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PROJECT GROUP ON DATA PROTECTION
(CJ-PD)

**Act on Protection of Personal Data and
Disclosure of Data of Public Interest**

Act No LXIII of 1992

HUNGARY

REPUBLIC OF HUNGARY

ACT ON PROTECTION OF PERSONAL DATA AND DISCLOSURE
OF DATA OF PUBLIC INTEREST

(Translation)

Act No LXIII of 1992

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Act No LXIII of 1992
on
Protection of Personal Data and
Disclosure of Data of Public Interest

In accordance with the provisions of the Constitution of the Republic of Hungary, the National Assembly hereby enacts the following act on the fundamental rules governing the protection of personal data and the implementation of the right of access to data of public interest.

Chapter I
General Provisions
Purpose of the Act
Article 1

(1) The purpose of this Act is to guarantee the right of everyone to exercise control over his personal data and to have access to data of public interest, except as otherwise provided by law under this Act.

(2) Derogation from the provisions of this Act shall be allowed when such derogation is specifically provided for by this Act.

(3) Exceptions under this Act shall be made only for specific types of data and data controller together.

Definitions
Article 2

For the purposes of this Act:

1. "personal data" means any data relating to a specified natural person (hereinafter called data subject) and any conclusion drawn from such data in respect to him. As long as data subject can be indentified by the data it prevereses this personal characteristic;

2. "special categories of data" means any personal data relating to

a) racial origin, nationality, national or ethnic origin, political opinion or party affiliation, religious or other belief,

b) health, pathological addiction, sexual life and criminal conviction;

3. "data of public interest" means any information under processing of authorities performing functions of state or local self-government, except for personal data and those information which are subject to exceptions specialized under this Act;

4. "data processing" includes recording, storage, process and use (including transfer and disclosure) of personal data, irrespective of the technical means employed, as well as alteration of data and prevention of their further use;

5. "transfer" means access by specified third person to such data;

6. "disclosure" means access by anyone to such data;

7. "data controller" means any person or body responsible for operations defined in para. 4., either performing the operations himself or entrusted them to others;

8. "deletion" includes any steps taken for data being unidentified, with no possibility of their restaining;

9. "law" is the Act, and the degree of local self-government in para (1) of Art. 1, para (1) of Art. 6, para (1) of Art. 12, Art. 24, Art. 25 para (2) of Art. 28.

Chapter II.

Protection of Personal Data

Data Processing

Article 3.

(1) Personal data shall not be processed unless as

a) consented by data subject;

b) ordered by law or - under special provisions of law -- by decree of local self-government.

(2) Special categories of data shall not be processed unless as

a) consented in writing by data subject;

b) ordered by law in respect of international agreements or enforcement of basic rights guaranteed by the Constitution, as well as the interest of national security, prevention of crimes or criminal investigation;

c) in all other cases ordered by law.

(3) Disclosure of specifically determined categories of personal data may be ordered by law in respect of public interest. In all other cases, disclosure of such data shall be subject to the consent or as to special categories of data the written consent of data subject. In case of doubt the lack of such consent shall be presumed.

(4) No special consent is required with regard to personal data let known by data subject in the course of public appearance or turned over by him with the purpose of disclosure.

(5) Consent to processing of relevant data shall be presumed in proceedings commenced at the request of the data subject, who shall be advised of such presumption.

Article 4.

Unless otherwise provided by law, the right of individuals to protection of personal data and privacy shall not be impaired by other interests involved in data processing, including the disclosure of data of public interest. (Art. 19.)

Purpose of Data processing

Article 5

(1) Personal data shall be processed only for a specified purpose, in exercise of a right or in compliance with an obligation. In course of the entire processing this purpose shall be complied.

(2) No personal data shall be processed other than those indispensably required for satisfying the purpose of processing and only in a way compatible with that purpose.

Data shall not be used excessively and longer than is required for that purpose.

(3) Data processing based on compulsory supply of information shall be ordered in favour of public interest.

Article 6

(1) Before collecting the data the data subject shall be advised whether it is voluntary or compulsory. In case of compulsory supply the source of law ordering data processing shall also be named.

(2) Data subject shall be informed of the purpose of processing and of the controllers. This communication can be accomplished by law providing for data collection from existing file due to transfer and file connection.

Quality of Data

Article 7

(1) Personal data undergoing processing shall be:

a) obtained and processed fairly and lawfully,
b) accurate, complete and where necessary kept up to date.

c) preserved in a form which permits identification of data subject for no longer than is required for the purpose for which these data are stored.

(2) Unlimited, general and uniform personal identification code shall not be used.

Data Transfer and Connection of files

Article 8

(1) Data shall not be transferred and files shall not be connected unless consented by data subject or provided by law. The conditions for data processing shall meet in each case with regard to each personal data.

(2) Connection of files processed by the same controller, as well as those of state organization and self-governments shall likewise be governed as in para 1.

Data Transfer Abroad

Article 9

Personal data shall not be transferred from the country to foreign data controller, whatever the data medium or the mode of transmission is, except when consented to by data subject or permitted by law, provided that the same principles of data protection shall be obeyed by the controller abroad in respect of each data.

Data Security

Article 10.

(1) Data controller shall insure data security and shall take all technical and organizational measures and develop rules of procedure required to the enforcement of Act and other regulations concerning data protection and secrecy.

(2) Data shall be protected in particular against unauthorized access, alteration, disclosure or deletion and damage or destruction.

Individual Rights and Implementation thereof

Article 11

(1) Data subject may

a) request for communication on the processing of his personal data (Arts 12 and 13),

b) request for rectification of his personal data or deletion thereof (Arts 14 to 16), except those processed according to provisions of law.

(2) Anyone may inspect the data protection register (para (1) of Art. 28), make notes and request for extracts thereof. A fee shall be payed for the extracts.

Article 12

(1) Data controller shall inform the data subject, at his request, of the processing of personal data, the purpose

of the processing, its legal basis and the duration of processing, as well of who received or will receive data and for what purpose. The length of records on transfer and, in the same measure, the duration of obligation to give information, may be restricted by law on data processing. This restriction shall not be less than five years with regard to personal data and less than twenty years with regard to special categories of data.

(2) Data controller shall furnish information in writing, in an intelligible form, within 30 days from the submission of a request.

(3) Information referred to in para (2) is free, except for those repeatedly requested on the same area at the same controller within a year.

Article 13.

(1) Data controller shall not deny information to data subject except provided so by law in accordance with Art. 16.

(2) Data controller shall state the reason for denial of the information requested.

(3) The controller shall annually report on applications which have been denied to the Data Protection Ombudsman.

Article 14.

(1) Data controller shall correct inaccurate data.

(2) Personal data shall be deleted if

a) the processing is unlawful;

b) requested so by data subject in accordance with para (1) b) of Art. 11;

c) the purpose of processing has ceased.

(3) Personal data which shall be presented for repository storage under law on portection of archivalia are not subject to deletion.

Article 15

Data subject and any other person to whom data were transferred for processing shall be informed of any rectifications and deletions. Such information may be dispensed with, in view of the purpose of processing, if the legitimate interest of data subject is not infringed thereby.

Article 16.

Individual rights of data subject (Arts 11 to 15) may be restricted by law in the interest of the external and internal security of the State, in the area of national defence, national security, crime prevention or criminal investigation, as well as in the monetary interest of the State and of the local self-government, or protecting the rights of data subject or of others.

Judicial Enforcement

Article 17

(1) In case of infringement of his rights data subject may institute court proceedings against the controller.

(2) Data controller shall prove that the processing have complied with provisions of law.

(3) The court in the place of the controller's business shall have jurisdiction over the case. A person otherwise incapable of suing or being sued may also be a party to the lawsuit.

(4) If the application is granted, the court shall order the controller to provide the information requested, or to correct or delete the data involved, or oblige the Data Protection Ombudsman to enable inspection of the Data Protection Register.

(5) Court may order to record its decision to the data protection register if necessary in respect of the interest of data protection principles and of significance number of persons whose rights protected by this Act.

Compensation

Article 18

(1) Data controller shall pay compensation for any damage caused to data subject with processing of his data or by violation of the technical requirements of data protection. Controller shall be discharged from liability upon proving that the damage was caused inevitable by reasons beyond control of data processing.

(2) No compensation shall be paid for that part of damage caused by the injured person's intentional or seriously negligent conduct.

Chapter III

Disclosure of Data of Public Interest

Article 19

(1) The person or body performing function of state or local self-government (hereinafter referred to as authority) shall, within its sphere of competence, including its management, promote accurate and prompt information for the general public.

(2) The authority shall regularly publish or otherwise enable access to most important data relating to its activity in particular to the authority, competence and structure of it, as well as the categories of data possessed by it and the law governing its activity.

(3) The authority shall grant access for anyone to the data of public interest processed by it, except for those data which are classified as state or official secret by authorities entitled to do so under law, furthermore provided that right to access of certain data of public interest is not specifically restricted by law in the interest of

- a) national defence,
- b) national security,
- c) criminal investigation and crime prevention,
- d) monetary and currency policy,

- e) international relations and relations to international organizations.
- f) judicial procedure.

Article 20

(1) An application for access to data of public interest shall be granted in an intelligible form by the authority, as soon as possible after being notified, but at the latest within 15 days. The applicant, bearing the charges, may ask for a copy of the document or a part of it containing the data regardless of the way of its storage.

(2) The applicant shall be notified in writing, within 8 days, of the rejection of his application and of the reasons therefor.

(3) The head of the authority may charge expenses, to the actual extent thereof, for the communication of data of public interest. The applicant upon request shall be informed about the amount of expenses in advance.

(4) The authority shall annually report on application which have been denied and the reasons therefor to the Data Protection Ombudsman.

Article 21

(1) The applicant may apply to the court if his application for data of public interest is refused.

(2) The authority shall prove that the refusal was reasonable and in accordance with law.

(3) Proceedings may be taken within 30 days from the notification of refusal, against the organ which denied the information requested.

(4) A person otherwise incapable of suing or being sued may also be a party to the case.

(5) Lawsuit against an authority with nationwide competence shall be decided by the county (Budapest metropolitan) court. Cases within the competence of local courts shall be decided by the local court in the seat of

the county court or by the Central District Court of Pest in Budapest. The jurisdiction of the court shall be determined by the seat (place of business) of the authority refusing to communicate data.

(6) The court shall give priority to proceeding.

(7) If the application is granted, the court shall order the authority to communicate the requested data of public interest.

Article 22

The provisions of this Chapter shall not apply to communication of data from authentic records as regulated by separate provisions of law.

Chapter IV

Data Protection Ombudsman and the Data Protection Register Data Protection Ombudsman

Article 23

(1) In order to protect the constitutional rights to protection of personal data and to disclosure of data of public interest, the National Assembly shall elect an ombudsman for data protection from among Hungarian citizens with university degree, with clean record, with excellent academic knowledge or with at least 10 years of professional practice, who are of experience in conducting and supervising proceedings involving data protection or in related sciences and are well respected.

(2) Subject to the exceptions made by this Act, the Data Protection Ombudsman shall be governed by the provisions of the Act on Parliamentary Ombudsman for Civic Rights.

Article 24

The Data Protection Ombudsman shall

- a) observe the implementation of this Act and other laws on data processing;
- b) examine complaints lodged with him;
- c) ensure the maintenance of data protection register.

Article 25

(1) The Data Protection Ombudsman shall monitor the existence of conditions for protection of personal data and for disclosure of data of public interest, prevent proposal for adoption or modification of legislation concerning data processing and disclosure of data of public interest and give opinion on such draft legislation.

(2) The Data Protection Ombudsman observing an unlawful processing of data, shall request the controller to discontinue the processing. The controller shall take the necessary measures without delay and inform the Data Protection Ombudsman in writing within 30 days thereof.

(3) The Data Protection Ombudsman shall announce to the general public the existence of data processing unlawfully undertaken, the identity of data controller, and the categories of data processed, if the data controller does not stop unlawful processing.

Article 26

(1) In exercising his functions the Data Protection Ombudsman may request the controller to furnish him information on any matter, and may inspect any documents and records likely to bear on personal data or data of public interest.

(2) The ombudsman for data protection may enter any premises where data are processed.

(3) State secrets and official secrets shall not prevent the Data Protection Ombudsman from exercising his rights stated in this Article, but the provisions on secrecy shall bind him as well. The Data Protection Ombudsman shall exercise his rights in person in the case of processing affecting state secrets or official secrets in the armed forces, the police and the national security agencies. In performing his functions at the national security agencies the Data Protection Ombudsman shall have

no access to documents other than records of data specified by separate provisions of law.

Article 27

(1) Anyone may apply to the Data Protection Ombudsman in cases violation of his rights, or of a direct danger thereof, concerning the processing of his personal data or his access to data of public interest, except when the particular case is in the course of judicial procedure.

(2) No one shall suffer any prejudice on grounds of his application to Data Protection Ombudsman. The applicant shall have the same protection as the persons making communications of public interest.

Data Protection Register

Article 28.

(1) Prior to commencement of his activity, the data controller shall notify the Data Protection Ombudsman, for registration

- a) the purpose of the data processing;
- b) the type of processed data and the legal basis therefor;
- c) the range of data subjects;
- d) the source of data;
- e) the type of transferred data, the recipients of such data, and the legal basis of transfer;
- f) the deadlines for deletion of certain types of data;
- g) the name and address of data controller and the place of actual data processing.

(2) Notice of data processing that is ordered by law shall be made by the competent minister, head of national agency, or mayor, chief mayor, or the president of the county assembly, within 15 days of the entry into force of the relevant legislation.

(3) The national security agencies shall notify the purpose of, and the legal basis for, their data processing.

Article 29

(1) At initial registration, the data controller shall receive a registry number. The registry number shall be indicated at every transfer and disclosure of data, as well as their communication to the data subject.

(2) Notice of any change in data specified in psara (1) of Art. 28 shall be reported to the Data Protection Ombudsman within 8 days and the registrer shall be modified accordingly.

Article 30

Registration is not required with regard to data processing that

a) covers the data of persons maintaining employment, membership, student or business relations with the data controller;

b) is governed by internal rules of churches, religious denominations or religious communities;

c) covers personal data relating to the sickness or health of persons receiving medical care, for purposes of medical treatment or preservation of health or claiming social insurance benefits;

d) covers data for the purpose of granting financial and other social benefits to a person;

e) covers personal data relative to conduct administrative, prosecutorial and judicial proceedings;

f) covers personal data for the purpose of official statistics, provided that the possibility to identify an individual with such data can be conclusively eliminated in a manner specified by separate provisions of law;

g) covers data processed by companies and agencies under the Press Law for their unique informative activity;

h) serves the purposes of scientific research if relevant data are unpublished;

i) were transferred from the controller to archives, if data processing was closed more than 30 years ago;

j) serves the sole purpose of a natural person.

Data Protection Office

Article 31

(1) The Data Protection Ombudsman shall be assisted in his work by an Office, the regulation thereof is to be established by the Ombudsman and to be ratified by the President of the Republic.

(2) The Data Protection Office shall be governed by the rules relative to the Office of the Parliamentary Ombudsman for Civic Rights.

Chapter V

Special Provisions

Data Processing in Research Institutes

Article 32

(1) Data collected and stored for purposes of scientific research shall not be used for other purposes.

(2) Personal data, as soon as it is possible with regard to the research, shall be unindented. Data suitable to identify a specified or specifiable natural person shall be stored separately. These data shall not be connected with others except it is required so for the purpose of research.

(3) An organ or a person performing scientific research shall publish personal data if

a) concented by the data subject or

b) required to display the result of research relative to historic events.

Chapter VI
Final Provisions
Amendments to Laws
Article 33

Para (1) of Art. 83 of Act IV of 1959 on the Civil Code shall be superseded by the following provision:

" (1) The management and processing of data by computer or otherwise shall not infringe individual rights."

Entry into Force
Article 34

(1) This Act - with the exception of paras 2 and 3 - shall enter into force on the 1st day of the 6th month following the date of the promulgation of this Act.

(2) Chapter III (Arts 19 to 22) of this Act shall enter into force on the 15th day following the date of promulgation.

(3) Chapter IV (Arts 23 to 31) of this Act shall enter into force concurrently with the entry into force of the Act on Parliamentary Ombudsman for Citizen s Rights.

Article 35

(1) Regulations by law referred to in this Act shall, except for para (3) of Art. 3, Art. 4. para (1) of Art. 13 be prepared by 31 December 1992.

(2) Legal guidelines for data processing shall cease to be applicable after the promulgation of this Act.

Article 36

(1) The Data Protection Ombudsman shall be elected within 2 months from the entry into force of Chapter IV (Arts 23 to 31) of this Act and the regulations of Data Protection Office shall be presented for ratification within an additional 2 months.

(2) Data processing at the date of entry into force of this Act shall be reported at the data protection register

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by data controller within 3 months of the election of the Data Protection Ombudsman.

Article 37

Minister of Finance is entitled to determine the fee referred to in para (2) of Art. 11 and the rules governing thereof.

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