

PARLIAMENT
of the Republic of Moldova

Law Nr. 17-XVI of 15.02.2007
on personal data protection

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The Parliament adopts the present organic law.

Chapter I
GENERAL PROVISIONS

Article 1. Purpose of the law

The purpose of the present law is to guarantee the protection of the person's rights and freedoms with regard to its personal data processing, including the protection of the rights to private life inviolability, to personal and family secret.

Article 2. Area of enforcement

- (1) The present law regulates relations regarding the personal data processing, carried out by legal entities and natural persons, by use of automatic means or without use of such means, if the personal data processing without use of these means corresponds to the character of the actions (operations) performed with the personal data by use of automatic means.
- (2) The present law shall be applied to relations that arise in the following situations:
 - a) the personal data processing, carried out by legal entities or natural persons, who are not on the territory of the Republic of Moldova, by using, during the processing, the means which are on the territory of the Republic of Moldova;
 - b) the personal data processing carried out on the territory of the Republic of Moldova within the activity of the authorized institution;
 - c) the personal data processing performed in the framework of prevention and investigation activity of the infringements or other activities carried out in the criminal procedure domain, according to the law.
- (3) The present law shall not be applied to relations that arise in the following situations:
 - a) the personal data processing performed by natural persons exclusively for their personal and family needs, if the rights of the personal data subjects are not violated by this;
 - b) the personal data processing, if the personal data are qualified, in the established way, as information which constitutes state secret.

Article 3. Legislation

The legislation in the field of personal data processing consists of the Constitution of the Republic of Moldova, Convention for the Protection of Individuals with regard to Automatic

Processing of Personal Data, Additional Protocol to the Convention, other international treaties the Republic of Moldova is party of, the present law and other normative acts.

Article 4. Basic Terms

The following basic terms are used in the present law:

personal data - information about a natural person, which permits its direct or indirect identification;

personal data subject - natural person who is a carrier of personal data;

personal data holder - any legal entity or natural person which organizes and performs the personal data processing, as well as any legal entity or natural person which identifies goals, essence and means of the personal data processing;

personal data processing - any operation or set of operations carried out on personal data during collection, recording, organization, storage, adjustment, adaptation, modification, exclusion, consultation, access offering, use, transfer, dissemination, blocking or destruction;

personal data transfer - the placing of personal data at a third party's disposal by their holder.

consent of the personal data subject – any free, unconditional, concrete and conscious manifestation of will, by which the subject allows the processing of his personal data.

Chapter II

BASIC CONDITIONS OF PERSONAL DATA PROCESSING

Article 5. Characteristic of Personal Data

Personal data, which are the object of processing, shall be:

- a) obtained lawfully and processed appropriately;
- b) collected for definite purposes and not used in a way incompatible with those purposes;
- c) adequate, relevant and non excessive in relation to the purpose for which they were collected;
- d) accurate and, if it is necessary, updated in due time;
- e) kept in a form which permits the identification of the subject to the extent that is required by the purpose for which those data were collected.

Article 6. Personal Data Processing

(1) The processing of the personal data shall be executed with the unconditional consent of the personal data subject, with the exception of the cases provided by law;

(2) The consent for personal data processing can be recalled by personal data subject. The countermand of the consent can't have a retroactive effect.

(3) The written consent of the personal data subject for his personal data processing shall include the following information:

- a) the personal data subjects' name, surname, father's name, address, state's identification number (IDNP), number of the identification document, date of issue of the mentioned document and information about authority which issued this document;
- b) the title (name, surname, father's name) and address of the personal data holder which obtains the consent;
- c) the purpose of the personal data processing;
- d) the list of personal data for the processing of which the consent is given;

- e) the list of actions with personal data for the fulfillment of which the consent is given, general description of personal data processing's methods, used by the holder of such data;
 - f) the consent's period of validity, as well as the way of the consent's recalling;
- (4) In case of personal data subject's incapacity, the consent for his personal data processing is given in written by the legal representative of the personal data subject.
- (5) In case of the personal data subject's death, the consent for his personal data processing is given in written, by the successors of the personal data subject if the personal data subject didn't give such kind of consent during his life.
- (6) The consent of personal data subject is not necessary when:
- a) the personal data are collected for fulfillment of duties which are in the field of competence of public authorities;
 - b) the goal of personal data processing is the execution of a contract, one of the parties to which is the personal data subject;
 - c) the personal data processing is done for statistical or other research purposes, with the condition of obligatory personal data depersonalization;
 - d) the personal data processing is necessary for the protection of life, health or other important vital interests of the personal data subject, if obtaining its consent is impossible;
 - e) the personal data processing is necessary for delivery of postal dispatches by postal communication organizations, for realization by electronic communication operators of the calculations with the users of communication services for the offered communication services, as well as for examination of the claims of the users of communication services.

Article 7. Processing of Special Categories of Personal Data

- (1) The personal data revealing racial or ethnic origin, political or religious beliefs, personal data concerning health or sexual life, as well as data relating to criminal conviction constitute special categories of personal data.
- (2) The processing of special categories of personal data shall be executed only if the written consent is offered by the personal data subject.
- (3) In case of the person's restricted or limited legal capacity, the processing of special categories of personal data is executed only in case of obtaining the written consent of his legal representative.
- (4) The processing of special categories of personal data without the written consent of the personal data subject is allowed in the following cases:
- a) when the personal data are accessible to the open public;
 - b) when the processing is necessary for the protection of life, physical integrity or health of the concerned person or of another person;
 - c) when processing is necessary for preventive medicine, setting the diagnosis, prescribing medication on condition that the processing of respective data will be executed by a health worker who is subject to the professional confidentiality or by any other person who is subject to an equivalent obligation regarding confidentiality;
 - d) when the processing is necessary for justice accomplishment.
 - e) when the law provides explicitly this necessity in order to ensure the protection of state's security, on condition that the processing will be done respecting the rights and fundamental freedoms of the person, set by this law.

Article 8. The personal data sources accessible to open public

- (1) In order to provide population with necessary information, sources of personal data may be created (including handbooks, phone books, address agendas and other similar sources of information) accessible to the open public, which may include surname, name, father's name, year and place of birth, address, telephone number, information regarding the profession and other personal data offered by the subject.
- (2) Information about the personal data subject can be excluded at any moment from the personal data sources accessible to the open public on the request of the personal data subject or on the basis of a court or other competent authorities' decision.
- (3) In case the personal data holder collects personal data from public sources or from other personal databases available to the open public, the holder of these data is obliged to inform the personal data subject about the content, nature and the purposes of their use.
- (4) The use of the public personal data may be prohibited in the following cases:
 - a) in case of the written request of the personal data subject;
 - b) in case of the decision of a law enforcement body.

Article 9. Personal data storage and modification

- (1) The conditions and time periods of personal data storage are established by the law, taking into consideration the purposes of these data collection and observing the rights and fundamental freedoms of the personal data subject. After expiration of the storage time, the personal data shall be destroyed in the way established by the law.
- (2) Personal data from the state registers, from the moment of suspension of their utilization, may remain for permanent storage receiving the statute of archive document.
- (3) The personal data holder is obliged to introduce modifications into the data content on the personal data subject's initiative, on condition of providing documentary confirmation of the reliability of these data, or on own initiative in cases stipulated by the law.
- (4) After the accomplishment of the operations of personal data processing, if the concerned person has not given its written consent for their further processing for other purposes, the personal data holder is obliged to destroy them or transmit them to another holder with the consent of the person.

Article 10. Rights of personal data subject

- (1) Any personal data subject, during the personal data processing, shall be enabled:
 - a) to have access to his personal data, to obtain the information about the personal data holder, about his location, purpose and personality;
 - b) to require information about his personal data, which have been processed, about the origins of the information on these data, including where they were transmitted or where they will be transmitted;
 - c) to require, from the personal data holder, the adjustment of his personal data, their blocking or destruction in case they are incomplete, obsolete, incorrect, illegally received and are not necessary for the declared processing purpose, as well as to take the necessary measures provided by the law in order to defend his rights;
 - d) to obtain information on confirmation of the fact of personal data processing by the holder of these data, purposes and methods of such processing, the time of undertaking of last modifications on personal data of personal data subject, as well as the information with legal consequences for the personal data subject generated by their processing;
 - e) to make objections against his personal data processing if these data will be used for commercial purposes;

- f) to submit a complaint on actions or inactions of the personal data holder to the competent body for the protection of personal data subjects` rights or to a court;
 - g) to defend the legal rights and interests, including to obtain compensation for material and/or moral damages in the court.
- (2) The right of the personal data subject to access his personal data is limited in case when the personal data processing, including those obtained as a result of operative investigation, counter-espionage and espionage activity, is carried out with the purpose of country`s defense, state`s security and public order protection.

Chapter III

CONTROL IN PERSONAL DATA PROTECTION SPHERE

Article 11. Supervisory body in personal data processing sphere

- (1) The control over the compliance of personal data processing with the present law provisions is performed by the National Center for Personal Data Protection (named hereinafter *the Center*), which acts independently, impartially in respect of public authorities. The Center has a seal and a heading with the image of the State Emblem of the Republic of Moldova and with the Center`s name. The heading contains also the Center`s address.
- (2) The staff of the Center is consists of public servants and contracted employees, employed through a contest within the provisions of the legislation in force. The structure of the Center, staff-limit and duties of the servants and employees are regulated by a statute adopted by the Parliament.
- (3) A Consultative Council by the Center is created on voluntary principles. In its activity, the Consultative Council is ruled by the provisions of the law.
- (4) The Center elaborates and approves annually the preliminary draft budget of the Center and presents it to the Government to be included in the state budget, keeping the administrative independence.
- (5) The Center has the following competences:
- a) supervises the observance of the legislation on information protection and controls its enforcement, in particular the right to information, access, correction, appeal or removal of data;
 - b) offers necessary instructions for adjusting the personal data processing in accordance with the present law`s principles, without affecting the field of competence of other bodies;
 - c) examines the personal data subjects` addresses on compliance of the personal data content and the processing methods with the processing purposes and undertakes the relevant decisions;
 - d) presents information to personal data subjects on their rights regarding their personal data processing;
 - e) requires necessary information for the performance of its duties and receives free of charge this information from legal entities and natural persons;
 - f) realizes the control of information on personal data processing or involves in such kind of control other public authorities within their competence;
 - g) requires from the personal data holder the adjustment, blocking or destruction of the invalid or illegally obtained personal data;
 - h) undertakes necessary measures, in the way provided by the law, on suspension or stopping of the personal data processing, performed by violation of the present law`s requirements;

- i) addresses requests to judicial authorities for protecting the rights of the personal data subjects and represents their interests in the courts;
 - j) keeps the register of the personal data holders;
 - k) obtains from the personal data holders the necessary support and information for carrying out the Center's attributions;
 - l) draws up reports on the violation of the present law, in the way established by the law;
 - m) transmits to prosecuting bodies and other law enforcement bodies the materials for decision making on beginning criminal prosecution in case of delinquency indicators` presence regarding the violation of the rights of personal data subjects according to competences;
 - n) informs the public authorities, as well as personal data subjects, on the basis of their petitions and interpellations, on the existing situation in the field of protection of personal data subjects` right;
 - o) informs periodically the institutions and society about its activity, about the priority problems and concerns in the field of rights protection of the person;
 - p) other functions provided by the law.
- (6) The Center presents annually, until the 15 of March, a report on its activity for the previous calendar year to the Parliament, the President of the Republic of Moldova and the Government. The annual report of the Center is published in the Official Gazette of the Republic of Moldova.
- (7) Confidentiality shall be guaranteed to the personal data, known by the Center during its activity.
- (8) In the fulfillment of their duties, the officials of the Center are enabled to have free access to the premises and territory of personal data holders and to the necessary documents, except for the documents that contain information qualified as state secret.
- (9) Persons holding positions with responsibility of any level shall present to the Center the required materials and documents regarding personal data protection within the period of 15 days, if the request does not provide for another time frame.

{Art.11 modified through the Law Nr. 141-XVI of 26.06.2008, in force of 01.08.2008}

Article 11/1. Director and Deputy Director of the Center

- (1) The Center is led by a Director, appointed by the Parliament by the majority of votes of the elected deputies on the proposal, depending on the case, of the Chairman of the Parliament, a parliamentary fraction or at least 15 deputies, for a 5 years mandate. The person appointed as Director may not hold this post for more than two consecutive mandates.
- (2) The Director exercises the general management of the Center, co-ordinates the employees' activity, employs and discharges the staff of the Center, approves the functional duties of the personnel, organizes preparation of annual reports and presents them in the plenary session of the Parliament, represents the institution in the country and abroad.
- (3) While exercising his attributions, the Director is assisted by a Deputy Director, appointed in function by the Parliament, on the proposal of the Director of the Center, for a 5 years mandate. During the absence of the Director of the Center, the Deputy Director exercises temporary the duties of the Director.
- (4) Every person, who has the citizenship of the Republic of Moldova, with higher law education and has at least 5 years of professional experience in the field of protection of human rights and freedoms, may be appointed as Director or Deputy Director of the Center.
- (5) The post of the Director and the Deputy Director of the Center are assimilated with regard to the public title and salary with the leading posts of the central public authorities.

(6) During the period of exercising their mandates, the Director and the Deputy Director of the Center may not belong to any political party or other political structures, may not be engaged in other public or private activities with the exception of teaching and scientific activities, have no right to possess directly or indirectly capital issues of commercial societies or enterprises that deal with the domains that are within the Center's competence.

(7) The Director and the Deputy Director of the Center continue to exercise their functions until these functions will be undertaken by their successors, excepting the cases of pre-term cessation of exercise of their duties.

(8) The mandate of the Director and that of the Deputy Director of the Center ceases pre-term in the following situations:

- a) resignation;
- b) incompatibility with other public or private functions;
- c) dismissal;
- d) impossibility to exercise the mandate more than 90 days, certified by means of a specialized medical examinations;
- e) decease.

(9) The proposal for dismissal of the Director of the Center may be submitted, depending on the case, by the Chairman of the Parliament, a parliamentary fraction or at least 15 deputies in the following situations:

- a) a serious breach of the functional duties, provided by the legislation;
- b) a final conviction sentence.

(10) The proposal for dismissal of the Deputy Director of the Center may be submitted by the Director of the Center, a parliamentary fraction or at least 15 deputies in the following situations:

- a) a serious breach of the functional duties, provided by the legislation;
- b) a final conviction sentence.

{Art.11/1 included through the Law Nr. 141-XVI of 26.06.2008, in force of 01.08.2008}

Article 12. Register of personal data holders

(1) The Center creates and administrates the personal data holders register in order to register the personal data holders. The personal data holders register shall contain:

- a) information regarding the databases, which contains personal data;
- b) title or name of the personal data holder;
- c) purpose and method of collecting and use of personal data;
- d) juridical regime and storing period of the personal data;
- e) categories and groups of personal data subjects;
- f) sources of origin of personal data;
- g) responsible persons for personal data processing;
- h) measures of security and confidentiality ensuring.

(2) The way of creation of the personal data register is established by law.

(3) Personal data holders are obliged to register at the Center.

{Art.12 modified through the Law Nr. 141-XVI of 26.06.2008, in force of 01.08.2008}

Chapter IV

CONFIDENTIALITY AND SECURITY OF PERSONAL DATA PROCESSING

Article 13. Confidentiality of personal data

- (1) The personal data holders and third parties, who obtained access to personal data, shall ensure the confidentiality of such data, excepting the cases stipulated in paragraph (3) of the present Article.
- (2) From the moment of data subject` decease, personal data related to him are used for archive or other purposes set by the law with the successors consent.
- (3) Ensuring the confidentiality of personal data is not necessary:
 - a) in case of request submission by the personal data subject;
 - b) in case of personal data depersonalization;
 - c) concerning the personal data accessible for open public;
 - d) after the expiration of 100 years of personal data storage, from the moment of their input into the database.

Article 14. Security of personal data processing

- (1) While processing the personal data, the personal data holder is obliged to undertake organizational and technical measures necessary for personal data protection against illegal or accidental access, destruction, modification, blocking, copying, spreading, as well as other illegal actions.
- (2) Requirements regarding the ensuring of personal data security in the process of their processing in the framework of informational systems of personal data are set by the Government.
- (3) The control over the execution of the requirements set by the Government according to the paragraph (2) of the present Article is made by the Center.

{Art.14 modified through the Law Nr. 141-XVI of 26.06.2008, in force of 01.08.2008}

Article 15. Personal data depersonalization

- (1) For scientific, statistical, sociologic, medical etc. purposes, the personal data holder depersonalizes them, by withdrawing from its framework the part that permits the identification of the natural person, transforming them into anonymous data, which can not be associated with an identified or identifiable person.
- (2) In case of depersonalization, the confidential regime set for respective personal data is canceled.

Chapter V

TRANSBORDER TRANSFER OF PERSONAL DATA

Article 16. Transborder transfer of personal data

- (1) The present Article is applied in the case of transfer across national borders, whatever support is used, of personal data, which are subject to processing or are collected with the purpose to be subject of such processing.
- (2) Personal data, that are on the territory of the Republic of Moldova and destined to be transferred to other states, are protected in accordance with the present law.
- (3) The transborder transfer of personal data, that are subject to a processing or are going to be processed after the transfer, can be made in the case when the respective state ensures an adequate level of protection of the rights of personal data subjects and of the data destined for the

transfer, as well as in other cases according to the international agreements the Republic of Moldova is party of.

(4) The level of protection is established by the Center, taking into consideration the conditions, in which the data transfer is performed, especially the nature of the data, the purpose of the data transfer and processing, the country of final destination, the legislation of the requesting state.

(5) In the case when the Center concludes that the level of protection offered by the state of destination is unsatisfactory, it may prohibit the data transfer.

(6) The transfer of personal data to the states that do not ensure an adequate level of protection, can be made only:

- a) with the written consent of the personal data subject;
- b) in case of the need to sign or execute an agreement or a contract between the personal data subject and their holder, or between the holder of these data and a third party in the interest of the personal data subject;
- c) if the transfer is necessary to protect the rights, freedoms or interests of the personal data subject;
- d) in case when personal data are accessible to public.

{Art.16 modified through the Law Nr. 141-XVI of 26.06.2008, in force of 01.08.2008}

Chapter VI RESPONSIBILITY

Article 17. Responsibility for breaking the present law

- (1) For violation of the present law, the guilty persons are responsible according to the civil, administrative and criminal legislation.
- (2) The sanctions for violation of the present law are applied by the competent court.

Chapter VI FINAL AND TRANSITIONAL PROVISIONS

Article 18.

- (1) The Parliament, within the term of 3 months from the date of approval of the present law, approves the Statute of the National Center for Personal Data Protection.
- (2) The Government within the term of 3 months:
 - a) shall present to the Parliament suggestions regarding the harmonization of the legislation with this law;
 - b) shall harmonize their normative acts with the present law;
 - c) shall ensure the harmonization of the normative acts of central public administration authorities with the present law.

CHAIRMAN OF THE PARLIAMENT

Marian LUPU

**Chişinău, 15 February 2007.
Nr. 17-XVI**