data by a Federal Public Service or a public institution with legal personality that comes under the Federal Government, requires an authorization of principle by this Sectoral Committee, unless the disclosure is already subject to an authorization of principle of another Sectoral Committee established within the Commission for the protection of privacy.

Prior to granting its authorization, the Sectoral Committee for the Federal Government shall check whether disclosure is in line with legal and regulatory provisions.

Once the authorizations granted by the Sectoral Committee for the Federal Government have become final, they shall be public. They shall be published on the website of the Commission for the protection of privacy.

The leading civil servant of the Federal Public Service concerned or of the public institution with legal personality that comes under the Federal Government, or a member of staff designated by him, may take part in the meetings of the Sectoral Committee for the Federal Government with an advisory vote.

Chapter VIII – Penalties

Art 37. Any member or member of the Commission for the protection of privacy or any expert who has violated the obligation of secrecy referred to in article 33, shall be punished with a fine of two hundred to ten thousand euros.

Art 38. Any controller, his representative in Belgium, appointee or agent who does not comply with the obligations laid down in articles 15 or 16, § 1 shall be punished with a fine of one hundred to twenty thousand euros.

Art 39. A fine of one hundred euros to one hundred thousand euros shall be imposed on:

1° any controller, his representative in Belgium, appointee or agent processing personal data in violation of the conditions imposed by article 4 § 1;

2° any controller, his representative in Belgium, appointee or agent processing personal data in cases other than those under article 5;

3° any controller, his representative in Belgium, appointee or agent processing personal data in violation of articles 6, 7 and 8;

4° any controller, his representative in Belgium, appointee or agent who has failed to comply with the duties imposed by article 9;

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

6° any person who resorts to acts of violence, force, threats, donations or promises with the purpose of forcing another person to disclose information that has been obtained through exercise of the right defined in article 10, § 1 or of obtaining his consent for the processing of personal data relating to him;

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

8° any controller, his representative in Belgium, appointee or agent who communicates incomplete or incorrect information in the notifications imposed by article 17;

9° [...] (repealed)

10° any controller, his representative in Belgium, appointee or agent who, in violation of article 19, refuses to communicate to the Commission information relating to the processing otherwise than by automatic means of personal data that forms part of a filing system or that is intended to form part thereof;

11° [...] (repealed)

12° any person who transfers personal data or has personal data transferred to a country outside the European Community included in the list referred to in article 21, § 2, or any person who authorizes such transfers in denial of the requirements of article 22;

13° any person who prevents the Commission, its members or the experts it has called upon from proceeding with the verifications referred to in article 32.

Art 40. Upon conviction for any of the offences defined in articles 38 or 39, the court may order the entire or partial publication of the judgment in one or more newspapers in the manner it determines, and at the expenses of the convicted person.

Art 41. § 1. In case of a conviction for any of the offences described in article 39, the judge may pronounce the seizure of the carriers of personal data to which the offence relates, such as manual filing systems, magnetic discs or magnetic tapes, except for computers or any other equipment, or order the erasure of the data.

Seizure or erasure may also be ordered even if the personal data carriers do not belong to the person convicted.

Article 8, § 1 of the Law of 29 June 1964 *on suspension, postponement and probation*, shall apply neither to the seizure, nor to the erasure ordered in accordance with paragraphs one and two.

The objects seized shall be destroyed when the judgment has become final.

§ 2. Without prejudice to the disqualification of competences laid down in particular provisions, the Court may, in case of conviction for an offence mentioned in article 39, impose the prohibition to manage any processing of personal data, directly or through an intermediary, for a maximum of two years.

§ 3. Any violation of the prohibition laid down in § 2 or any recidivism relating to the offences laid down in articles 37, 38 and 39, shall be punished with a three-month to two-year imprisonment and with a fine of one hundred to one hundred thousand euros or with one of those punishments.

Art 42. The controller or his representative in Belgium shall be liable under civil law for the payment of the fines incurred by his appointee or agent.

Art 43. All provisions of Book I of the Belgian Penal Code, including Chapter VII and article 85, shall apply to the offences described by the present Law or its implementing decrees.

Chapter IX - Final provisions

Art 44. By decree after deliberation in the Council of Ministers, following the opinion of the Commission for the protection of privacy, the King may establish specific rules with regard to the application of the provisions of the present Law, in order to take into account the specificity of different sectors.

Professional associations and other organizations representing categories of controllers who have drawn up draft codes of conduct or who intend to modify or extend existing codes of conduct, may submit these codes to the Commission for the protection of privacy.

The Commission shall ensure in particular that the drafts submitted to it are in accordance with the present Law and its implementing decrees, and investigate the points of view of the parties concerned or of their representatives as much as possible.

Art 45. The King may appoint the public authorities that shall order, in times of war or in times that are regarded as equivalent thereto in accordance with article 7 of the Law of 12 May 1927 *on Military Claims*, as well as during the occupation of the Belgian territory by the enemy.

The King may also determine the amounts of the compensation for the destruction referred to in the previous paragraph.

Any person violating or making unlawful use of the decrees implementing the first paragraph, or abuses the right of destruction laid down in it, shall be punished with a fine of one hundred to one hundred thousand euros

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Art 46. In article 580, 14° of the Belgian Judicial Code, for "and those referred to in article 587, 3°" there is substituted "and those referred to in article 14 of the law of... on The protection of privacy in relation to the Processing of Personal Data."

Art 47. In article 587 of the said Code the following amendments have been made:

(...)

Art 48. In article 5, paragraph two of the Law of 8 August 1983 *establishing a national register of natural persons*, amended by the Laws of 15 January 1990 and 19 July 1991, for "following the opinion of the Commission referred to in article 12" there is substituted "following the opinion of the Commission for the protection of privacy established by the law of ... on the Protection of Privacy with regard to the Processing of Personal Data."

Art 49. In the Belgian Law of 15 January 1990 *establishing and organizing a Crossroads Bank of Social Security* the following is amended:

(...)

Art 50. Article 25 of the Law coordinated on 16 March 1968 *on the road traffic police*, cancelled by the law of 9 July 1976 and reintroduced by the Law of 18 July 1990, is amended as follows:

(...)

Art 51. In the Law of 12 June 1991 *on Consumer Credit*, the following amendments have been made:

(...)

Art 52. Every provision of the present Law shall enter into force on the date established by the King and at the latest on the first day of the twenty-fourth month following the publication of the present Law in the Belgian Official Journal.

The King shall determine the period of time for the person keeping a filing system to comply with the provisions of the present Law for data processing operations in place at the moment of their entry into force.