The report on activity is submitted to the Parliament, the President of the Republic of Moldova, the Government, on the grounds of the Article 11, paragraph (6) of the Law nr.17-XVI of 15.02.2007 on personal data protection.

Chisinau 2010
CONTENTS

Introduction.........................................................................................................................................................

Chapter I. Normative framework applicable to the personal data protection field in the Republic of Moldova...............................................................................................................................2

1. International Acts............................................................................................................................................
   a) Convention for the protection of individuals with regard to automatic processing of personal data, done in Strasbourg on 28 January 1981.................................
   b) Additional protocol to the Convention for the protection of individuals with regard to automatic processing of personal data, regarding supervisory authorities and transborder data flows, done in Strasbourg on 8 November 2001..........................

2. National Acts................................................................................................................................................
   a) Law no. 17 - XVI of 15.02.2007 on personal data protection..........................
   b) Law no. 182 – XVI of 10.07.2008 regarding the approval of the Statute, structure, staff-limit and financial arrangements of the National Center for Personal Data Protection...

Chapter II. Process of creating the National Center for Personal Data Protection..............

1. Center`s staff employment........................................................................................................

2. Professional development of the personnel..........................................................

3. Providing technical and material basis for the Center........................................................

Chapter III. Statistical results of the Center`s activity...........................................................

1. Elaboration of the internal normative framework..........................................................

2. Activity on examination of petitions and other appeals .............................................

3. Controls carried out in the field of personal data processing.................................

4. Specific cases of law infringement in the field of personal data protection...........
   a) illegal processing of special categories of personal data............................
   b) disrespecting the right to oppose of the personal data subject....................
   c) violation of the confidentiality and security regime of personal data processing..........................................................

5. Activity on offering necessary Instructions for adjusting the personal data processing in accordance with the law.................................................................

6. Activity regarding the evidence of personal data holders...........................................
   a) Rules on the manner of manual keeping of the personal data holders Register.................................................................................................................................
   b) Requirements for the assurance of personal data security at their processing within the information systems of personal data..................................
7. Transborder transfer of personal data

8. Examination of draft normative acts

Chapter IV. Consultative Council

Chapter V. International cooperation

1. Establishment of cooperation relations with foreign states and international institutions

2. Assistance Programs

Chapter VI. Communication and public relations

Chapter VII. Economic management of the Center

Chapter VIII. Plans for the future
INTRODUCTION

The automatic processing of personal data in various fields made possible urgent and real time solving of different issues, whether it is about identifying a transgressor, saving a human`s life through stating genetic compatibility or about the quality of the services provided by post communications organizations or other communications, etc.

However, these benefits make the individual become subject to a more significant interference in the private sphere by various institutions such as social and insurance services, law enforcement bodies, banks, medical sectors etc. Therefore, there is an eventual possibility of limitation of intimacy and privacy of every natural person, an intrusion in a so-called “intimacy perimeter”.

At the same time, using these data in order to achieve commercial activities, monitoring the labour force, registering phone calls, monitoring the geographical localization of the persons through electronic communication networks, systematization of the preferences for given products or services, or of the habits etc., has to be categorically proportional to the level of development of the protection of individuals with regard to processing of personal data.

In this context, the right to personal data protection is considered in the European Union as fundamental one, the essential condition for ensuring the respect for this right being the existence, in every Member State, of an independent supervisory authority, aimed at observing compliance with the principles of personal data protection.

This being said and given the Republic of Moldova`s aspirations for European Integration, the existence of the National Center for Personal Data Protection – a public authority having concrete and specific attributions of control in the field of personal data protection - becomes imperative.

The following report contains a presentation of the main activities and objectives carried out by the administration and the staff of the National Center for Personal Data Protection during 2009 year.

I extend my hope that the launching of the negotiations of the new Association Agreement of the Republic of Moldova with the European Union will serve as an additional argument of the necessity for a functional National Center for Personal Data Protection, in conditions of overall autonomy and independence, as a guarantee for the protection of the rights and fundamental freedoms of individuals, notably their right to privacy in connection with the processing of their personal data.

Vitalie PANIŞ
Director
Chapter I. Normative framework applicable to the personal data protection field in the Republic of Moldova

1. International Acts

Privacy was and is a very important and sensitive field, fact for which it is found in the category of rights and fundamental guaranties enshrined in various international treaties such as:


a) Convention for the protection of individuals with regard to automatic processing of personal data, done in Strasbourg on 28 January 1981

It was for the first time that the field of personal data protection gained a special legal framework in the Convention no. 108 for the protection of individuals with regard to automatic processing of personal data, adopted in Strasbourg on 28 January 1981 (hereinafter Convention no. 108). The Republic of Moldova signed this Convention on 04 May 1998 and ratified it through the Parliament Decision No. 483-XIV of 02 July 1999.

This international treaty, opened for signature not only for Member States of the European Union, establishes as an objective guaranteeing, within the territory of the Parties, to every natural person, whatever his/her citizenship or residence, the respect for the rights and fundamental freedoms and, in particular, the right to privacy with regard to automatic processing of his/her personal data.

The Convention no. 108 creates a model legal framework, regulating the scope, basic principles for data protection, conditions and guaranties in case of transborder processing of personal data.  

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1Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks.

2Article 8. Right to respect for private and family life
Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

3Article 17
No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks.
flows of personal data, cooperation between Parties, role of the Consultative Committee consisting of the Parties' representatives, amendment procedure and final clauses.

It should be mentioned that when depositing the instrument of ratification of the Convention no. 108 by the Permanent Representative of the Republic of Moldova to the Council of Europe on 28 February 2008, Declarations were noticed regarding the area of enforcement of this treaty and the competent supervisory authority, which were reflected, subsequently, in the Law on personal data protection.

Thus, it has been declared that:

1. In accordance with Article 3, paragraph 2.a, of the Convention no.108, the Republic of Moldova will not apply the provisions of the Convention to the following categories of personal data:
   a) which are processed by individuals exclusively for their personal and family use provided that the rights of the personal data subjects are not violated;
   b) which are subject, in the established way, to the legal regime on information which constitutes a State's secret.

2. In accordance with Article 3, paragraph 2.c, of the Convention, the Republic of Moldova will also apply the Convention to personal data which are not processed automatically.

3. In accordance with Article 13, paragraph 2.a, of the Convention, the Republic of Moldova designates the National Center for Personal Data Protection as the competent authority for the implementation of the provisions of the Convention and for maintaining relations of mutual assistance with other Parties.

At the same time, the Committee of Ministers of the Council of Europe adopted in Strasbourg on 15 June 1999 Amendments to articles 3, 21 - 22, 24 and 27 of the Convention no. 108. The process of accepting these Amendments by the Republic of Moldova, initiated by the Ministry of Informational Development in February 2009, did not see any continuity.

The Amendments establish the right of the European Communities to accede to this international treaty, given the competence of the Committee of Ministers of the Council of Europe to invite any State not a member of the Council of Europe to accede.

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4. Article 3. Scope
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:
   a) that it will not apply this convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law.

5. Article 3. Scope
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:
   c) that it will also apply this convention to personal data files which are not processed automatically.
to the Convention no. 108, as well as the distribution of the right to vote within the Consultative Committee.

In 2010, the Center intends to promote the idea of accepting the said Amendments by the Republic of Moldova.

b) Additional protocol to the Convention for the protection of individuals with regard to automatic processing of personal data, regarding supervisory authorities and transborder data flows, done in Strasbourg on 8 November 2001

Aware of the role of the supervisory authorities as an element of effective protection of the individuals with regard to personal data processing, as well as the importance of the flow of information between people, the Council of Europe adopted on 8 November 2001 the additional Protocol to the Convention no. 108.

The Additional Protocol, which is not yet ratified by the Republic of Moldova, highlights, in particular, the status of national supervisory authorities which have to act in complete independence as a basic element of effective protection of individuals with regard to personal data processing and the legal regime of transborder data flows to recipients, which are not subject to the jurisdiction of a Party to the Convention.

The Center, immediately after consolidation of its administrative and personnel capacity and with the support of the Ministry of Information Technologies and Communications, as well as of the Ministry of Foreign Affairs and European Integration, relaunched the ratification procedure of the Additional Protocol by the Republic of Moldova. This activity is placed in the list of short term priorities.

2. National Acts

According to the article 28, Chapter II „Rights and fundamental freedoms”, of the Constitution of the Republic of Moldova, the state observes and protects intimate, family and private life. Nevertheless, the constitutional act doesn`t provide directly the right of each person to the protection of his/her personal data.

The right of every person to the protection of personal data, which is stipulated in art.8 of the Charter of Fundamental Rights of the European Union, appears as a new and autonomous right.

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6 Article 1 – Supervisory authorities
1. Each Party shall provide for one or more authorities to be responsible for ensuring compliance with the measures in its domestic law giving effect to the principles stated in Chapters II and III of the Convention and in this Protocol.
2. a) To this end, the said authorities shall have, in particular, powers of investigation and intervention, as well as the power to engage in legal proceedings or bring to the attention of the competent judicial authorities violations of provisions of domestic law giving effect to the principles mentioned in paragraph 1 of Article 1 of this Protocol.
   b) Each supervisory authority shall hear claims lodged by any person concerning the protection of his/her rights and fundamental freedoms with regard to the processing of personal data within its competence.
3. The supervisory authorities shall exercise their functions in complete independence.

7 We think that in case of a future revising of the Constitution of the Republic of Moldova, there should be taken into consideration inclusion in the category of rights and fundamental freedoms the right to personal data protection. Thus, data protection has been incorporated as a fundamental right in the Constitution of some states (Article 35 of the 1976 Constitution of Portugal; Article 18 of the 1978 Constitution of Spain; Article 1 of the 1978 Austrian Data Protection Act: Fundamental Right of Data Protection). Also, personal data protection has been recognized as a fundamental right in the European Union: Art.8 of the Charter of Fundamental Rights of the European Union (2007/c 303/01)
Thus, if when speaking of the right to the respect of private and family life, the protection is static, as it is exhausted during exclusion of intrusions of others in the private sphere, personal data protection is a dynamic protection, which imposes certain rules and ways of data processing, as well as some powers of intervention in their circulation.

a) Law no. 17 - XVI of 15.02.2007 on personal data protection

The Republic of Moldova made some concrete steps to implement at the national level the European principles and standards as regards personal data protection. Thus, after the ratification of the Convention no.108, the activity was launched on adopting the law that would create the national legal framework necessary for the implementation of this treaty.

The draft laws, initially elaborated by the Ministry of Transports and Communications in 2001 and, afterwards, by the Ministry of Informational Development in 2006, were criticized by the European experts, who addressed some recommendations in order to transpose the Community Acquis in this legislative act.

Only on 15.02.2007, after almost eight years from the date of ratification of the Convention no. 108, the Law on personal data protection was adopted. After this fact the instruments of ratification of the Convention no. 108 were deposited on 28 February 2008 and the treaty entered into force for the Republic of Moldova on 01.06.2008.

Article 3 of the Law on personal data protection stipulates that the legislation in the field of personal data processing consists of the Constitution of the Republic of Moldova, Convention no. 108, Additional Protocol to the Convention no. 108, other international treaties the Republic of Moldova is party to, the present law and other normative acts.

It is to be underlined the fact of including the Additional Protocol to the Convention no. 108 in the list of the normative framework regulating personal data protection field before the ratification of this document. This fact demonstrates the real intention of the Republic of Moldova to ratify this international treaty.

The Law on personal data protection establishes the scope of this legislative act, the terms used, the basic conditions for personal data processing, concretely nominates the national authority competent in carrying out controls in the field of personal data protection - National Center for Personal Data Protection, regulates the settlement of a public Register of personal data holders, establishes the confidentiality and security regime of personal data processings and the conditions for transborder transfer of personal data.

Even in the first year of the Center’s activity, there were found some discrepancies between the provisions of the Law on personal data protection and the European standards, fact which creates obstacles to the smooth operation and requires the need to revise several of its provisions in order to introduce amendments and additions.
In this chapter, it is to be mentioned that for clarifying and amplifying the principles of the Convention No.108, in order to protect the human rights and fundamental freedoms and in particular the right to privacy with regard to the processing of personal data, the Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter the Directive 95/46/EC) was adopted on October 24, 1995.

The provisions of the Directive 95/46/EC have not found reflection in full extent in the national legislation of the Republic of Moldova, for this reason there persists the risk of placing our country in the category of countries that do not provide an adequate protection of personal data and, finally, an impediment to the free, cross-border movement of these data from Member States of the European Union to the Republic of Moldova.

In particular,
- there are discrepancies as to the terminology and the used concepts;
- it is to be established the contraventional liability breaching the legislation on personal data protection, including the concretization of the status and the powers of the Center in this respect;
- provisions are to be included that would require personal data holders to notify (to inform) the national supervisory authority before starting the processing operations of the personal data; would determine the content of these notifications; would regulate the mechanism of prior checks on behalf of the national supervisory authority in cases where the personal data raise particular risks for the rights and the freedoms of personal data subjects or proceeding from the means used for processing, the goal of processing, the categories of subjects, such as for example children; would cover the possibility of the cross-border transfers of personal data in the case of the existence of appropriate contractual clauses in this regard, etc.

The Law on personal data protection has individualized the status of the competent national authority in order to exercise the control in the field of personal data protection, including, among other skills, the power to establish minutes of the law infringement, in the manner prescribed by law.

Despite this, there were not introduced sanctions for breaking the Law on personal data protection in the Code of Contraventions of the Republic of Moldova approved through the Law no. 218-XVI of 24.10.2008, and the Center does not fall under the list of the agents of findings provided by Articles 400-423, Code of Contraventions, which, in accordance with the provisions of Article 385(2) of the same Code, would be empowered with responsibility for finding a contravention and drawing up minutes.

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8 Article11. 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.
b) Law no. 182 – XVI of 10.07.2008 regarding the approval of the Statute, structure, staff-limit and financial arrangements of the National Center for Personal Data Protection (Center’s Statute)

With the view of implementing the provisions of the art.11, par. (2), of the Law on personal data protection, as well as transposing at national level the principles of the Additional Protocol to the Convention no. 108, the Center’s staff-limit was approved through the Law no. 182 – XVI of 10.07.2008, counting 21 units, and the Center’s Statute, which established the structure, financial arrangements and rules of activity of this authority.⁹

According to this Statute, the institution is led by the Director, who is assisted, while carrying out his attributions, by the Deputy Director, the Center consisting of the following subdivisions:

- Evidence and Control of Personal Data Holders Department ¹⁰
- External Relations and European Integration Department ¹¹
- Legal and Public Relations Department ¹²
- Planning and Economical-Financial Department ¹³

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⁹ Chapter I, p.1. The National Center for Personal Data Protection, hereinafter named as the Center, is an autonomous public authority, independent of other public authorities, natural persons and legal entities, which exercises its legally awarded attributions by the Law nr.17-XVI of 15 February 2007 on personal data protection.

¹⁰ This subdivision keeps evidence of the personal data processing and of the holders of these data, manages the registers established by the Center and elaborates the technical norms on processing of personal data; carries out preliminary controls and investigations, applies, if necessary, sanctions and monitors the process of realization of the legal measures, disposed by the Center, by the personal data holders; authorizes the processing and transborder transfer of the personal data as stipulated in the law in force.

¹¹ This subdivision organizes the Center’s activity of external relations and implements the Action Plan on European Integration aspirations of the Republic of Moldova in the field of personal data protection; performs studies and analyses of the international practice and legislation on processing and protection of personal data.

¹² This subdivision represents, in the courts, the interests of the Center, of natural persons and legal entities whose rights have been violated; elaborates drafts and positions on the draft normative acts regarding the processing of the personal data, as well as draft orders and dispositions of the Director of the Center; manages the activity of public relations and of solving the petitions addressed to the Center.

¹³ This subdivision manages the patrimony, coordinates the activity of accounting and elaboration of the annual budget of the Center; keeps the evidence and manages the job relations of the Center’s personnel.
Chapter II. Process of creating the National Center for Personal Data Protection

1. Center’s staff employment

The Center has been created as a result of the adoption of national legislation in the field of personal data protection. It became an integral part of the control system in a democratic society and as a guarant of defending human rights and fundamental freedoms, in particular, the right to privacy with regard to processing and transborder transfer of personal data.

After the appointment of the Director and Deputy Director of the Center, procedures were initiated to ensure the conditions for the creation of this public authority.

In this context, short-term priorities were set out, which were intended to implement the provisions of the art. 3 of the Law no.182-XVI of 10.07.2008, as well as some additional objectives, in particular:

a) Carrying out the procedures of hiring the personnel;
   b) Obtaining all materials regarding personal data protection from other public authorities;
   c) Active involvement in the elaboration process of the secondary normative framework, in order to implement the provisions of the national and international legislation in the field;
   d) Mediatization of the creation of the national supervisory authority in the field of personal data processing and ensuring the transparency of its activity.

It is to be underlined that the Center started a real and efficient performing of its functional attributions at the end of April 2009, after a partial hiring of the personnel, its activity being, nevertheless, influenced by the issues of creating conditions for the activity of the staff, as well as ensuring the security of the institution’s patrimony.

In comparison with other states, where the supervisory authority on personal data protection has been created on the basis of the logistic resources and specialists of the Human Rights Centers (for example Romania, where the National Authority has been created on the basis of 19 officers from the institution of People Advocate), a fact that ensured a consistency of the activity in this field and a qualitative representation with qualified experts – the Center had to launch its activity in the field from zero level.

With the view of implementation of the point 5 of the European Integration Agenda – priorities for 2009, as regards carrying out the procedures of hiring the personnel:  

14 Parliament Decisions no. 233 of 13.11.2008 and, respectively, no. 8 of 03.02.2009
15 Art.3. – The Government from the 1st of January 2009:
   a) will start the financing of the National Center for Personal Data Protection;
   b) will provide headquarters for the National Center for Personal Data Protection;
   c) will ensure the transfer to the National Center for Personal Data Protection of all the materials regarding personal data protection.
personnel of the Center, as well as after four hiring contests, organized according to the conditions stipulated in the Regulation approved through the Government Decision no. 201 of 11 March 2009, 54 candidates were admitted for the contest out of 71 files submitted. Subsequently, only 14 public servants were selected and hired, 7 of which were debutants.

Thus, the staff of the Center is completed at the rate of 71%, a fact that allows performing the organizational process and the active involvement in improvement process of the legal framework in order to create the conditions in subsequent execution of its functional tasks.

Unfortunately, the selection process of the officers was and still is marked by the relatively new character (for the Republic of Moldova) of the field of activity, including the salary for the personnel of the Center.

As regards this issue, it should be mentioned that, despite the provisions of art. 11\(^1\) of the Law on personal data protection\(^{16}\), as well as that the Center is an autonomous public authority which has to perform its activity impartially and independently in respect of public authorities, the level of payment for its administration and the personnel was, unjustified, equalized with the level of salary indicated in the section “other bodies of central public administration” of the annex no. 3 of the Law no. 355 - XVI of 23 December 2005.

For example in Romania, according to the Law no. 102 of 3 May 2005 on creation, organization and functioning of the National Authority on Personal Data Processing Supervision, the payment of its staff is realized equivalent to similar functions from the Office of the two Chambers of the Parliament, in accordance with the law (art. 18).

2. Professional development of the personnel

The officers of the Center participated in 2009 in 6 courses of professional development at the national level, being permanently involved in organization of periodical internal colloquies aimed at improving the level of knowledge of applicable legislation and practical implementation of the data protection principles.

Therewith, through a program financed by the International Center for Democratic Transition (ICDT) and with the kind assistance of the Embassy of the Republic of Hungary to the Republic of Moldova, the Center’s officers made two study visits and exchange of experience in Budapest, in order to learn the activity of the Office of Parliamentary Commissioner for Data Protection and Freedom of Information

\(^{16}\) 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.

(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.

(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.
of the Republic of Hungary, the country which payed special attention and perceptiveness in supporting the Center, which was at the beginning of its creation, for a better understanding of functional requirements according to the Community Acquis. During the visits, there were organized meetings both with officials from the staff of the Parliamentary Commissioner for Data Protection and with representatives of other institutions which are dealing with personal data protection field.

3. Providing technical and material basis for the Center

On 15 January 2009 the Government transmitted for temporary use and free of charge a space in the building located on 48, Serghei Lazo street, in Chisinau municipality, which currently represents the Center’s headquarters. On 10.02.2009 financial resources were allocated for 2009 year from the budget in the amount of 2.300.000 Lei intended specifically for the creation of the Center. Further on, this sum was reduced with over 466.000 Lei, which, unfortunately, hampered the good development of the creation process of adequate working conditions for the staff, as well as implementation of some Center’s specific activities. Despite this, the Center deployed every effort to implement the assigned targets.

Following this, according to the general plan on financing for 2009 and observing the provisions of the legislation on public acquisitions, contracts were signed and acquired goods and services of strict necessity in order to assure working conditions for the personnel and performing the functional competences of the Center.

In particular, computers, furniture and office supplies were acquired. Also, services of telephone connection and internet were contracted. It was elaborated the official website of the Center (www.datapersonale.md), managing, at the same time, to partially arrange the work spaces assigned to the Center, etc.

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17 Government Decision no. 116 of 10 February 2009 „On distribution of financial means”
CHAPTER III. Statistical results of the Center`s activity

1. Elaboration of the internal normative framework
In order to ensure the normal process of activity, the Center elaborated the internal normative framework that comprises:
e) The internal Regulation of the Center and its departments;
f) The Regulation on the management of the secretarial work;
g) The Regulation on keeping the Register of evidence of controls of information on personal data processing;
h) The Regulation on filing and examination of the petitions and other appeals;
i) The Regulation on the activity of the public acquisition group;
j) The Regulation of the Expertise Commission;
k) The Regulation on the organization and function of the departmental commission of control on income and property declarations;
l) The Regulation of the Consultative Council by the Center;
m) The personal establishment;
n) New employee Guide;
o) The Regulation on the identity cards and the official insignia of the Center;
p) The Instruction Labor safety and health for the Center`s officials;
q) The Fire Safety Rules within the Center;

2. Activity on examination of petitions and other appeals
From the moment of advertising the creation of the Center as a public authority vested with powers regarding the personal data protection, and especially since the official website www.datepersonale.md was designed, the Center began to receive petitions, complains and letters in which it was solicited information or involvement in solving some cases of violation of personal data subjects’ rights.

It should be emphasized that in accordance with the Article 10, paragraph (1) item f) of the Law on personal data protection, any personal data subject is enabled to complain the actions or inactions of the personal data holder to the body empowered to protect the rights of personal data subjects or to the court.

Thus, without disrespecting the possibility to address with a complaint to the national supervisory authority, the subjects are enabled to apply to the court for defending any rights guaranteed by the law.

In order to solve the registered complaints, the Center, in its turn, has a number of legal attributions, such as:
- requires necessary information for the performance of its duties and receives, free of charge, this information from legal entities and natural persons;
- realizes the control of information on personal data processing or involves in such kind of control other public authorities within their competence;
- requires from the personal data holder the adjustment, blocking or destruction of the invalid or illegally obtained personal data;
- 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;
- addresses requests to judicial authorities for protecting the rights of the personal data subjects and represents their interests in the courts;
- draws up reports on the violation of the present law (task, which actually can be achieved, but only after the modification of the Contravention Code);
- 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 18.

Thus, during the reference period, the Center employers examined 14 petitions and other appeals, of which 4 were accepted, 1 rejected, and in 9 cases relevant explanations were given. At the same time, in 5 cases, the registered appeals generated controls.

Table no.1

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<thead>
<tr>
<th>examined petitions and other appeals</th>
<th>of which accepted/rejected /relevant explanations</th>
<th>Acts of reaction</th>
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<td>investigations initiated</td>
<td>decisions on cessation of the operations of personal data processing</td>
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</table>

We consider that the subjects’ right and possibility to notify the Center through complaints is a good way for monitoring, control and evaluation of the level of implementation and performing of legal obligations by the personal data holders, which, at the same time, provide reasons for operative intervention of the supervisory authority.

In order to promote publicly the requirements necessary to be observed by the subjects when they address a petition, the Center placed them on its official website entitled “What should you know if you are going to address a petition to the National Center of Personal Data Protection?”

3. Controls carried out in the field of personal data processing

The supervision of the compliance of personal data processing with the legal requirements, as well as the information about personal data protection processing, is

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18 Attributions established by the Article 11, paragraph (5) item e), f), g), h), i), l), m) from the Law on personal data protection nr.17-XVI of 15.02.2007.
one of the main tasks put in charge of the Center, achievement of which gives the possibility to fulfill the competence of control and realize the objective of defending the right to privacy in relation with the processing or transborder transfer of personal data.

The controls can be performed both ex officio, when the Center informs itself about certain violations via mass media, Internet, etc., and following the examination of some petitions or notifications.

In 2009, the Center initiated controls of legality of personal data protection in 8 cases\(^1\), which resulted in most cases in acts of reaction, according to the situation presented in table no. 2.

<table>
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<tr>
<th>controls carried out</th>
<th>including ex officio/on appeals from personal data subjects</th>
<th>Acts of reaction issued as a result of controls carried out</th>
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<td></td>
<td>decisions of suspending the operations of personal data processing</td>
<td>decisions on cessation of operations of personal data processing</td>
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<td>8</td>
<td>4</td>
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</table>

4. Specific cases of law infringement in the field of personal data protection

a) Illegal processing of special categories of personal data

Generally, various situations of infringement of confidentiality of personal data by the financial institutions were recorded. It was done by allowing the unrestricted access and dissemination of personal data in the form of so-called “black list” of the customers and people with responsibility in loan contracts.

Also, there were exceptionally established cases of serious infringement by some financial institutions of fundamental principles regarding the adequate, relevant and non excessive character of personal data in relation with the purposes for which they are collected and/or further processed.\(^2\)

Thus, the Center found in 2009 that, on the official website of the X banking institution, it was placed, in unrestricted access conditions, the electronic form of the “black list” Register, which comprised personal data of the clients and people with responsibility in the concluded contracts and which, additionally to their full name and

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\(^1\) In accordance with Article 11, paragraph (5) of the Law on personal data protection, the Center:

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;

f) realizes the control of information on personal data processing or involves in such kind of control other public authorities within their competence.

\(^2\) Article 5 (c) from the Convention nr.108; article 6 paragraph 1 (c) from the Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; article 5 (c) from the Law on personal data protection.
personal code (IDNP), included special categories of data, which revealed ethnic origin and family secret of certain people.

These actions of personal data processing, performed in contradiction with the principles relating to the data quality and without personal data subject’s consent, are subjected to the Convention no.108, the Article 8 of the European Convention on Human Rights and Fundamental Freedoms, the Article 28 of the Constitution of the Republic of Moldova and the Law on personal data protection, violating the inviolability of private life, bringing serious prejudice to the fundamental rights and, in particular, creating a serious derogation from the principles of personal data protection of the citizens.

Despite the fact that the Center has indicated the nominated violations, the X financial institution has maintained its position and point of view regarding the lack of some infringements, justifying that the nominated data were collected from the individuals before the entry into force of the Law on personal data protection.

Additionally, the officials of the financial institution have shown a behavior of a clearly expressed opposition and neglect towards the Center’s competences, as the supervisory authority in the field of personal data protection, refusing to provide the information and documents which confirmed the way these personal data were collected from the persons Y and Z.

The refusal to cooperate in the case examination process continued even after the contraventional punishment applied by the Center for Combating Economic Crimes and Corruption for the decision factors of this financial institution under the Article 349 paragraph (1) of the Contravention Code 21, as a result of our authority request.

Following the control, the Center issued the decision on suspending the granting access and dissemination by the financial institute X of the information which contains personal data from the “black list” Register, which are operations carried out in infringement of the Law on personal data protection. Also, it was disposed the integrated removal of the category of personal data regarding the ethnic origin and private life of the citizens Y and Z, processed in the informational systems in violation of the provisions of Article 7 of the Law on personal data protection.

b) Disrespecting the right to oppose of the personal data subject

There have been observed cases of illegal transfer of databases of personal data among the personal data holders without the data subjects’ consent under the Article 9 (4) and the Article 10 (e) of the Law on personal data protection, in order to perform the direct marketing activities 22.

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21 Article 349 Contravention Code
1) Hampering in any form the legitimate activity of a civil servant who is exercising his/her office (failure to acknowledge jurisdiction, to submit documents, to execute instructions or other legitimate requirements) shall be sanctioned by a fine of 50 to 100 conventional units with or without the deprivation of the right to carry out certain activities for a period of 3 months to 1 year.

22 Article 9 Personal data storage and modification
(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:
Thus, the citizen X complained that he was contacted insistently and continually on the personal phone number by the company Y’s manager, with which he previously had no relations, in order to promote the commercial services provided by this company.

During the performed investigation, it was confirmed the existence of an agreement, signed between one of the company, with which the citizen X previously had a contractual relation as beneficiary of services, and the company Y, under which the exchange of “internal information” in order to promote the direct marketing and companies offers was performed, the information that also included personal data of the citizen X.

The legal analysis of the agreement text, as well as the corroboration of the dispositions of this act with the citizen X`s explanations related to the absence of will manifestation for processing of his personal data, revealed several deficiencies. In particular, the agreement didn`t specify the volume of mutual transmitted information, the definition of “internal information”, the way of its transmission, means of ensuring the confidentiality and security of personal data processing – a component part of the “internal information”. At the same time, there were not found data confirming the existence of citizen X`s consent for processing his personal data and, in particular, the transfer of these data from one holder to another.

As a result, the mentioned companies have been prescribed the cessation of the processing and the integral removal of the citizen X’s personal data, processed with infringement of the legislation requirements, as well as to undertake the actions in order to comply the process of personal data processing of other subjects with the provisions of the Law on personal data protection.

c) Violation of the confidentiality and security regime of personal data processing

The Center examined the case of placing on the website www.torrentsmd.com, with unrestricted free access, the e-form of the database of the Department of Information Technology (nowadays the Ministry of Information Technologies and Communications), which contained information about the inhabitants of the Chisinau city, including: full name and surname of the person, number of the identity card, personal code (IDNP) and his/her home address, as well as the database of the “Moldtelecom” company.

It should be mentioned that the personal data holders in accordance with Article 14 of the Law on personal data protection have the whole responsibility for the caused damages following the violation of the security requirements of personal data processing.

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e) to make objections against his personal data processing if these data will be used for commercial purposes;

23 The mentioned decision was executed by the companies Y and Z in time and unconditionally.

24 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.
Following the examination of the Center’s notification, the Office of the Prosecutor General initiated a criminal prosecution under the Article 177 of the Criminal Code\(^{25}\), where the problem of the lack of national legal framework that would define or explain the collocations of “family secret” and “personal secret” was emphasized, which is necessary for correct qualification of the actions of the individuals suspected in committing the nominated injurious actions.

5. Activity on offering necessary Instructions for adjusting the personal data processing in accordance with the law

In accordance with Article 11, paragraph (5), item b) of the Law on personal data protection, the Center has the power to offer the necessary instructions on bringing the personal data processing in line with the legal principles, without affecting the field of competence of other bodies. This attribution offers the opportunity to draw up and implement a common practice regarding the personal data processing.

During the 2009 year, as a result of examining the petitions of personal data subjects or the controls carried out, the Center offered concrete instructions in 6 cases, with the view of bringing the operations of personal data processing in line with the law.

For example, taking over the examination of the National Office of Social Insurance’ request (hereinafter NOSI), where there were indicated the presumed violations admitted by the representatives of different institutions during the request access to the personal data processed in the state Register of individual records in the public system of social insurance and some “uncertainties” in the legislation, the Center had performed an analysis at this chapter, submitting concrete instructions.

In particular, the Center indicated the following:

a) NOSI, as a holder of personal data, holder and registrar of the state Register of individual record in the public system on social insurance, assumes the whole responsibility to provide the confidentiality and security of personal data processing.

In case of prejudice brought to the rights and interests of personal data subjects, as a result of the actions or inactions of NOSI, as well as when confidentiality conditions of the information in databases of the tax rate payers to the social insurance budget is not observed, in accordance with item 53 (5) of the Statute approved by the Government Decision of the Republic of Moldova no. 739 of 25 July 2000, there is the possibility to initiate the disciplinary, contraventional, criminal procedures or suing\(^{26}\).

b) Any case of request for access to personal data and to sensitive data, contained in personal accounts of policyholders, independently of the applicant’s status (deputy, judge, scientist, etc.), it should be analyzed by NOSI to identify:

\(^{25}\text{Article 177. Violation of Privacy}\)

(1) Illegally collecting or deliberately disseminating legally protected information about personal life that is a personal or family secret of another person without his/her consent shall be punished by a fine of up to 300 conventional units or by community service for 180 to 240 hours.

\(^{26}\text{53. The employees of the National Office of Social Insurance and its territorial subdivisions are liable to personal disciplinary, administrative or criminal responsibility, as is for the case, for:}\)

5) infringement of the regime of informational confidentiality in databases of the tax rate payers to the social insurance budget.
- the purpose for which these data are requested to be put at third person`s disposal and whether this aim is referred or not to those for which they were collected;
- the volume and accurate structure of personal data for which access is requested by the applicant;
- the conditions of keeping and the period of time for which the personal data are necessary;
- the normative framework justifying the request for access of the applicant to these data;
- the presence of personal data subject`s consent to transmit the information contained in the personal account;
- the presence of the Articles 6 and 7 conditions of the Law on personal data protection, which motivate submitting to third parties the information which contains personal data without the consent of the personal data subject.
- the possibility to apply the Article 15 provisions of the Law on personal data protection regarding depersonalization of personal data put at the third parties` disposal (after the detailed analysis of the purposes for which access to these data is requested);

c) It should be applied the provisions of the point 29 of the Regulation of the state Register of the individual records in the public system of social insurance, approved through the Government Decision nr.418 of 03.05.2000, in any case of taking a decision to grant access or to put at disposal the information which contains personal data. This Regulation establishes that the right of access to personal data of other insured persons can be made in accordance with the law and under a contract, taking into account the prescriptions of security and confidentiality.

d) in order to avoid situations qualified as “problematic” by NOSI, this personal data holder shall:
- make public the specific nature of the processing of these categories of personal data, which are confidential;
- draw up secondary normative acts (methodological norms), which will precisely set up the prescriptions of confidentiality and security to be carried out by the third parties, for which personal data were put at disposal or had been granted access to these data;
- draw up the model contracts or legal acts of transmitting the information, where it should be clearly indicated the interdictions (e.g. not to be used for other purposes than those for which they were solicited), the obligations (e.g. to be given back or destroyed after the expiration of the period of time for which they were requested, etc.) and the responsibility for the infringement of the prescriptions.

e) According to the Articles 1 and 43 of the Law on public system of social insurance and point 2 of the Statute approved through the Government Decision of the Republic of Moldova no. 739 of 25 July 2000, NOSI is an independent public institution of national interest, with legal personality, which administers and manages the public system of social insurance and, in accordance with point 28 (10), has the attribution to keep the information related to the public social insurance and ensure its confidentiality.
By virtue of this fact, unjustified applications for access to confidential information cannot be executed, whatever would be the author of this request.

6. Activity regarding the evidence of personal data holders

Another important task of the Center, that transposes on a nation-wide scale the provisions of the Directive 95/46/EC\(^{27}\), is the establishment and administration of the personal data holders Register, which are required to register at the Center in accordance with Article 12 of the Law on personal data protection\(^{28}\).

The Law No.17-XVI does not establish a transition period needed to implement the provisions of Article 12(3) and Article 14(2), that is why more holders of personal data, in particular the institutions with foreign capital, insisted in the year 2009 to be registered in the Register of the personal data holders and to obtain the necessary instructions for the legal processing of personal data.

We reiterate that, after strengthening the administrative and logistic capacities, the drafting of legal acts that would regulate the procedure of registration of the personal data holders and the manner of keeping the Register of the personal data holders was one of the main objectives of the Center, achievement of which, we think, is not far from being realized.

a) Rules on the manner of manual keeping of the personal data holders Register

In order to ensure the conditions for the implementation of the provisions of Article 12 of the Law on personal data protection, which sets, in a mandatory way, the obligation of the personal data holders to be registered at the Center, and the conditions necessary for the exercising of the functional powers by the Center, as it is the responsibility of the public authorities to establish and to run the register of personal data holders\(^{29}\), the Center draw up the draft Rules on the manner of manual keeping of the personal data holders register (hereinafter the Rules).

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\(^{27}\) Article 21. Publicizing of processing operations
1. Member States shall take measures to ensure that processing operations are publicized.
2. Member States shall provide that a register of processing operations notified in accordance with Article 18 shall be kept by the supervisory authority.
The register may be inspected by any person.

\(^{28}\) Article 12. Register of personal data holders
(1) The Center creates and administers 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.
(3) Personal data holders are obliged to register at the Center.

\(^{29}\) Article 12. Register of personal data holders
(1) The Center creates and administers the personal data holders register in order to register the personal data holders.
(3) Personal data holders are obliged to register at the Center.
At the same time, provisions were included in its content, trying to cover the legal vacuum regarding the holders` obligation to notify the Center about the beginning of personal data processing.

It is to be mentioned that the manual keeping of the personal data holders Register resulted from the lack of financial and technical possibilities to initiate the process of developing and implementing an Automated Information System that would allow the establishment and the administration of the personal data holders Register in electronic form. It would be a provisional variant for identification of the normative regulation solution for the establishment and administration of this Register in accordance with Article 27 of the Law on the registers.

The actual advantage of the manual keeping of the Register is hastening the process of personal data holders` registration, which are already addressing to the Center with applications for registration, a process that will lead to the identification of the potential problems necessary to be avoided when developing and implementing the electronic form of keeping it.

After several unsuccessful attempts to approve operatively this normative act, at the level of an autonomous and independent authority, a process in which representatives of the Center, the Ministry of Justice and the State Chancellery were actively involved, and taking into account the need to develop and implement a legal framework, that would allow the initiation of the Center’s activity as to the keeping of the personal data holders Register, it was proposed the solution to approve the Rules on the manner of manual keeping of the personal data holders Register, through a Government Decision. This draft, at the moment, is at the phase of opinion delivering and legal examination at the Ministry of Justice.

b) Requirements for the assurance of personal data security at their processing within the information systems of personal data

In parallel, the Center launched, in March 2009, the development procedure of the Requirements for the assurance of personal data security at their processing within the information systems of personal data (Requirements), activity that needs to be presented in detail.

We reiterate that the ratification of the Convention No.108 by the Republic of Moldova, and adopting the Law on personal data protection, had as its starting point the need to ensure an adequate legal and institutional framework for the protection of the individual’s rights to the privacy inviolability, to personal and family secrets.

However, despite the fact that the field of personal data protection is part of the Acquis communautaire, proceeding from the findings made as a result of the analysis

30 The Center, supported by the position of the State Chancellery, has a separate opinion on the competence to normatively regulate the field of establishment and management of manually kept Register of personal data holders, which follows the Article 11 par.(5) a), b), c), f) and j), Art.12 par. (1) of the Law on Personal Data Protection, Chapter II, point 3 a), g) of the Statute of National Center for Personal Data Protection, approved through the Law no. 182-XVI of 10.07.2008, and of art. 16 of the Law on the registers, which imposes, inter alia, to the public authority, which established the Register, to approve the Rules on the way of keeping the Register. The position of the Ministry of Justice is diametrically opposed on the grounds that the Center does not seem to have adequate legal powers to approve such a normative act.

31 The draft Rules is at the phase of opinion delivering and legal examination at the Ministry of Justice.
and evaluation of the situation regarding the security of the personal data processing, we can say that mostly the legal provisions are known neither by the personal data holders, nor by the personal data subjects.

Moreover, the absence, on a nation-wide scale, of regulations on the requirements for the assurance of personal data security at their processing within the information systems of personal data (the existence of which is required by Article 14 of the Law on personal data protection) makes a mess in this chapter.

At present, each personal data holder establishes its own security policy (or generally neglects this section), which, in most cases, doesn’t respond to some simple requirements. Thus, there exists the danger of unauthorized access to the information systems of personal data and unlawful processing of such data or otherwise breaching the principles of data confidentiality.

The lack of a document that would establish the minimum requirements for the assurance of personal data security makes impossible the normal activity of the Center, the body empowered with control tasks of implementation of these requirements.

Starting from these findings, it was seen necessary to strengthen the legislative component via drawing up of the mentioned draft document, the Center proposing itself to give the necessary instructions for its further implementation, for increasing the awareness level of data holders obligations for the assurance of personal data processing security and of the rights of personal data subjects.

At the moment, the draft of this important document, prepared by the working group members - representatives of various public authorities under the direct leadership of the Center is at the phase of opinion delivering and legal examination at the Ministry of Justice, following to be submitted to the Government for approval.

It can be said that the Requirements’ implementation will, definitely, require inclusion in the budgets of personal data holders or of the institution, which will process the personal data on their behalf and by them, of financial resources needed to take organizational and technical measures, necessary for the assurance of the adequate security level. This is, however, determined by the need to protect the human rights and fundamental freedoms of individuals, in particular, the right to privacy in relation to the processing and cross-border transfer of personal data.

7. Transborder transfer of personal data

During the reporting period of time, the Center was addressed to in 5 cases regarding the authorization of transborder transfer of personal data, which generated case studies on appreciating the level of adequate protection offered by the states of

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[32] Article 14, Security of personal data processing

(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.

[33] The Group, established according to the Disposition of the Deputy Prime Minister no. 1209-85 of 05.03.2009, was composed of representatives of Information and Security Service, Office of the Prosecutor General, Ministry of Information Development (at the moment the Ministry of Information Technologies and Communications), Ministry of Interior, Ministry of Justice.
destination and the presence of conditions serving the basis for these processing and personal data transfers across the national border.

The Article 16 of the Law on personal data protection doesn’t establish directly the Center’s competence to issue the decisions regarding the authorization of transborder transfer of personal data, as well as the way the personal data holders notify or inform the national authority about these operations.

However, it is the Center that has the task to establish the level of adequate protection of the personal data subjects’ rights and the data intended to be transferred, and if the level of adequate protection offered by the state of destination is unsatisfactory, only the Center may prohibit the transfer of personal data.\(^{34}\)

It should be mentioned that the transborder transfer of personal data can be made in case when the states of destination ensure an adequate level of protection of the rights of personal data subjects and of the data destined for the transfer or only if it is in accordance with the international agreements the Republic of Moldova is party to.

The adequate level of protection proceeds from 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 and the legislation of the requesting state.

For example, the level of personal data protection is considered adequate in Member States of the European Union and in the states of European Economic Area, in particular Iceland, Liechtenstein and Norway, as well as in the states to which the European Commission recognized a level of protection through a decision.

The Law on personal data protection points out exhaustively the cases when the personal data transfer can be made to the states that do not ensure an adequate level of protection:

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;

\(^{34}\) Article 16. Transborder transfer of personal data

(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 to.

(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.

Table no. 3

<table>
<thead>
<tr>
<th>Requests regarding the authorization of transborder transfer of personal data</th>
<th>Decisions of non-prohibition/prohibition of transborder transfer of personal data</th>
<th>Instructions offered to bring the operations of personal data processing in line with the legal provisions</th>
</tr>
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<td>5</td>
<td>3</td>
<td>2</td>
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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 the open public.

It should be indicated that the provisions of the Directive 95/46/EC were not transposed into the national legislation, according to which the transfer of personal data to a state, whose legislation do not ensure an adequate level of protection, may also be performed if the personal data expediter ensures sufficient guarantees on the protection of fundamental rights of individuals, which would be stipulated in a contract concluded between the expediter and the foreign recipient of personal data.\(^{35}\)

8. Examination of draft normative acts

The list of tasks that the Center is vested with, in accordance with Article 11 of the Law on personal data protection, does not stipulate the one that would authorize the Center to participate in the process of legal examination of the normative acts.

However, proceeding from the fact that the Center is a supervisory body in the field of personal data processing, in accordance with provisions of the Law on normative acts of the Government and other central and local public administration authorities\(^{36}\), as well as according to the Government Decision on the harmonization of the legislation of the Republic of Moldova with Community Acquis\(^{37}\), our authority was involved in the process of legal examination of several draft normative acts related to the protection of rights and freedoms of individuals with regard to their personal data processing, as follows:

- *Draft Government Decision of the Republic of Moldova „Approving the Rules on the way of developing auctions for sale of credit histories”*

With reference to this secondary draft normative act, necessary to be elaborated in accordance with Article 14, paragraph (2) of the Law no.122-XVI of 05.09.2008 on the bureaus of credit histories\(^{38}\), the Center insisted on completing with provisions, which would essentially cover the rights and legitimate interests of personal data subjects (the subjects of the credit histories) at the transmission of the credit histories from one bureau of credit histories to another.

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\(^{35}\) Article 26. Derogations

2. Without prejudice to paragraph 1, a Member State may authorize a transfer or a set of transfer of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 25(2), where the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards to exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

\(^{36}\) Article 38. Legal examination

(1) Before being submitted for approval to the competent body, the draft normative act is mandatorily submitted for legal examination by the authorities and institutions directly involved in solving the problems included in the draft and by other authorities and institutions concerned, as well as by the authorities which are in charge to present a mandatory legal examination.

\(^{37}\) Point 22. The draft normative act shall be sent for coordination to interested public authorities, according to legislation in force, including to the Ministry of Justice and the Ministry of Foreign Affairs and European Integration, for presenting the legal examination proceeding from their functional competences.

\(^{38}\) Article 14. Transmission of information from the closed or reorganized bureau of credit histories or from the bureau of credit histories whose license was revoked.

(2) In case of reorganization of the bureau of credit histories whose successor is not a license holder, and in case of license revocation and liquidation, the credit histories kept at the liquidated or reorganized bureau of credit histories or at the bureau of credit histories whose license was revoked is disposed to auctions for sale, attended exclusively by the licensed bureau of credit histories. The obtained funds from selling credit histories as set forth in this Article shall be transmitted to the liquidated or reorganized bureau of credit histories or to the bureau of credit histories whose license was revoked. The way to hold the auctions is determined by the Government, upon the proposal of the competent authority.
It was proposed to complete the draft law with provisions that would establish the legal mechanism on obtaining the consent from the subjects of the credit histories for the transmission of the credit histories from one bureau of credit histories to another, in order to ensure the compliance of the provisions of the Article 9 of the Law on personal data protection\(^{39}\) and to inform them about the rights provided by Article 10, paragraph (1), item a) and e) of the same Law\(^{40}\).

- **Draft Law on amending and completing certain legislative acts (The Law no.45-XIII of April 12, 1994 on the operative activity of investigations, the Law no. 241-XVI of November 15, 2007 on the electronic communications and the Code of criminal procedure).**

The Center welcomed the introduction of some modifications in the national legislation, which would make more concrete the legal framework within which it is possible that the state, through its authorities, achieve certain limitations of the privacy aspects of the citizens.

However, several concrete proposals and recommendations have been made, concluding that the draft for amending the legal framework doesn’t provide further on sufficient guarantees for the protection of the rights to private life inviolability, including the fact that, being tangentially subject of operational measures, the person may remain uninformed about this fact\(^{41}\).

For example, the interception of any person`s discussion with the one who is subject of operational measures of interception, the installation of audio/video utilities, camera and other means of monitoring at home of the suspect (which has a large meaning), categorically means that his family members or those who are in contact with the suspect, involuntary, become subjects of an intrusion in their private life.

The interference is very serious and the activities of interception, of capture of the images, etc., categorically concern the persons who are around the suspect. Despite of this fact, apparently, they have not the right to be informed about it, to have the opportunity to access the accumulated materials and supervise the process of their destroying if they are not related to the cause.

The authors of the project proposed to put in charge of the trial judge or prosecutor, according to competences, the liability to announce in writing form only the persons who had been subject to the concerned operative measures of investigation.

This formulation, however, does not answer the question whether the category “people who had been subject to operative measures of investigation” will include only the persons for whom there were assigned and authorized operative measures of

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\(^{39}\) **Article 9.** Personal data storage and modification

(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.

\(^{40}\) **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;

(e) to make objections against his personal data processing if these data will be used for commercial purposes.

\(^{41}\) The consultative opinion of the Center was decisive in taking a decision by the Ministry of Justice to withdraw the draft law and establish a working group in order to finalize the act, where the representatives of the Center are included.
investigation by the prosecutor or judge, provided by the Article 6, paragraph (2), items 1) and 2) of the Law on the operative activity of investigations, or all persons the right to respect for private and family life, home and correspondence of whom was violated by virtue of the fact that they had contacted the people who have been subject to operative measures of investigation or have inhabited together.


With reference to this project, the Center noted that the signing of this Agreement is an important step to establish good relations of partnership between the Republic of Moldova and the Republic of Hungary, a country appointed to represent the Member States of the Schengen cooperation process regarding visa processing for Moldovan citizens, being achieved also the objectives of speeding up the examination of visa applications by the citizens of the republic of Moldova, excluding the cases of illegal migration, cooperation between control bodies, etc.

At the same time, along with concrete proposals to bring the draft text in line with the national legislation, regulating the field of personal data protection, it was indicated that the document should be completed with provisions that would clarify:

- the method, procedure or the way the Receiving Party of personal data will prove to the data Transmitting Party the fact, that these are necessary specifically for taking the decision on granting or refusing the visa;
- the volume of information or data, under which the Ministry of Information Technologies and Communications will be able to take the decision of authorization or non authorization of access for Hungarian Party to the state information Resources which contain personal data of citizens of the Republic of Moldova, on the grounds that this activity falls under the rules which regulate the transborder transfer of personal data;
- the storage period and the way of destroying the personal data transmitted in electronic way to the Member State of the Schengen cooperation process, after the achievement of the purpose for which the data were collected;
- the authority, which is responsible for damages compensation caused by the illegal processing of personal data of the subject of such data or by the infringement of technical requirements of data protection;
- the judicial authority able to examine the complaints of personal data subjects and the applicable state jurisdiction.

• Draft Government Decision on approving the Agreement concerning the exchange of information in the fight against criminality signed in Astana on May 22, 2009.

With reference to this document, which involves the creation of an interstate Data Bank in order to exchange information in the fight against criminality, the Center indicated that it is impossible to give a favorable opinion.
Thus, the draft treaty doesn`t provide clauses that would define the notions of „privacy” and „security of personal data processing”, recommendations to the security measures for processing the information massive including personal data, the processing time of these data and provisions that would require the beneficiary states of the personal data to ensure security and privacy principles similar to those provided by the conception of security policy of the data holder (in this case it is about the Ministry of Internal Affairs of the Russian Federation).

• *Draft Cooperation Agreement between EUROJUST and the Republic of Moldova.*

In particular, it was proposed that the project regulate the mechanism to ensure the compliance of the Agreement provisions regarding the personal data processing of subjects residing/situated in localities of the left bank of the Dniester river, as well as the exclusion of the provisions that establish the responsibility of the Center for any damage caused to a person as a result of errors de jure and de facto in exchanges of information with Eurojust, taking into consideration that the Office of the Prosecutor General was appointed as Moldovan authority responsible for the execution of the Agreement provisions.

• *Draft Government Decision of the Republic of Moldova ”Approving the draft law on amending and completing the Law No. 158-XVI of July 4, 2008 on public function and statute of civil servant”.*

With reference to this normative act, it was appreciated the fact that the Center’s proposals were included in the project, regarding the completion of Appendix 2 of the Law on public function and statute of civil servant and adding the functions of the director and deputy director of the Center to the list of high public functions.

• *Draft Government Decision on amending the Regulation of the Automatic Informational System “Evidence of contraventions on road traffic”.*
Chapter IV. Consultative Council

A Consultative Council by the Center has to be created, acting on a voluntary basis, according to Chapter IV of the Center’s Regulation approved through the Law no. 182-XVI of 10.07.2008 and the Article 11 (3) of the Law on personal data protection, in order to provide consultancy and assistance to the Center.\(^{42}\)

In this regard, the Center elaborated and approved on 01.06.2009 the Regulation of organization and functioning of the Consultative Council, various duties and attributions of this body being established, including:

- providing opinions and proposals in the process of drafting laws and regulations in the field of personal data protection;
- offering consultations to the Center in the area of policies dealing with the control and supervision of the practical implementation of the legal provisions on processing and transborder transfer of personal data, protection of the data subjects` rights and representing their interests in the courts;
- drawing up proposals regarding the optimization and improvement of the Center’s activity;
- detecting contradictions and providing optimal solutions for realizing the alignment of the national legislative and normative basis with international standards;
- examining particular problematic situations which are not regulated by legal or normative provisions, with the view of identifying the existing barriers and finding optimal solutions to solve them.

Taking into account that the Consultative Council’s composition, along with the chairmen of National Security, Defense, and Public Order Commission, and of the Human Rights Commission (at the moment it is the Commission on Human Rights and Inter-Ethnic Relations) of the Parliament, the representatives from the Parliament Apparatus, Apparatus of the President of the Republic of Moldova, Government Apparatus (it is now the State Chancellery), had to include representatives from central and local public administration authorities, from civil associations which act in the field of human rights protection with regard to the personal data processing, as well as qualified specialists from scientific research and higher education institutions, specialties of whom deal with the field of personal data protection, the Center undertook a range of actions to raise awareness of these institutions to delegate their representatives and appoint them as members of the Consultative Council.

At the same time, a roundtable was organised on 12.10.2009, during which it was attempted to determine, proceeding from the sphere of activity, the candidates of the civil associations’ representatives – potential members of the Consultative Council by the Center.

After approving the composition of the Consultative Council, the launching meeting of this body took place on 23.12.2009, attended by the representatives of the

\(^{42}\) The approval of the composition and drawing up the Regulation of the Consultative Council by the Center was one of the duties established according to the point 5 of the European Agenda of the Republic of Moldova – priorities for 2009, necessary to be realised till 01.06.2009.
Parliamentary Commission of National Security, Defense and Public Order, the Apparatus of the President of the Republic of Moldova, the Apparatus of the Parliament, the State Chancellery, the Office of the Prosecutor General, the Civil Association “ProDataLex” and the Center.

As a result, reiterating the importance of the personal data protection segment, the Consultative Council supported the initiative of revising the national legislation regulating the personal data protection field in order to align it to the Community Acquis, including the concretization of the Center’s competences and settlement of the contravention liability for legal norms infringement on the protection of these data, proposing as well:

- to identify the possibilities of settlement of the Automatic Informational System “Register of personal data holders” and not its manual keeping form;

- to promote the national and international image of the Center via intensification of the advertising measures of this public authority activities and public information on the rights of personal data subjects.
Chapter V. International Cooperation

1. Establishment of cooperation relations with foreign states and international institutions

After its establishment, the Center, with the support of the Ministry of Foreign Affairs and European Integration (hereinafter MFAEI), informed the Council of Europe, as well as the diplomatic missions accredited in Chisinau about the creation of the supervisory national authority and its contact details.

It is to be noted that the Republic of Moldova is the only country within the Eastern Partnership that has created a supervisory national authority in personal data protection field.

Subsequently, also through the MFAEI, demarches were disseminated to all states with which the Republic of Moldova has diplomatic relations requiring information on their personal data protection practice.

As a result of both the mentioned correspondence and the courtesy one, direct relationship with similar authorities from nine European states were settled: Albania, Bulgaria, Czech Republic, Croatia, Switzerland, Poland, Slovenia, Spain, Hungary. At the same time, normative and legislative documents from 30 states were obtained.

Also, the list of possible international conferences to participate in for the representatives of the Center was established and, in this respect, letters to authorities which hosted these events in 2009 were sent in order to obtain relevant information (Czech Republic, France, Germany, Italy, Poland, Spain, United Kingdom and USA). There were some messages to obtain information on the process of European integration in the field of personal data protection (Latvia, Lithuania and Romania).

Therefore, the Inspector General for the Protection of Personal Data of the Republic of Poland, in addition to other information about international conferences, addressed an invitation to the meeting held in Brussels and organised on 25 January 2010 for celebrating the Data Protection Day (it turned out to be impossible to attend it because of budgetary reasons) and to the Conference of the Central and Eastern Europe Data Protection Commissioners (in May, Poland). Also, the Director of the Spanish Data Protection Agency and the President of the Czech Office for Personal Data Protection have provided the information about the way of participating in the International Conference of Data Protection and Privacy Commissioners, and, respectively, in the biannual Case Handling Workshop.

In parallel, contact with Council of Europe Data Protection Commissioner was established, as well as with the Secretary of the Consultative Committee of the Convention no. 108 with regard to further participation of the Center in the sessions of this Committee.

During 2009, reports were sent on the implementation of the point 5 of the European Integration Agenda of the Republic of Moldova – priorities for 2009, according to the Center’s competences, regarding the creation of the Consultative Council by the Center and personnel hiring process.
Also, information has been submitted to the MFAEI about the achievements of the Republic of Moldova in the context of the Joint Committee Meeting on implementation of Visa Facilitation Agreement between the Republic of Moldova and the European Union, in its activity area (the implementation of the national legislation on personal data protection and creation of the data protection authority, as well as signing, ratifying and implementing the relevant international treaties).

In the same vein, the necessary information has been provided for touching upon the issue of personal data protection within the IXth Meeting of the Republic of Moldova – European Union Cooperation Subcommittee no. 3 “Customs, transborder cooperation, money laundering, drugs, illegal migration” on 23-24 November 2009 (to the Ministry of Justice), as well as within the session of the Republic of Moldova – European Union Cooperation Council on 21 December 2009 (to the MFAEI).

At the same time, in order to create the organizational framework that would allow the replacement of representatives of other public institutions, which ensured the participation of the Republic of Moldova in the meetings on personal data protection issues43, the Center requested the MFAEI to redirect to the Center the further invitations to the Consultative Committee of the Convention no.108 (T-PD) sessions.

The necessity of the Center’s participation in this forum is defined by the fact that it was nominated as the competent authority for implementing this Convention’s provisions and for the relations of cooperation with other Parties, as national supervisory personal data protection authority.

Our intention is to have the Center’s representatives participate in the 26th plenary meeting of the Consultative Committee of the Convention no.108 in 2010, after carrying out the necessary steps. This will be an opportunity to enhance the professional capacities of the Center’s personnel, to establish direct contacts with foreign similar authorities and to study the international practice, with the view of alignment of the national normative and legislative framework to European standards in the field of personal data protection.

2. Assistance Programs

Following the correspondence with the Government of the Republic of Moldova regarding the availability to consider a proposal of technical assistance project, a project idea was drawn up: “Settlement of the Automated Integrated Informational System “Register of personal data holders” (AIS) and the security provision of the National Center for Personal Data Protection”. It was drafted according to a Model Form and sent to the Prime Minister of the Republic of Moldova, in his quality of national coordinator of external assistance at the national level.

43 Before the Center’s creation, the Republic of Moldova was represented by the Ministry of Information Development (nowadays the Ministry of Information Technologies and Communications), which delegated a representative for T-PD meetings, including in 2009 (the 25th plenary meeting on 2-4 September 2009, in Strasbourg).
In the same context, the TAIEX⁴⁴ Programme application form was filled in order to obtain an opportunity for a study visit for the Center’s officials, the request being accepted by the European experts and, at the moment, the Center is waiting for a final decision of this Programme’s officials.

A support contract was signed on 17 December 2009 for offering a grant on financing the micro-project entitled: “Technical assistance for the National Center for Personal Data Protection”. This support is provided by the Ministry of Foreign Affairs of the Republic of Hungary through the Embassy of the Republic of Hungary to the Republic of Moldova, in order to ensure the Center with audio/video surveillance and access control system, office equipment and installation of the safe doors. With the view of implementing this micro-project, the Center will have to contribute from its own resources with 10,1 % of the grant offered, which is 11500 Euro, the total budget of the micro-project reaching 12665 Euro.

⁴⁴ Technical Assistance and Information Exchange Instrument of the European Commission
Chapter VI. Communication and public relations

Aware of the importance to ensure the transparency of the Center’s activity and dissemination of the establishment of this public authority as a supervisory body in personal data processing, the communication activity was one of the main priorities set in the initial phase.

In 2009, the Director of the Center participated in a TV program during which he presented the evolution and the steps of creation of the national supervisory authority, its competency and attributions, the specific features of the personal data protection field.

Also, on 28 January 2009, within the Grand Meeting on the occasion of the third Edition of the Data Protection Day in the Republic of Moldova, attended by the Deputy Chairman of the Parliament of the Republic of Moldova, the First Deputy Prime Minister of the Republic of Moldova, the Ambassador of the Republic of Hungary to the Republic of Moldova and other guests, the Center’s Administration offered a press conference discussing the main aspects of the personal data protection field and the need to focus the efforts on implementation of the European principles in the Republic of Moldova.

At the same time, 30 press releases and articles have been published, through which important aspects of the Center’s activity were promoted, being, also, initiated the activity of receiving people in audience.

The press agencies, taking over the messages and official statements of the Center, reflected the activity of the authority in 11 articles, emphasizing the novelty and importance of the personal data protection field, the rights of citizens in this area, as well as the role of the supervisory body.

In order to achieve the proposed goals and increase the public information level, it was conceived and launched, on 14 August 2009, the official website of the Center www.datepersonale.md, as an important mean of publicity in the context of development of the informational society, which had already registered over 36400 visitors.

The official website of the Center contains information on national and international legislation in personal data protection area, drafts of some normative acts, organizational structure and contact details of the Center, as well as information of public interest.

In order to increase the level of public information and awareness with regard to personal data protection, the Center organized roundtables attended both by the civil society and personal data holders’ representatives (National Bank of Moldova, Bureau of credit history, National Commission of Financial Market).

For example, a roundtable was organized on 12.10.2009, during which, apart from trying to determine, proceeding from the field of work, the candidates of the civil society representatives – potential members of the Consultative Council by the Center, a special place was given to the establishment of an effective, lengthy and productive
dialogue with the civil society. It was intended to organize a constant forum between NGOs and the Center, identifying jointly the eventual assistance projects for strengthening institutional capacities of the Center, in order to promote common objectives, to protect the rights and freedoms of individuals at the processing of their personal data, including the protection of the rights to inviolability of privacy, personal and family secrets.

Despite the fact that the Center had launched a public invitation to several civil society representatives, who initially confirmed their participation, the event was attended only by the representatives of the League for Human Rights Protection and the Human Rights Institute. This attitude arouses bewilderment by virtue of the importance of personal data protection segment in defence of human rights and fundamental freedoms.
Chapter VII. Economic management of the Center

According to the Government Decision no. 116 of 10 February 2009 „On distribution of financial means”, financial resources were allocated in the amount of 2,300,000 Lei for covering the expenses linked to the Center’s creation.

Subsequently, by means of the Law no. 82-XVIII of 03.12.2009 „For amending and completing the Law on State Budget for 2009, no. 244-XVI of 21.11.2008” the Center’s financial allocations have been reduced from 2,300,000 Lei up to the amount of 1,833,600 Lei, which represents an essential reduction of 466,400 Lei.

However, though the Center had an approved budget from 10.02.2009, there were a number of difficulties related to the hiring process of the competent staff in the Planning and Economical-Financial Department, as well as to carrying out the legal principles related to public acquisition procedures for goods and services.

In particular, the implementation of the budget allocated to the Center for 2009 is presented as follows:

Authority’s personnel costs constituted a rate of 45,1 % from the total financial means used and amounted to 828,307 Lei, including:

- work remuneration – 669,753 Lei;
- compulsory state social security contributions – 137,612 Lei;
- health care compulsory insurance – 20,941 Lei.

The expenses related to goods and services purchased by the Center represented 934,289 Lei or 50,9 % from the allocated resources, consisting of: purchasing furniture, office equipment, fuel, costs for Internet, post and telecommunications services, expenses related to maintenance of the premises used for rental, security services, current repairs and purchases of fixed assets.

Expenditures on professional training and protocol constituted 2,7 %.

As a result, the implementation of the budget was at the rate of 97, 65%.

Taking into account the fact that, during the elaboration of the Center’s draft budget for 2010, our authority was not consulted in any form by the Ministry of Finance and it was not requested the coordination or examination of this draft by the Center, we consider as relevant to propose, at this chapter, to undertake the practice of Romania, where according to the Law no. 102 of 03 May 2005 on establishing, organising and functioning of the National Supervisory Authority for Personal Data Processing, the Article 17 (2) stipulates that the National Supervisory Authority, consulting the Government, approves its own budget and submits it to the Government for including it in the state budget, and the objections of the National Supervisory Authority’s President on the draft budget, drawn up by the Government, are submitted to the Parliament for solution finding.
Chapter VIII. Plans for the future

- A very important action that the Center will continue to keep under control, according to its functional competency, is the signing and ratification of the Additional Protocol to the Convention for the protection of individuals with regard to automatic processing of personal data, as well as promoting the acceptance of the Amendments to this Convention;

- Participation in the process of negotiating the new (association) Agreement between the Republic of Moldova and the European Union, according to the field of competency;

- Participation of the Center’s representatives in international conferences on relevant issues, which will help both to promote the image of the Center and of the Republic of Moldova in general, and assimilate the international experience in order to improve the national practice in personal data protection field;

- Participation in the process of preparing the draft legislative act for amending and completing the Law on personal data protection and other acts in order to align them to the principles set by the Convention no.108 and the Directive 95/46/CE;

- Following the approval, through the Government Decision, of the “Requirements for the assurance of personal data security at their processing within the information systems of personal data”, as well as of the “Rules on the manner of manual keeping of the personal data holders register”, the Center will initiate the state registration of all personal data holders and will lead a media campaign in order for these two normative acts to be implemented by the personal data holders;

- Providing, during 2010, the necessary instructions for alignment of the processing of personal data with the dispositions of the Law on personal data protection by organizing and developing various conferences, roundtables, trainings, advertising actions intended to provide adequate informational support to the subjects and holders of personal data;

- Achieving the initiative of settlement and implementation of the Integrated Automated Informational System “Register of personal data holders” through identifying alternative financial resources.