

# **LAW no. 102/2005 on the set up, organisation and functioning of the National Supervisory Authority for Personal Data Processing - Republished**

## **CHAPTER I: General provisions**

### **Article 1**

**(1)** The National Supervisory Authority for the Processing of Personal Data, hereinafter referred to as the National Supervisory Authority, is established as a public authority with legal personality, autonomous and independent in relation to other authority of the public administration, as well as to any natural or legal person from the private sector, which exercises the competences invested with by the legal provisions in the field of the processing of personal data and the free movement of such data.

**(2)** The National Supervisory Authority for Personal Data Processing aims at protecting the fundamental human rights and liberties of the natural persons, in particular the right to private and family life, with regard to personal data processing of personal data and free movement of such data.

**(3)** The competences of the National Supervisory Authority are mainly regulated by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), published in the Official Journal of the European Union, series L, no. 119 of the 4<sup>th</sup> of May 2016, hereinafter referred to as the General Data Protection Regulation, and by the national legislation transposing Directive (EU) 2016/680 of the European Parliament and of the Council of the 27<sup>th</sup> of April 2016 on the protection of natural persons with regard to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating or prosecuting crimes or executing penalties and regarding the free movement of these data and repealing Council Framework Decision 2008/977/JHA, published in the Official Journal of the European Union series L no. 119 of the 4<sup>th</sup> of May 2016.

**(4)** It shall be ensured that the National Supervisory Authority is provided, at an appropriate level, with human, technical and financial resources, premises and infrastructure necessary for the performance of its tasks

**(5)** The premises of the National Supervisory Authority shall be in Bucharest municipality.

### **Article 2**

**(1)** The National Supervisory Authority exercises its tasks in a transparent and impartial manner.

**(2)** When exercising its powers, the National Supervisory Authority does not substitute itself for public authorities.

**(3)** The National Supervisory Authority shall, in the performance of its tasks and exercise of its powers, not be subject to any imperative or representative mandate, shall remain free from external influence, whether direct or indirect and shall neither seek nor take instructions from anybody

### **Article 3**

**(1)** The National Supervisory Authority is headed by a President, whose position is similar to a Secretary of State, from the point of view of the representation, the order of precedence, the salary rights and the rank of dignity, that of the secretary of state.

**(2)** The President heads the entire activity of the National Supervisory Authority and represents it in front of the Chamber of Deputies and Senate, in relation with the Government, ministries, other public administration authorities, organisations, as well as Romanian and foreign, natural and legal persons.

**(3)** While managing the National Supervisory Authority, the President is assisted by a vice-president, whose function is similar to the function of a Undersecretary of State, from the point of view of the representation, the order of precedence, the salary rights and the rank of dignity, that of the undersecretary of state.

**(4)** The President of the National Supervisory Authority is chief authorizing officer.

**(5)** In the exercise of his duties, the president of the National Supervisory Authority issues decisions and instructions which are mandatory for public authorities and institutions, legal entities of private law and any other bodies, as well as for natural persons whose activity is subject to the legislation on the protection of natural persons regarding the processing of personal data, hereinafter referred to as entities.

**(6)** The Decisions and the instructions with normative character are published in the Official Journal of Romania, Part I.

**(7)** In exercising the legal powers of the National Supervisory Authority, the entities mentioned in paragraph (5) are obliged to provide the National Supervisory Authority with the requested support and to communicate or, as the case may be, to provide the information, documents or acts that they hold, according to the law.

#### **Article 4**

**(1)** The activity of the National Supervisory Authority's President, vice-president and the staff has a public character.

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

#### **Article 5**

**(1)** The National Supervisory Authority's President presents on annual basis the activity reports in the plenary session of the Senate. The reports shall contain information regarding the activity of the National Supervisory Authority. They may contain recommendations regarding the legislation amendment or other measures aiming at the protection of the citizens' rights and liberties with regard to personal data processing.

**(2)** The annual report shall be transmitted to the Romanian Senate, the Chamber of Deputies, the Romanian Government, the European Commission and the European Data Protection Board. The annual report shall be published within 30 days from the date of transmission to the Senate of Romania.

## **CHAPTER II: Appointing and dismissing the National Supervisory Authority's President and vice-president**

### **Article 6**

**(1)** The president and the vicepresident of the National Supervisory Authority are appointed by the Senate. The mandate of the president and of the vice-presidents can be renewed only once.

**(2)** Any person with Romanian citizenship, a graduate of a higher legal institution, may be appointed in the position of president or vice-president of the National Supervisory Authority, according to the law. The president and the vice-president are politically independent persons, with a solid professional competence, including in the field of personal data protection, with a minimum 10 years activity in specialty, a good reputation and who enjoy a high civic probability.

**(3)** The presidency or vice-presidency of the National Supervisory Authority is incompatible with any other public or private function, except for the academic ones.

**(4)** While exercising these positions, the president and vice-president of the National Supervisory Authority cannot be a member of political parties or other political structures and are not allowed to hold, directly or indirectly, shares of companies carrying out activities in fields under the competence of the National Supervisory Authority.

### **Article 7**

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

**(2)** The candidates shall submit to the Committee for legal affairs, appointment, ethics, immunity and validation within the Senate, the acts certifying that they do fulfill the conditions under law in order to exercise the position of president or vice-president of the National Supervisory Authority. The candidates shall be interviewed by the Committee for legal affairs, appointment, ethics, immunity and validation. The Senate passes a judgment upon over the plenary hearing.

**(3)** The appointment of the president and vice-president of the National Supervisory Authority is made with the majority vote of the senators. If during the first scrutiny the above mentioned majority is not reached, new elections must be organized and only the first two candidates of the previous scrutiny may participate.

### **Article 8**

**(1)** The mandate of the president, respectively the vice-president of the National Supervisory Authority starts on the appointment date and lasts until the new president, respectively vice-president is installed.

**(2)** Before starting the exercise of the mandate, the president and the vice-president of the National Supervisory Authority shall take the oath before Senate: "I swear to respect the Constitution and the law of the country, and to defend the rights and liberties of the citizens, carrying out my attributions as president of the national supervisory authority for the processing of personal data, in good faith and impartiality. So help me God!".

**(3)** The oath may be taken, as the case may be, also without the religious part.

**(4)** The refusal to take the oath prevents the president, respectively the vice-president of the National Supervisory Authority from starting her/his activity and opens the procedure for a new appointment.

#### **Article 9**

**(1)** The mandate of the president, respectively the one of the vice-president, ends before the expiration of its term in case of resignation, revocation or incompatibility with other public or private functions, incapacity of carrying out the tasks for more than 90 days, attested by a medical examination, in the case of ex-officio retirement or in case of death.

**(2)** The removal from office of the president, respectively of the vice-president of the National Supervisory Authority shall be carried out by the plenary of the Senate, as a result of serious infringement of the provisions of the present law, if he/she no longer fulfills the conditions required by law for appointment or in case of serious deviations in the performance of his/her tasks.

**(3)** The resignation, incompatibility, the fulfillment of the retirement conditions for the age limit stipulated by the law, the incapacity of carrying out the tasks or the death shall be ascertained by the Standing Bureau of the Senate no later than 15 days from the appearance of the cause determining the ceasing of the mandate

**(4)** The period of fulfilling the position of president and vice-president of the National Supervisory Authority constitutes seniority in legal specialty.

### **CHAPTER III: The tasks of the president of the National Supervisory Authority**

#### **Article 10**

**(1)** The president of the National Supervisory Authority has the following tasks:

**a)** organises and coordinates the activity of the National Supervisory Authority;

**b)** ensures the monitoring of the application of the General Data Protection Regulation;

**c)** ensures the monitoring of the application of the national legislation transposing Directive (EU) 2016/680 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

**d)** ensures the monitoring of the application also of other legal provisions regarding the processing of personal data and the free movement of such data;

**e)** can make proposals regarding the initiation of draft normative acts or the modification of the normative acts in force in areas related to the processing of personal data; it is requested, in order to issue opinions, on behalf of the

National Supervisory Authority, when drafting normative acts regarding the protection of the rights and freedoms of persons, regarding the processing of personal data;

**f)** receives and follows the handling, according to the law, of the petitions and requests addressed to the National Supervisory Authority and decides on them;

**g)** employs, under the law, the National Supervisory Authority's personnel and exerts the administrative and disciplinary authority's right upon them;

**h)** exercises the function of chief authorising officer;

**i)** ensures the cooperation with similar institutions from abroad and the representation within the European Data Protection Board, provided in Article 68 of the General Data Protection Regulation;

**j)** fulfills also other tasks provided by this law, by normative acts that regulate the activity of processing personal data and the free movement of such data and by the Regulation on the organisation and functioning of the National Supervisory Authority.

**(2)** Within the National Supervisory Authority, it is organised and functions the president's office, and its staff is hired according to the law.

#### **Article 11**

**(1)** The tasks of the vice-president of the National Supervisory Authority are set out in its Regulation on the organisation and functioning of the National Supervisory Authority.

**(2)** The vice-president of the National Supervisory Authority may exert the tasks of the president in case of temporary impossibility of exercising the function.

#### **Article 12**

**(1)** The president of the National Supervisory Authority exercises his or her control duties ex officio or upon request.

**(2)** The requests can be submitted by any natural persons, regardless of the citizenship, age, sex, political affiliation and religious belief, as well as by any legal person.

#### **Article 13**

**(1)** The president and the vice-president of the National Supervisory Authority, as well as its personnel have access, under the law, to the classified documents held by the public authorities or other legal persons, to the extent that they are deemed necessary in order to exert the tasks provided by law.

**(2)** The president and the vice-president of the National Supervisory Authority and its personnel are bound not to disclose or make public the classified information or documents they had had access to. This obligation is maintained even after the persons concerned have ceased their activity within the National Supervisory Authority, under the sanction provided by criminal law.

## **CHAPTER IV: Exercising the control and handling complaints activity**

### **SECTION 1: Control activity**

#### **Article 14**

**(1)** The national supervisory authority carries out investigations, in the cases and under the conditions stipulated under its competence, through the personnel empowered for this purpose, according to the law, by the president of the National Supervisory Authority, hereinafter referred to as the control personnel.

**(2)** The control personnel has the right to carry out investigations, including unannounced ones, to request and to obtain from the data controller and processor, as well as, if necessary, from their representative, on the spot and/or within the established deadline, any information and documents, regardless of the storage medium, to pick up copies of them, to have access to any of the controller's and processor's premises, as well as to have access and to verify any equipment, media or data storage medium necessary for the performance of the investigation, according to the law.

**(3)** Where the control personnel is prevented in any way in the exercise of the tasks provided in paragraph (2), the National Supervisory Authority may request the judicial authorisation given by the president of the Bucharest Court of Appeal or by a judge delegated by it. A copy of the judicial authorisation shall be communicated to the controlled entity prior to the commencement of the investigation.

**(4)** The request for authorisation is judged in the council chamber, without summoning the parties. The judge shall rule on the application for authorisation within 48 hours from the date of registration of the application. The conclusion shall be motivated and communicated to the National Supervisory Authority and to the controlled entity within 48 hours at the most from the decision.

**(5)** Where the investigation is to be carried out, including simultaneously, in several spaces owned by the controlled entity, the National Supervisory Authority shall introduce a single request, the court pronouncing by a conclusion indicating the spaces where the investigation shall be conducted.

**(6)** The request for authorisation must contain all the information that may justify the investigation, and the judge notified is required to verify whether the request is well founded.

**(7)** The conclusion provided in paragraph (3) may be appealed against in the High Court of Cassation and Justice, within 72 hours from its communication according to paragraph (4). The appeal is not suspension of execution.

**(8)** In all cases, the investigation cannot begin before 08:00 and cannot continue after 18:00 and must be carried out in the presence of the person where the investigation is carried out or of its representative. The investigation can continue after 18:00 only with the written consent of the person where it is performed or of its representative.

**(9)** The identification and preservation of the objects, as well as the applying seals are done according to the provisions of Law no. 135/2010 on the Criminal Procedure Code, with subsequent amendments and completions.

**(10)** The National Supervisory Authority may order the carrying out of expertise and the hearing of persons whose statements are considered relevant and necessary for conducting the investigation.

**(11)** In the control activity, the National Supervisory Authority may order the application of corrective measures provided for in Article 58 paragraph

(2) of the General Data Protection Regulation, including contraventional sanctions, may make recommendations and may notify other competent authorities, as the case may be.

**(12)** In the case of joint operations carried out on the territory of Romania, in which the personnel designated by another supervisory authority from a Member State of the European Union participate, he/she shall perform his/her duties within the limits of the authority issued by the president of the National Supervisory Authority.

#### **Article 15**

**(1)** The main contraventional sanctions applied by the National Supervisory Authority, according to Article 58 paragraph (2) letters b) and i) of the General Data Protection Regulation are the reprimand and the fine. The application of the fine is made under the conditions of Article 83 of the General Data Protection Regulation.

**(2)** If there is the possibility, through the processing operations that a controller or processor intends to carry out, to violate the applicable law, the National Supervisory Authority issues a warning, according to Article 58 paragraph (2) letter a) of the General Data Protection Regulation.

**(3)** Depending on the circumstances of each case, the measures provided in paragraphs (1) and (2) may be applied separately or together with other corrective measures provided for in Article 58 paragraph (2) of the General Data Protection Regulation and Article 16 paragraph (5) and (6) of this law.

**(4)** The sanctions provided in paragraph (1) may be applied within 3 years from the date of the deed. In the case of violations that last in time or those that consist in committing, based on the same resolution, at different intervals of time, several actions or inactions, each presenting the content of the same contravention, the prescription begins to run from the date the finding or from the date of cessation of the last act or act committed, if this moment intervenes prior to the finding.

**(5)** The prescription deadline provided in paragraph (4) shall be interrupted by performing any procedural act in the investigated case, without being able to exceed 4 years from the date of the deed. The interruption will have an effect on all participants in committing the respective violation.

**(6)** The fines provided in paragraph (1), established in euro in Article 83 paragraphs (4) - (6) of the General Data Protection Regulation, are applied and paid in lei, at the official rate of the National Bank of Romania from the date of application.

#### **Article 16**

**(1)** In the case of processing that falls within the control competence of the National Supervisory Authority, except for cross-border ones, finding the facts and applying the measures provided for in Article 15 paragraph (1) and (2) are made by the report of the finding/sanctioning concluded by the control personnel.

**(2)** By exception from the provisions of paragraph (1), in case the amount of the fine exceeds the equivalent in lei of the amount of 300,000 euros, the application of the fine is made by decision of the president of the National Supervisory Authority, which is based on the report of the finding and the report of the control personnel.

**(3)** In the case of cross-border processing that attract the competence of the National Supervisory Authority as the lead supervisory authority, the facts shall be ascertained by the report concluded by the control personnel, and the application of the measures provided for in Article 15 paragraphs (1) and (2) by decision of the president of the National Supervisory Authority, which is based on the report of the finding and the report of the control personnel.

**(4)** The provisions of paragraph (3) shall apply accordingly if the supervisory authority of a Member State of the European Union has refused the proposal to act as the lead supervisory authority, submitted by the National Supervisory Authority.

**(5)** The application of the corrective measures that consist of obliging the data controller or processor to comply with the requests of the data subject for the exercise of the rights, to ensure the compliance of the processing operations with the applicable legal provisions, obliging the controller to inform the data subject about a personal data breach can be made by the report of the finding/sanctioning concluded by the control personnel or by decision of the president of the National Supervisory Authority.

**(6)** The application of the corrective measures consisting, as the case may be, in the temporary or definitive limitation, the prohibition on the processing, the rectification or deletion of the personal data, the restriction of the processing, the notification of these actions to the recipients to whom the personal data were disclosed, the withdrawal of a certification or the obligation for the certification body to withdraw a certification issued or not to issue a certification if the certification requirements are not or are no longer met, the suspension of data flows to a recipient from a third country or to an international organisation is only available through decision of the president of the National Supervisory Authority.

**(7)** The decision must contain the following elements: the identification data of the National Supervisory Authority and the name of its legal representative, the identification data of the data controller/processor, the personal identification number, as the case may be, a description of the facts and circumstances that may be taken into account when individualising the measure, indicating the legal basis according to which the deed is established and sanctioned, the corrective measures applied, the deadline and the method of payment of the fine, as the case may be, the deadline for appealing and the competent court.

#### **Article 17**

**(1)** The data controller or processor may file an appeal against the report of the finding/sanctioning and/or the decision to apply the corrective measures, as the case may be, with the administrative contentious section of the competent court, within 15 days from handing, respectively from communication. The decision resolving the appeal can be appealed only by appeal. The appeal is judged by the competent court of appeal. In all cases, the competent courts are those in Romania.



**(2)** The report of finding/sanctioning or the decision of the president of the National Supervisory Authority unchallenged within 15 days from the date of handing, respectively the communication, constitutes an enforceable title without any other formality. Introducing the appeal provided in paragraph (1) suspends only the payment of the fine, until a final court decision is issued.

**(3)** The deadline of payment of the fine is 15 days from the date of handing, respectively from the date of communication of the minutes of finding/sanctioning or of the decision of the president of the National Supervisory Authority.

#### **Article 18**

**(1)** The national supervisory authority may order the publication by the data controller or processor or of any corrective measures applied, with the costs incurred by them.

**(2)** In case of non-observance of the measures ordered or in case of tacit or express refusal to provide all the information and documents requested during the investigation procedure or in case of refusal to submit to the investigation, the National Supervisory Authority may order, by decision, the application of a cumulative fine of up to 3,000 lei for each day of delay, calculated from the date established by decision.

**(3)** The decision provided in paragraph (2) constitutes an enforceable title without any other formality. An appeal can be lodged against this decision under the conditions of Article 17 paragraph (1).

#### **Article 19**

**(1)** The procedure for carrying out investigations by the controller personnel of the National Supervisory Authority, in exercising the legal powers, is regulated by the decision of the president of the National Supervisory Authority, published in the Official Journal of Romania, Part I.

**(2)** To the extent that this law does not provide otherwise, the finding and application of the contraventional sanctions is carried out in compliance with the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with modifications and completions by Law no. 180/2002, with subsequent modifications and completions.

### **SECTION 2: The activity for handling complaints**

#### **Article 20**

**(1)** Any data subject who considers that the processing of his or her personal data violates the legal provisions in force has the right to submit a complaints to the National Supervisory Authority, especially if his or her habitual residence, place of work or alleged violation is or, as the case may be, takes place on the territory of Romania. The complaint may also be filed by electronic means of communication.

**(2)** The complaint shall be submitted personally or by a representative, with the attachment of the power of attorney issued according to the law or of a notary proxy, as the case may be. The complaint may also be filed by the representative of the data subject who is a spouse or relative up to second degree inclusive.

**(3)** Where the complaint is filed through a body, organization, association or foundation without patrimonial purpose, they must prove that they have been legally constituted, with a statute providing for public interest objectives, and that they are active in the field of the protection of the rights and freedoms of data subjects with regard to the protection of their personal data. In this case, the complaint shall also include the power of attorney or the notary proxy of representation, as the case may be, according to paragraph (2) in order to show the limits of the mandate given by the data subject.

#### **Article 21**

**(1)** The procedure for handling complaints is regulated by decision of the president of the National Supervisory Authority, published in the Official Journal of Romania, Part I.

**(2)** The national supervisory authority shall inform the data subject about the admissibility of the complaint, within 45 days from the registration. If it is found that the information in the complaint or the documents transmitted are incomplete or insufficient, the National Supervisory Authority requests the data subject to complete the complaint in order to be considered admissible for the purpose of carrying out an investigation. A new deadline of no more than 45 days starts from the date of filing the complaint.

**(3)** The National Supervisory Authority shall inform the data subject about the progress or outcome of the investigation, within three months from the date on which it was notified that the complaint is admissible in accordance with paragraph (2). The information will also include the remedy against the National Supervisory Authority.

**(4)** Where a more detailed investigation or coordination with other supervisory authorities is required in accordance with Article 57 paragraph (1) letter f) of the General Data Protection Regulation, the National Supervisory Authority shall inform the data subject about the progress of the investigation, every three months, until it is finalised. The outcome of the investigation shall be brought to the attention of the data subject within 45 days from the finalisation of the investigation.

**(5)** Within the procedure for solving complaints, investigations are carried out in accordance with the provisions of Articles 14-19.

**(6)** In case of non-observance of the provisions of paragraphs (2) - (4), the data subject may address the administrative contentious section of the competent court, after having completed the preliminary procedure provided by the Law of the administrative contentious no. 554/2004, as subsequently amended and supplemented. The appeal is judged by the competent court of appeal - in all cases, the competent courts are those in Romania.

### **CHAPTER V: Judicial remedies**

#### **Article 22**

**(1)** Where, following the exercise of its legal powers, the National Supervisory Authority considers that any of the rights of the data subjects guaranteed by the legal regulations in the field of personal data protection have been infringed, it may notify the competent court, according to the law.

The data subject acquires the quality of a claimant and shall be cited as such. If the data subject approves this action, the active quality of the National Supervisory Authority shall cease. If the data subject does not approve the action taken by the National Supervisory Authority, the court will cancel the application according to the Civil Procedure Code.

**(2)** The actions and requests, including those for the exercise of ordinary or extraordinary remedies, formulated by the National Supervisory Authority, are exempt from the payment of stamp court fees.

**(3)** The provisions of paragraph (2) also applies to the data subject who appropriates the action formulated by the National Supervisory Authority under the conditions of paragraph (1).

#### **Article 23**

**(1)** Challenging of the documents issued by the National Supervisory Authority in the activity of control and handling of the complaints is carried out according to Articles 17 and 21.

**(2)** The administrative documents issued by the National Supervisory Authority in the exercise of the legal tasks, other than those provided in paragraph (1), can be appealed to the administrative litigation section of the competent court.

**(3)** The provisions of this law are supplemented by the provisions of Law no. 554/2004, as subsequently amended and supplemented, to the extent that this law does not provide otherwise.

#### **Article 24**

**(1)** Without prejudice to the possibility of addressing a complaint to the National Supervisory Authority, the data subjects have the right to address the competent court to defend the rights guaranteed by the applicable law, which have been infringed.

**(2)** Where a claim with the same object and having the same parties has been filed, the National Supervisory Authority may order the suspension and/or classification of the complaint, as the case may be.

**(3)** Any person who has suffered a damage as a result of processing of personal data, carried out illegally, can address the competent court for its repair.

**(4)** The competent court is the one of the data controller's or processor's office or from the habitual residence of the data subject. The application is exempt from stamp duty.

## **CHAPTER VI: Organisation and functioning of the National Supervisory Authority**

#### **Article 25**

**(1)** The regulation for the organisation and functioning, together with the organisation structure of the National Supervisory Authority are drawn up by the National Supervisory Authority and approved by the Standing Bureau of the Senate.

(2) The maximum number of positions, except the dignitaries, is 85. The state of functions and the structure of the posts by compartments are approved by the president of the National Supervisory Authority.

#### **Article 26**

(1) The personnel of the National Supervisory Authority consists of civil servants or, as the case may be, contractual personnel, and is subject to examination or competition, according to the law.

(2) The attributions, tasks and personal liabilities of the personnel of the National Supervisory Authority are set up by the job description, in accordance with the regulation for the organisation and functioning.

(3) The appointment, employment, promotion, modification and termination of the activity and, as the case may be, the employment reports of the personnel of the National Supervisory Authority are made by decision of its president, according to the law.

(4) The activity carried out by the specialised personnel with legal studies within the National Supervisory Authority constitutes seniority in the specialty of the graduated studies.

(5) The personnel of management and execution of another specialty than the legal one within the National Supervisory Authority benefit from seniority in the specialty of the graduated studies.

(6) The personnel of the National Supervisory Authority may not hold shares or social shares in the commercial companies with activity object in fields that fall within its competence and cannot have the membership in the governing bodies of such companies.

(7) The infringement of the provisions of this law, of the special laws ruling the field of activity of the National Supervisory Authority or the regulation for the organisation and functioning entails the criminal, disciplinary and administrative liability, as the case may be.

#### **Article 27**

(1) The National Supervisory Authority has its own budget, stipulated as a distinct part of the state budget.

(2) The National Supervisory Authority, in consultation with the Government, approves its own budget and submits it to the Government for inclusion in the state budget. The President's objections to the draft budget drawn up by the Government are submitted to Parliament for settlement.

#### **Article 28**

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

### **CHAPTER VII: Transitional and final provisions**

#### **Article 29**

(1) The database and the evidences, including the archive and all other documents regarding the protection of personal data, held and managed by the Ombudsman shall be submitted to the National Supervisory Authority, based on a "take over protocol" due to be carried out in 45 days after the present law enters into force<sup>\*)</sup>.

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<sup>\*)</sup>The deadline is extended until the 31<sup>st</sup> of December 2005, according to the unique article of the Government Emergency Ordinance no. 131/2005, approved by Law no. 27/2006.

**(2)** When the deadline provided in paragraph (1) is fulfilled, the National Supervisory Authority shall take over the entire activity regarding the protection of personal data, as well as the personnel carrying out this activity from the Ombudsman.

**(3)** Until the deadline provided in paragraph (1) is fulfilled, the Government shall provide the National Supervisory Authority with premises and all other facilities necessary in order to ensure its proper functioning.

**(4)** After the adoption of the regulation provided in Article 25, but no longer after the deadline provided in paragraph (1), the National Supervisory Authority shall hire the necessary personnel, in order to fulfill the tasks provided by law.

### **Article 30**

**(1)** The 37 positions and the funds necessary for the functioning of the National Supervisory Authority shall be ensured by the appropriate deduction of them from the Ombudsman number of positions and funds.

**(2)** The Ministry of Public Finance shall bring the necessary modifications to the state budget, as required by the provisions of paragraph (1), as well as to the budgets of the two institutions – Ombudsman and the National Supervisory Authority – as well as the annexes.

### **Article 31**

Until the deadline provided in Article 29 paragraph (1) is fulfilled, the Ombudsman shall carry out its legal tasks regarding the protection of personal data.

### **Article 32**

Law no. 677/2001 on the protection of individuals with regard to personal data processing and free movement of these data, published in the Official Journal, part I, no. 790 of the 12<sup>th</sup> of December 2001 is amended as follows:

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<sup>\*\*)</sup> Law no. 677/2001 on the protection of individuals with regard to personal data processing and free movement of these data, published in the Official Journal, part I, no. 790 of the 12<sup>th</sup> of December 2001, with further amendment and completions, was repealed by Article V paragraph (1) of Law no. 129/2018 for the modification and completion of Law no. 102/2005 on the set up, organisation and functioning of the National Supervisory Authority for Personal Data Processing, and repealing Law no. 677/2001 on the protection of individuals with regard to personal data processing and free movement of these data.

**1.** Article 21 paragraph (1) is amended and shall have to following content:

“Article 21

(1) The supervisory authority, as provided by the this law, is the National Supervisory Authority for Personal Data Processing.”

**2.** Article 21 paragraph (3), after letter d), a new letter, letter d<sup>1</sup>), is introduced, having the following content:

“d<sup>1</sup>) informs natural persons and/or legal persons acting in these fields, directly or through their associative structures, on the necessity to respect the obligations and to fulfill the procedures provided by the present law;”

**3.** Article 21 paragraph (3), after letter l) a new letter, letter m), is introduced, having the following content:

“m) the organisation and functioning of the National Supervisory Authority for Personal Data Processing are established by law.”

**4.** Article 27 paragraph (5) is repealed.

### **Article 33**

The Declaration set out in Article 2 paragraph (3) of Law no. 682/2001 on the ratification of the Convention on the individuals' protection with regard to personal data automatic processing, adopted in Strasbourg on the 28<sup>th</sup> of January 1981, published in the Official Journal, part I, no. 830 of the 21<sup>th</sup> of December 2001, is amended as follows:

“3. Article 3 point 2 letter c):

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

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

### **Article 34**

On the date of the entering into force of the present law, the Standing Bureau of the Senate shall send its proposals for the candidates for the position of president and vice-president of the National Supervisory Authority for Personal Data Processing's President to the Committee for Legal Affairs, Appointment, Ethics, Immunity and Validation, within 10 days, according to article 7 of this law.

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NOTE:

We reproduce below the provisions of Articles II-VIII, as well as the mention regarding the transposition of the community norms of the Law no. 129/2018, which are not included in the republished form of Law no. 102/2005 and which continue to apply as specific provisions of the amending act:

“- Article II

(1) The Government makes available to the National Supervisory Authority for the Processing of Personal Data, according to the law, the premises necessary for the effective and proper exercise of its powers.

(2) To the extent that the premises provided in paragraph (1) is not provided, the National Supervisory Authority for the Processing of Personal Data may, under the conditions of the law, proceed to the renting or purchase of an office on the free real estate market, within the limits of the funds approved for this purpose.

- Article III

For the proper fulfillment of the legal tasks, the National Supervisory Authority for the Processing of Personal Data has:

- a) two vehicles for the management of the National Supervisory Authority for the Processing of Personal Data: president and vice-president;
- b) two vehicles for the common car park;
- c) 6 vehicles for the specific activities, respectively for ensuring the competences and tasks of monitoring and control of the National Supervisory Authority for the Processing of Personal Data, in accordance with the tasks set out to the Member State by the General Data Protection Regulation, by derogation from the provisions of Article 5 paragraph (3) of the Government Ordinance no. 80/2001 on the establishment of some spending norms for public administration authorities and public institutions, approved with modifications by Law no. 247/2002, as subsequently amended and supplemented;
- d) a monthly fuel consumption of 500 l/vehicle; it is not considered to be an excess from the fuel consumption norm for the vehicle the consumption that, on an yearly basis, falls within the limit of the fuel norm in relation to the number of vehicles approved.

- Article IV

After the entry into force of the provisions of the present law, the Regulation for the organisation and functioning of the National Supervisory Authority for the Processing of Personal Data will be agreed with its provisions.

- Article V

(1) On the 25<sup>th</sup> of May 2018, the Law no. 677/2001 for the protection of individuals regarding the processing of personal data and the free movement of such data, published in the Official Journal of Romania, Part I, no. 790 of the 12<sup>th</sup> of December 2001, as subsequently amended and supplemented, is repealed.

(2) All references to Law no. 677/2001, as subsequently amended and supplemented, from the normative acts shall be construed as references to the General Data Protection Regulation and to the law for its implementation.

- Article VI

(1) The provisions of the General Data Protection Regulation apply to complaints and intimations submitted and registered with the National Supervisory Authority for the Processing of Personal Data from the date of its application, as well as to those submitted before the 25<sup>th</sup> of May 2018 and which are being handled. The investigations carried out for their resolution and the ex officio investigations started before the 25<sup>th</sup> of May 2018 and not finalised on this date, are subject to the provisions of the same regulation.

(2) The finding of the facts and the application of the corrective measures, including the contraventional sanctions, after the 25<sup>th</sup> of May 2018, is carried out in accordance with the provisions of the General Data Protection Regulation and with those of the legal provisions for its implementation, of Law no. 102/2005 on the set up, organisation and functioning of the National Supervisory Authority for the Processing of Personal Data, as subsequently amended and supplemented, as well as those brought by this law.

(3) Where the General Data Protection Regulation and the legal provisions for its implementation provide for a more severe sanction, the contravention committed before the 25<sup>th</sup> of May 2018 shall be sanctioned according to the provisions of the normative acts in force at the time of its execution. In

situations where, according to the General Data Protection Regulation and legal provisions for its implementation, the act is no longer considered a contravention, it is no longer sanctioned, even if it was committed before the 25<sup>th</sup> of May 2018.

- Article VII

The lawsuits pending on the 25<sup>th</sup> of May 2018 remain subject to the law applicable at the time of their commencement.

- Article VIII

(1) The present law creates the institutional framework necessary to apply in Romania mainly the provisions of Articles 51-55, Articles 57-59, Articles 62, 68, 77, 79, 80 and Articles 82-84 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC.

(2) This law comes into force 5 days after the publication in the Official Journal of Romania, Part I, except for the provisions of Article I points 1 and 6-11, Article VI and VII, which enters into force on the 25<sup>th</sup> of May 2018.”