

**NATIONAL SUPERVISORY AUTHORITY FOR
PERSONAL DATA PROCESSING**

Activity report

- 2006 -

The activity report is presented by the Romanian Senate, by virtue of art. 5 of the Law no. 102/2005 related to the setting up, organization and functioning of the National Supervisory Authority for Personal Data Processing, published in the Romanian Official Journal no. 391 of May the 9th 2005, with subsequent amendments and additions.

Bucharest

FOREWORD

The National Supervisory Authority for Personal Data Processing is facing its first activity year as independent and autonomous authority.

Its establishment during the year of 2005 started from the need of providing an adequate institutional framework for the protection of personal data, mainly regulated by the Law no. 677/2001 related to the protection of personal data processing and free circulation of such data, effective as of March 12th 2002.

At the same time, the reinforcement of the administrative capacity of the Supervisory Authority stood for a fundamental requirement of the European Commission, in the process of negotiation of the accession of Romania to the European Union's structures. The scope of personal data protection is part of the community *acquis* undertaken by Romania, especially at the chapters related to the *Free movement of services* and *Cooperation in the field of justice and home affairs*.

Whereas the importance granted to this field, the main mission of the National Supervisory Authority for Personal Data Processing during 2006 was to organize in a rapid way, allowing its full functioning in order to immediately start the implementation in Romania of the community acts related to data protection.

The short experience of this year revealed that the Law no. 677/2001, though enforced for four year, generally was familiar neither to personal data controllers, nor to data subjects whose personal data were being processed, evidence thereof being the relatively low number of notification and complaints, recorded in the period 2002-2005. For this purpose, a significant part of the activity was oriented towards public information actions, and the penalties enforced to data controllers were especially warnings and fines close to the minimum amount provided by the law.

Starting from these preliminary findings, through its short and medium term strategy, the National Supervisory Authority for Personal Data Processing proposes to increase the level of awareness of the obligations of the data controllers and of the target entities, in the context of personal data processing. We intend to use for this purpose all legal means available, so that in parallel with the variation and multiplication of the publication in newspapers, radio and TV media, to intensify the number of controls and to apply less educational penalties, but especially of obligatory nature, intended to make responsible all persons not taking into account the rights of the persons whose personal data are being processed.

Another goal proposed for the immediately following period (2007-2008) is the improvement of the staff involved in the specialized activity of the National Supervisory Authority for Personal Data Processing, including the development of programs, already started in 2006 with similar authorities of Italy and Ireland.

Special care will be paid to the active participation in international sittings dedicated to personal data protection; taking into account that based on the capacity of European Member State, Romania – through the National Supervisory Authority for Personal Data Processing – is responsible for the harmonization of the policy in the field at national level with community regulations and practices.

As consequence of this issue, there is the need to reinforce the legislative component, by initiating amendments or by adopting normative acts applicable to personal data protection field, so that the expertise acquired at European and international

level is adequately capitalized in the local activity of the National Supervisory Authority for Personal Data Processing.

In this context, I wish to underline that the right to personal data protection is assessed by the European Union as a fundamental right, enlisted in the Charter of fundamental rights, implemented at Nice in 2000, that was in fact included in the Treaty implementing a Constitution for Europe. According to this Charter, each member state must implement an independent control authority to supervise the observance of the data protection principles.

Consequently, the existence of the Romanian Supervisory Authority becomes an issue related to the constitution, having a similar regime to the People's Advocate and Constitutional Court.

This report is intended as a presentation of the main guidelines considered by the National Supervisory Authority for Personal Data Processing for the coherent development of this domain (almost unknown in Romania upon the date of the setting up of the Supervisory Authority), without proposing an exhaustive draw up of this activity from 2006.

Herewith I am hoping that the first year of Romania's in the European Union will stand for the National Supervisory Authority, I represent, an argument for the need of functioning of such an institution as fully independent entity, securing the fundamental right to intimate life, family and private life, with its corollary, the right to personal data protection.

Georgeta Basarabescu, President

Chapter I General Provisions

Section 1: Applicable normative frame

A. Law no. 677/2001 for protection of persons with regard to personal data processing and free movement of these data

The personal data protection is regulated at European level, mainly, by the Directive 95/46/EC of the European Parliament and Council dated October 24th 1995, for protection of persons with regard to personal data processing and free movement of such data, by the Directive 2002/58/EC of the European Parliament and Council related to personal data processing and private life protection in the field of electronic communication, as well as by the Convention no. 108 for protecting individuals from computerized processing of personal data, signed at Strasbourg on January 28th 1981, at the European Council.

In Romania, the Constitution of 1991 republished, guarantees the fundamental right to intimate, family and private life (art. 26)¹. Nevertheless, the right to personal data processing is not expressly regulated by the Romanian Constitution, though it is indicated by other rights, by the Treaty of Nice and the Treaty establishing the Constitution of Europe².

From the point of view of the Supervisory Authority, a future revision of the Romania's Constitution should consider to insert in the category of fundamental rights, the right of personal data protection, considering that from January the 1st 2007 Romania became a European Union member state.

Within the process of negotiation of the accession of Romania to the European Union structures, the field of personal data protection was an element of the community *acquis*, in relation to the fulfilment of the economic criteria (*Free movement of services*) and with the ability of undertaking the obligations of a member state (*Cooperation in the field of justice and home affairs*).

The provisions Of the Directive 95/46/EC of the European Parliament and Council have been transposed in the Romanian legislation on 12th of December 2001, by adopting the Law no. 677/2001 for protection of persons with regard to personal data processing and free movement of such data³ (hereinafter referred to, *Outline law* or *National law*).

One can note that the personal data protection represents a relatively new domain in the Romanian legal frame and refers to, generically speaking, to the right of the natural person of being protected the features and information revealing its identity, and also the

¹ „(1) Public authorities observe and protect the intimate, family and private life.

(2) The natural person is entitled to benefit personally, unless infringing the rights and freedom of thirds, the public order or morals.”

² “1. Any individual is entitled to the protection of personal data related to him /her.

2. Such data should be processed in good faith for specific purposes and upon the approval of the person concerned or based on another legitimate ground set forth by the law. Any individual is entitled to the right of access to the data collected about him /her and to the right of modifying such.

3. Observance of such rules will be subject to the control of an independent authority.”

³ The law has been published in the Romania's Official Journal no. 790 of 12th of December 2001 and became effective upon the same date, applicable as of March 12th 2002.

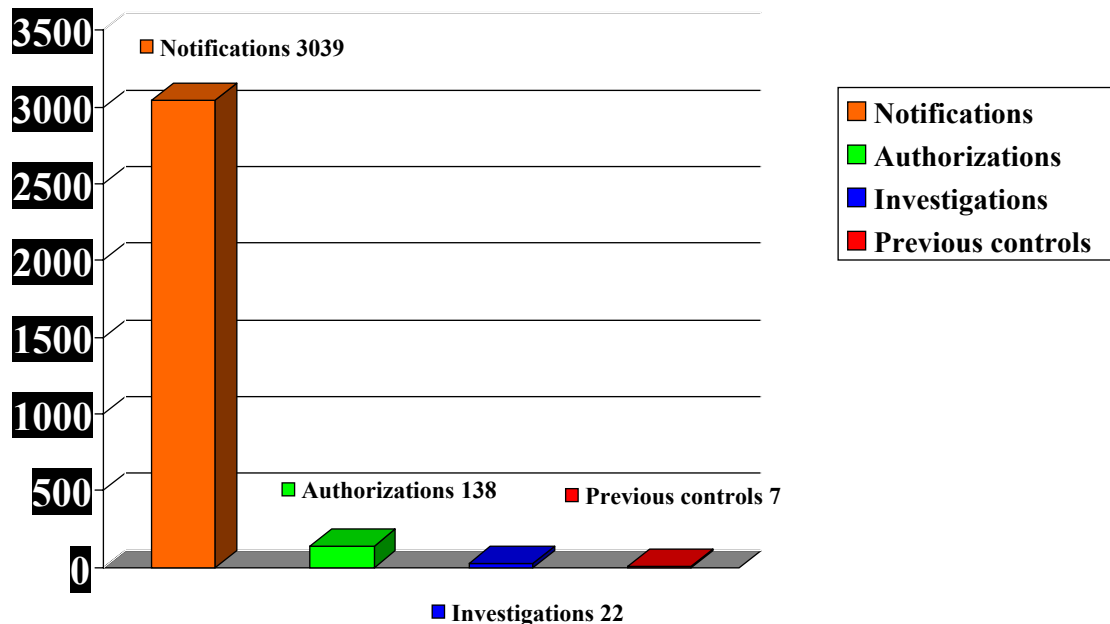
correlative obligation of the state to adopt adequate measures to provide an efficient protection of the person. This right is not an absolute right. Thus, certain restrictions or limitations can be established according to the law, such as the case of personal data processing in criminal law.

The reasons of development of this field are related to the increasing use of this type of data for commercial purposes, monitoring of man power, registration of phone calls, travel of vehicles, identification of preferences for products or services etc.

Law no. 677/2001 conferred upon the Supervisory Authority full *autonomy* and invested it with tasks related to *investigation, control and intervention, consultancy, regulation and public information*, taking over the principles set forth by the Directive 95/46/EC and considered by the experts of the European Commission who checked the fulfilment by Romania of the obligations undertaken as future member state.

The duties of the Supervisory Authority have been initially entrusted to the institution of People's Advocate, that established a group for the protection of persons with regard to personal data processing and free movement of such data, group subsequently transformed, after successive re-organization, into the Department for protection of persons with regard to personal data processing, supervised by one of the deputies of the People's Advocate.

During this period of time, respectively 2002 - 2005, 3039 notifications have been recorded, 22 investigations have been carried out, 7 previous controls and 138 permits have been issued for the transfer of personal data abroad (*see the diagram below*).



The activity of the People's Advocate that fulfilled at that time, supervisory duties, has been disclosed in complementary documents of Romania's position and in progress reports of Romania in the process of integration in the European Union. Sensing weak progress of Romania during this period of time, the European Commission requested the remedy of shortcomings by establishing an independent control authority – namely, the National Supervisory Authority for Personal Data Processing.

B. Law no. 102/2005 related to the establishment, organization and functioning of the National Supervisory Authority for Personal Data Processing

In this context, the Romania's Parliament implemented the Law no. 102/2005 regulating the establishment, organization and functioning of the National Supervisory Authority for Personal Data Processing, normative act published in the Romanian Official journal nr. 391 of May 9th 2005. According to this law, the National Supervisory Authority for Personal Data Processing has legal personality; it is an autonomous public authority and independent from any other public authority, natural or legal private entity. The independence of the Supervisory Authority is provided by its own budget, part of the state budget.

An important amendment brought by the Law no. 102/2005 is the abrogation of art. 27 paragraph (5) of the Law no. 677/2001, stipulating the need to obtain the preliminary approval of the prosecution authorities or of the competent legal court, in case the supervisory authority intended to carry out actual investigations related to personal data processing in the field of criminal law actions. The abrogation of this legal provision was recommended by the European Commission evaluation, especially at the Chapter *Justice and home affairs*, because it was considered that such a provision would influence the independent exercise of the duties of the Supervisory Authority, and also to align the national legislation to the *acquis* of Schengen and Europol.

Law no. 102/2005 legalized the status as independent authority asserted by the Law no. 677/2001, the applicable outline law, and invested its chairman with all the duties enclosing in fact the general powers of the authority.

The first chairman of the National Supervisory Authority for Personal Data Processing, Mrs. Georgeta Basarabescu, former deputy of the People's Advocate, was appointed by the Senate of Romania. The chairman such appointed took actions for taking over the activity of the People's Advocate institution and operationalization of the authority.

C. Law no. 682/2001 related to the ratification of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, signed at Strasbourg on January 28th 1981

By the Law no. 682/2001, Romania ratified the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, concluded by the European Council at Strasbourg on January 28th 1981, known as the *Convention no. 108*. According to the provisions of the law, Romania expanded the scope of application of the Convention no. 108 also to processing made by other means, except for automatic ones, if the data belong or are intended to be part of a system of records. The ratification law implemented, as additional exception to the details already set forth by the law no. 677/2001, that the scope of application of the Convention no. 108 does not refer to processing related to the data obtained from public documents, according to the law.

As a result of the amendments of the Law no. 682/2001, by adopting the Law no. 102/2005, the National Supervisory Authority for Personal Data Processing has been declared national competent authority for the enforcement of the Convention no. 108.

By the law no. 55/2005, Romania ratified the additional protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, with regard to control authorities and cross border transfer of personal data, adopted at Strasbourg on 18th of November 2001.

On the one hand, through this Protocol, the member states re-assert the importance of the control authorities actions under full independence conditions, as an element constituting the actual protection of individuals with regard to personal data processing, provided for this purpose, *the award of duties of investigation, intervention, involvement in legal procedures or bringing to the attention of competent legal authorities the infringement of the provisions related to personal data protection, solving complaints submitted by any individual in relation to the protection of its fundamental rights and liberties, with regard to personal data processing.*

On the other hand, the Protocol encompasses provisions related to the transfer of personal data to addressees to whom the provisions of Convention no. 108 are not applicable. Therefore, the transfer may take place if only an adequate protection level is provided or if the national legislation stipulates such, due to the specific interests of the interested persons or to prevailing grounded interests, such as important public interests, or in case protection measures provided by contractual provisions deemed suitably by competent authorities, in accordance with the national legislation.

It is to underline that according to all the constitutional provisions of art. 11 and art. 20, the provisions of the Convention no. 108 and of its additional Protocol, once ratified, have become part of the internal right and have priority to the national laws, in case they might encompass contradictory or more favourable provisions, in the field of human rights.

D. Law no. 365/2002 on e-commerce

Except for the duties provided by the outline law, the supervisory authority is invested with duties encompassed by information-related services.

Law no. 365/2002⁴ transposed the Directive no. 2000/31/EC related to certain legal issues about information related services, especially e-commerce on the domestic market. The purpose thereof is setting forth of the terms for supply of services to informational companies, criminal punishment of deeds committed in relation to the security of e-commerce domains, with issuance and use of electronic payment instruments as well as the use of identity data for making financial operations, in order to provide a favourable frame for the free movement and development under security conditions of these services.

Law no. 365/2002 expressly provided both the competence of the National Supervisory Authority for Personal Data Processing, and of the National regulatory Authority in Communications and Information technology, with regard to ascertaining offences in the e-commerce domain. This refers to inobservance of the obligation to previously obtain the express approval of the addressee to receive e-mail commercial notifications, as well as to inobservance of legal terms for such communications.

E. Law no. 506/2004 related to personal data processing and protection of private life in the field of electronic communication

Another regulatory decision establishing sanctioning tasks in the charge of the Supervisory Authority, is the Law no. 506/2004⁵. This transposed the Directive 2002/58/EC of the European Parliament and European Council related to personal data processing and protection of the private life in the field of e-communications.

⁴ Republished in the Romanian Official Journal no. 959 of November 29th 2006

⁵ Published in the Romanian Official Journal no. 1101 of November 25th 2004

Law no. 506/2004 guarantees the personal data protection taken over from suppliers of electronic communication public networks, e-communication service suppliers destined to the public, added value service suppliers and registers of subscribers' suppliers. The law comes in addition and to customize the legal frame set forth by the Law no. 677/2001, at the e-communication specific sector.

According to the Law no. 506/2004, certain contraventions⁶ have to be found by the control staff authorized by the People's Advocate, based on the Law no. 677/2001. Considering the taking over of duties and activity of personal data protection in the charge of the National Supervisory Authority for Personal Data Processing by the law no. 102/2005, the provisions of this regulatory decision are implicitly deemed amended.

The law stipulates the obligation of the service suppliers in the field of e-communications to adopt a series of measures able to guarantee the confidentiality and the security of network communication, intended to protect the personal data such processed. The National regulatory authority in Communications and Information Technology is liable for the establishment of security conditions, and the National Supervisory Authority for Personal Data Processing is in charge with the control of confidentiality of communications.

In order to set forth joint cooperation lines in the efficient enforcement of the Law no. 506/2004, the supervisory authority initiated actions for the conclusion of a protocol of cooperation with the National Regulatory Authority in Communications and Information Technology.

Considering the legal competence of the Supervisory Authority, to guarantee the right to intimate, family and private life, acknowledged by the Romania's Constitution to **natural entities**, there is the need to amend art. 12 (4) of the Law no. 506/2004, in order to allow the enforcement of contravention penalties by the Supervisory Authority if only commercial communications are sent to natural entities, and not legal entities.

Section 2: Activity of the Supervisory Authority for the period October-December 2005

After the appointment of the chairman of the Supervisory Authority, legal actions have been initiated for the management and commissioning thereof. In this context, much effort has been directed to the operationalization of the activity and preparation of support of all achievements in the field of data protection before the evaluation experts at Chapter *Justice and home affairs*, mission that would take place on December 6th 2005. The priorities for this period referred to:

A. adopting the Rules for organization and functioning of the Supervisory Authority;

⁶ Special contraventions found by the Supervisory Authority, regulated by art. 13 of Law no. 506/2004, are established for the following: interception and supervision of communication and related traffic data; storage of information in terminals of subscribers or users, inobservance of the legal conditions; infringement of data processing conditions, conditions for issuance of detailed invoices; inobservance of availability of means to hide the identity or reject calls, as well as failure of informing the public about such means. Contraventions are also considered the processing of localization data, other than traffic information; blocking the automatic re-direction of calls; inobservance of the conditions of drawing up subscriber registers, conditions allowing commercial communication by using automatic call systems independent of human data controller actions, by fax or e-mail or any other method using public e-communication services.

B. taking over of the activity specific to data protection from the People's Advocate;

C. development of the evaluation duties in the field of data protection dated December 6th 2005.

A. Adopting the Regulation for organization and functioning

As priority of operationalization, the chairman of the Supervisory Authority forwarded to the Permanent Office of the Senate the draft of the Regulation of organization and functioning of the National Supervisory Authority for Personal Data Processing. This was adopted by the Decision of the Permanent office of the Senate no. 16/2005, on November 2nd 2005.

The structure of the Supervisory Authority encompasses four specialized departments, mainly, in providing the implementation of the provisions of the Directive 95/46/EC, in accordance with the provisions of the national legislation in the field of personal data processing:

- a. Service of Data controllers and data processing (record and analysis of notifications filed by personal data controllers);
- b. Investigation service (controls, investigations, solving complaints and notifications);
- c. Office of Permits issuance (issuance of authorizations for the transfer of data abroad and for health related data processing);
- d. European Integration Office and International Relations (harmonization of the internal legislation with the community legislation, foreign relations activity).

The financial economic, administrative and staff related activity is managed the Economic and Human resources division, and court representation as well as draw up of endorsements, opinions, recommendations, issuance of decisions, public and mass-media relations fall in the competence of the Legal and Communication Office.

B. Taking over the activity specific to data protection from the People's Advocate

Along with the establishment of the structure of the Supervisory Authority actions have been started for the fulfilment of legal obligations arisen from taking over the data protection activity from the People's Advocate.

The official take over of this activity was delayed by the implementation of the Government Emergency Ordinance no. 131/2005 (on September 22nd 2005, published in the Romanian Official journal no. 883 of October 3rd 2005), according to which, the People's Advocate had to run the surveillance and control activity in the field of personal data protection, from the date of enforcement of the Government Emergency Ordinance no. 131/2005 until December 31st 2005, published in the Romanian Official Journal no. 1061 of November 28th 2005.

In exchange, *The comprehensive monitoring report for Romania*, made public by the European Commission on October 25th 2005, draw the attention over the need of efficient operationalization of the National Supervisory Authority for Personal Data Processing. During this period, the data processing activity was conducted under the methodological monitoring of the chairman of the Supervisory Authority, appointed by The Senate of Romania, though the specialized staff continued to remain under the disciplinary and financial authority of the People's Advocate.

The finishing of measures for taking over the activity of personal data protection from the people's Advocate had to meet a really short time interval, considering that for the period 6-7 December 2005, when a mission of evaluation by the European Commission - at the Chapter *Justice and home affairs*, in the field of personal data protection - were to assess the progress recorded in this field, by the newly established authority. In this context, the chairman of the Supervisory Authority established the priorities of its activity on short term, aiming at the following goals:

- a. Obtaining a suitable office;
- b. Taking over of the staff, archives and other records from the People's Advocate and, implicitly, the data protection activity;
- c. Obtaining enough resources in the purpose of funding the activity of the Supervisory Authority.

Since no office for the National Supervisory Authority for Personal Data Processing was identified, it exercised its duties in the offices previously made available to the People's Advocate Institution, by the Romanian Government, including for the division specialized in the field of personal data protection.

For the purpose of settling legislative issues related to the operationalization of the Supervisory Authority, an emergency ordinance has been adopted under no.163/2005, which established the transfer of the activity to the newly established Supervisory Authority December 1st 2005, prior the mission of evaluation of December 6th 2005. By the same emergency ordinance, the management board provided that, after December 1st 2005, the supervisory authority may lease a suitable building on the real estate market, all costs related to this, as well as the costs for other equipment related to its functioning being provided by assignment of funds from the budget of the People's Advocate and by the Budget reserve fund available to the Government.

Under such circumstances, the staff taken over from the people's Advocate prepared the documentation necessary for the mission of evaluation of December 2005.

C. Mission of evaluation of the data protection field of December 6th 2005

This mission was focused on the activity developed by the People's Advocate for the period 2002-2005 (where it also fulfilled supervisory authority tasks), as well as measures taken by the National Supervisory Authority for Personal Data Processing, as a result of the appointment of this Authority's chairman (September – November 2005). The experts of the mission of evaluation examined the stage of operationalization of the National Supervisory Authority for Personal Data Processing, established in May 2005 by the law no. 102/2005, as well as the manner of fulfilment of its the tasks, including priorities established for the beginning of 2006.

The supervisory authority was represented in negotiations by a delegation consisting in chairman and heads of specialized structures.

The operationalization of the National Supervisory Authority for Personal Data Processing was presented by highlighting adequate measures related to:

- adopting the organization and functioning regulation;
- taking over the activity, the archives and the specialized staff from the People's Advocate;
- existence of financial resources for 2006;
- recovery of outstanding debts recorded in the *Plan of priority actions for European integration November 2004-December 2005*, by setting forth organization measures,

contests for filling in the vacant jobs in the chart of the Supervisory Authority and by informing the public on the topic of personal data protection, including by participating for one hour in a TV show;

- including in the state budget draft for 2006 the budget of the Supervisory Authority with a total of revenue amounting to 4.651.000 lei.

With regard to the fulfilment of the tasks of the Supervisory Authority, the European experts considered the special situation of the Authority on December 6th 2005, i.e. only a few days from the publication of the Government Emergency Ordinance no. 163/2005, so that priorities established by it for 2006 have been carefully examined.

In this context, the evaluation mission has welcome the establishment of an autonomous authority, separate from the People's Advocate, as well as all actions started by it in view of. The following positive aspects have been noticed:

- 1) support granted by the Romania's Senate and Government, by providing the necessary financial resources and by adopting the organization and functioning regulation allowing the operationalization of the Supervisory Authority;
- 2) the existence of priorities and clear activity objectives for the year 2006;
- 3) the intention to fill in the jobs with young staff, but with expertise in the field of personal data protection ;
- 4) training of the staff by professional exchanges with other European Union Supervisory Authorities;
- 5) intention of developing public information activities.

The European experts encouraged the representatives of the authority in the purpose of increasing the level of implementation of the data protection legislation and of the degree of information of the public with this regard. They manifested their availability to provide the necessary support for the implementation of the objectives established by the supervisory authority, including by contacting TAIEX⁷, to grant specialized assistance. For this purpose the mission of evaluation recommended the following:

- a) setting forth simplified procedure rules related to registration of notifications, especially by using computer equipment ;
- b) standardization of notifications and data processing records in electronic format;
- c) setting forth simplified procedure rules related to authorization of the transfer abroad and settlement of complaints;
- d) significant increase in preliminary control actions and investigations;
- e) regulating the control procedure;
- f) necessity to adopt disciplinary codes according to the specific of data controllers' activity;
- g) Underlining the role of informing the public about the authority's duties and activity, including by organization of seminars in the territory;
- h) making professional exchange programs with similar authorities of the European Union.

The findings and recommendations of the European experts were covered by the report presented after the mission of evaluation of December 2005. The first positive remark of the report's conclusions, considered to be one of the advantages of the newly established Supervisory Authority, refers to its staff, young, motivated, with expertise in

⁷ Technical Assistance and Exchange of Information Office at the European Commission

the field of data protection and is prepared to start a new activity in the field. The importance of this aspect considering the huge amount of work of the authority for the following months. Based on such assessments and recommendation, the supervisory authority drawn up a strategic program of actual actions for 2006, focused on the following types of activities:

I. Actions for operationalization;

II. Implementation actions;

III. Actions for informing the personal data controllers and persons concerned.

I. Operationalization actions. The supervisory authority aimed at developing certain actions for the purpose of reinforcing the administrative capacity, through:

- providing an office;
- organization chart;
- computing technique purchase;
- specialization and improvement of the staff.

II. Implementation actions according to the national legislation, in compliance with the community legislation, through:

- improvement of the Supervisory Authority activity, in view of implementing the *acquis* in the field of data protection;
- the significant increase of preliminary control actions and investigations;
- simplification of procedures for notification and registration of personal data controllers;
- simplification of procedures for authorization of personal data transfers,

III. Actions of information of personal data controllers and concerned persons. Communication actions in this field have been foreseen, addressed to personal data controllers and concerned persons. The following types of actions have been considered:

- seminars at the head office and on the territory (with the support of prefect's institutions);
- collaboration with professional associations, in order to adopt disciplinary codes;
- the official site of the authority – www.dataprotection.ro;
- radio-tv shows;
- communications and press releases;
- editing of informative materials (leaflets, brochures);
- call centre operation;
- planning for the next period of professional exchanges with personal data protection authorities.

From the point of view of **international relations**, we must mention that for the period 23-24 November 2005, the National Supervisory Authority for Personal Data Processing was represented for the first time (as observer) at the meeting of the Work Group established based on art. 29 of the Directive 95/46/EC, assembled in Brussels, Belgium, representatives of personal data protection authorities in the European Union. Mrs. Waltraut Kotschy, Data protection commissioner of Austria and chairman of the assembly publicly addressed the welcome of Romania in the Work Group.

During the meeting, the delegation of the Supervisory Authority discussed with the representatives of the European Commission and with the representatives of the several European states, presenting them the legislative evolutions in Romania in the field of personal data protection and the stage of operationalization of the National

Supervisory Authority for Personal Data Processing. The representatives of the similar European authorities of the European Union manifested their availability to support the new data protection authority of Romania, including by making professional exchanges.

Section 3: Activity of the Supervisory Authority for the period January-March 2006

Based on the program drawn up as a result of the evaluation mission of December 2005, the supervisory authority started, for the immediate following period, a series of actions in the purpose of effective operationalization of its activity and in order to recover the delays found by the European Commission. The three directions of action examined by the European experts upon the evaluation mission have been followed up.

a. Operationalization of the Supervisory Authority.

For the purpose of operationalization of the authority, a suitable office has been identified, located at the address 32 Olari Street, sector 2 of Bucharest, which has been leased starting with February 1st 2006. The Authority benefited from the Government support that supplemented the budget of the Supervisory Authority from the Budget reserve fund available to the Government.

The legal procedures for setting up the Authority's office have been made urgent, as well as the purchase of furniture, computer equipment and additional computer networks for providing the suitable equipment of the new office.

The reinforcement of the administrative capacity was made also by the completion of the organization chart, and it, both new employee and already existent, has been involved in the organization of periodical internal discussions, intended to improve the level of knowing the applicable legislation and practical implementation of the data protection principles.

As well, in January and February 2006, exchange of expertise with similar institutions of Italy, Spain and Hungary took place, revealing a special promptness in supporting the new Romanian Supervisory Authority in order to fulfil the functionality requirements and level of implementation, according to the community *acquis*.

b. Implementation of the specific legislation.

Though organization difficulties existed during this period, specific to the operationalization of the Authority, in view of implementing the data protection legislation, in the period January-February 2006, the control activity grew three times from the period September-December 2005. As a result of the investigations performed, the measures established by the national legislation in the field have been taken such as: sanctioning with warning (in 4 cases), sanctioning with fine (in 4 cases), the recommendation of adopting measures to inform the concerned persons and security of data processing (in 9 cases). As well, based on the complaints received for the previous period, the criminal prosecuting authorities have been informed (in 5 cases). A part of investigations arose from the annual plan approved for 2006, related to the processing of data through video surveillance means.

In order to regulate the internal development conditions of activities related to legal competences, control and investigation procedures have been drawn up, of claims' settlement, analysis and registration of notifications, as well as issuance of authorizations.

By implementing the recommendation of the European evaluator experts given December 2005, protocols have been signed for cooperation with the General Inspectorate of the Romanian Police and with the National Authority for Consumers'

protection. As well, negotiation procedures and signature of similar protocols with other control authorities have been started (National Audiovisual Council and the National Communication Statutory Authority).

For the purpose of making a electronic records of notifications sent to the Supervisory Authority in January – February 2006 have been started all public purchase procedures for a software allowing for the management of documents and, subsequently, the on-line registration of notifications, at European Union standards level.

c. Information and popularization.

As evaluator experts found, the legislation related to data protection is little known in Romania. Therefore, for the period January-February 2006, part of the efforts of the supervisory authority directed towards the increase of the level of information of the public.

For this purpose, at the main office of the Supervisory Authority were organized seminars with representatives of data controllers running their business in the field of real estate agencies and phone services, has been designed and launched the official site of the authority (www.dataprotection.ro), have been printed informative materials (leaflets, brochures) – distributed in public places and a call centre has been commissioned for guidance related to the applicability of the legislation. During this period hearing sessions have been initiated at the office of the Authority.

At external level, the supervisory authority took part, for the period 31 January - February 1st 2006, in the 54th assembly of the Work Group *Art. 29* (Brussels, Belgium), on this occasion, having the possibility to continue the collaboration relations during the previous session and to initiate making professional exchanges with similar authorities of other member states.

Section 4: The activity of the Supervisory Authority for the period March-December 2006

During the period 9-10 March 2006 the last evaluation mission of the European Commission took place, at Chapter *Justice and home affairs*, that included also the field of personal data protection.

This evaluation mission took place at the new office of the Supervisory Authority. The European experts could ascertain the actual conditions of staff performance, the manner of reception of data controllers and persons concerned by the specialists in the field of data protection, the manner of organizing the guiding activity and call centre.

The experts of the evaluation mission carefully examined all the materials made available by the Authority's management, both in Romanian and in English, asked questions about the harmonization of the national legislation with the community legislation, asked information about the competences of the Authority in the field of police and justice. During the evaluation, progresses made by the supervisory authority during the three months of activity from the last mission have been assessed and it was found that all recommendations at that date have been considered.

Consequently, it was positively assessed the existence of the new office of the Authority, providing a suitable space for the staff (52 persons), as well as the fact that the organization chart was already entirely filled in (51/52 jobs, except for the vice-president position).

According to the final evaluation report, the experts noticed the progresses of implementation of the specific legislation, by setting forth the administrative procedures

on fields of activity and detailed Plan of actions for 2006 at Authority level. The experts found that notification forms have been drawn up in order to welcome the data controllers.

Another aspect considered by the European experts as positive fact is the investigation activity developed by the Authority. Attached to this activity, the signature of cooperation protocols with the National Authority for Consumers' protection and with the Romanian General Police Inspectorate have been signed, for making efficient on-site investigations and to obtain information related to the infringement of provisions related to data protection. The procedure applied in making investigations has been a solid one, by priority making, on-site controls, as to the "on-office" inspections, through correspondence. Though the written investigations are not excluded, the administrative procedure concluded at the supervisory authority recommends its use in subsidiary, in case the available information proves to be insufficient to solve the case.

With regard to the information and publicity made by the Authority, for the analyzed period have been noticed the actions for the site operationalization (www.dataprotection.ro) and detailed programme of seminars with data controllers, foreseen for 2006.

Within the mission of evaluation, the supervisory authority hosted representatives of the Ministry of Administration and Interior and of the Romanian Information Service. They presented the evolutions in the field of JAI (*Justice and home affairs*) concerning personal data protection in their field of activity. On this occasion, the representatives of these authorities referred to the package of laws related to national security that would implicitly abrogate art. 2 para. (7) of the Law no. 677/2001⁸ and will allow to the Supervisory Authority to control the processing in the field of national defence and security, issue welcome by the European Commission experts.

In conclusion, *the findings of the evaluation mission have been favourable, retaining that the supervisory authority took important steps in order to obtain the operationalization and that many of the recommendations of December 2005 have been considered and are under implementation stage.*

At level of recommendation, it was underlined the need to remedy the current situation related to national defence and security services, whose data processing are not falling under the incidence of the Data processing law (according to art. 2 paragraph (7) of the Law no. 677/2001).

It was also recommended to set forth - by the law no. 677/2001 – certain criteria related to the limitation of the amount of the fee required by the data controllers from concerned persons exercising the right of access for more than once per year, in order to prevent the transformation of this fee into a discouraging measure for citizens.

Another aspect that needs clarification, in the experts' opinion relates to passing from the old system of notification to the new one, through imposing the obligation to re-notify all data controllers, using the new standard forms approved by the Authority, that would allow a clear image of the existent situation upon the entering into force of the new provisions.

In order to stimulate the activity related to securing the rights of the concerned person and spread of information related to the activity and duties of the Authority, it was

⁸ "(7) This law does not apply to personal data processing and transfer, made within the national defense field and national security, ran within the limits and restrictions established by the law."

considered important to continue the distribution of the information through the press in general, of organization of press conferences and editing of an informative bulletin.

The goals established by the supervisory authority for the immediately next period after the last mission of evaluation aimed at three main directions:

- reinforcement of the administrative capacity;
- efficient implementation of the national legislation, in accordance with the community *acquis*;
- informing the public with regard to the specific legislation.

An important component of professional exchanges with specialized authorities of the European Union was the participation of the representatives of the regional and international conference authorities, as well as in periodical assemblies in Brussels, of the Work Group (WP) Art. 29.

We consider that all the actions started by the supervisory authority have led to the successful achievement of the negotiations of access to the European Union, as far as data protection is concerned. Therefore, the last *Monitoring report* made public by the European Commission on May 16th 2006, at the Chapter related to *Free movement of services* and Chapter *Justice and home affairs*, it was assessed the **“important progress of Romania in the field of personal data protection”**.

At the same time, the European Commission noticed the improvement of implementation of personal data protection rules and significant improvement of the administrative capacity of the Supervisory Authority during the five months before adopting the report.

We underline that at the basis of building the strategy of the Supervisory Authority for 2006 was the plan of actions prepared in December 2005, whose goals were almost entirely fulfilled by December 31st 2006.

The achievements of the Authority's activity, as well as the future plans are broadly presented in the chapters covered by this report.

Chapter II

Supervisory and Control Activity of the Authority

The sections of this chapter approach specific issues related to the fulfilment of the main legal duties of the Supervisory Authority, concerning the registration and analysis of notifications, authorization of transfer of personal data abroad, making investigations and solving complaints.

During 2006 special care was paid to the activity of registration of notifications. New types of forms have been implemented, for their fill in a special guide has been developed. By means of the correspondence with the data controllers during the administrative procedure of registration of personal data processing, a permanent informing activity was conducted.

At the same time the investigations carried out during 2006 with the employees of the Supervisory Authority, the guidance of data controllers with regard to legal obligations was achieved in providing the legality, the confidentiality and security of processing operations.

Another activity of the Supervisory Authority was the settlement of complaints received from data subjects, that claimed various infringements of the Law no. 677/2001. The weight of complaints is although reduced in the total of the whole volume of activity of the Supervisory Authority.

Section 1: General

1. Registration of notifications

1.1. The procedure for recording notifications

The legal ground of registration of personal data processing operations is art. 22 of the Law no. 677/2001, according to which the data controller must, prior processing of set of processing with the same correlated purpose, notify these activities to the Supervisory Authority.

According to the provisions of Law no. 476/2003, the notification was, for the period covered by this report, subject to a tax, amounting to 100 lei for natural entities and 1000 lei for legal entities. In the case of transfer of data abroad one had to pay, except for the fee for notification, a transfer fee amounting to 1500 lei. All taxes provided by the Law no. 476/2003 represented income to the state budget and were paid to the State Treasury, in whose territorial area the data controller resides or has the tax office.

Persons exempted from the obligation to pay the fee were public authorities, such as defined at art. 2 of the Law no. 500/2002 concerning public finances, as well as retired persons, students, pupils and unemployed.

The notification is recorded in the personal data processing register, available to the public. It represents one of the most important means of information of persons about data processing.

In view of facilitating the declaration of data processing made by data controllers, in 2006 the Authority has drawn up two notification **forms** referred to as F1⁹ and F2¹⁰.

⁹ Form F1 can be filled in as "General Notification" (including the sections related to the transfer abroad of personal data) or "Simplified notification", case in which only certain sections are filled in.

¹⁰ Form F2 is filled in for personal data processing made by certified public authorities to conduct preventive actions, research and repress of offences and maintain of public order, as well as other activities

These were approved by the Decision no. 60/2006, concerning the set up of standard forms of notifications provided by the Law no. 677/2001.

At the same time, in applying the provisions of art. 22 paragraph (9) of the Law no. 677/2001, amended and added, The supervisory authority issued the Decision no. 91/2006 concerning the situations allowing the simplified notification of personal data processing.

Notification forms have been made available to the interested persons at the office of the Supervisory Authority and on their site (www.dataprotection.ro), in electronic format “.doc” and “.pdf”. Another possibility to obtain forms, especially for the public authorities and local institutions, is provided by the Official Journal no. 507 of June 12th 2006 either by the electronic legislative agenda, wherefrom the form can be downloaded.

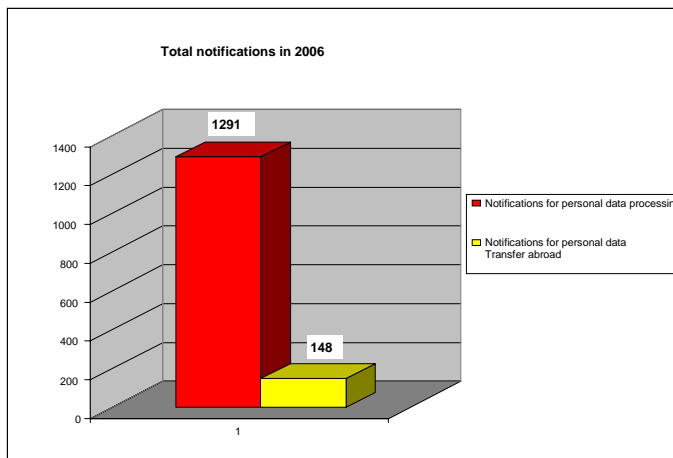
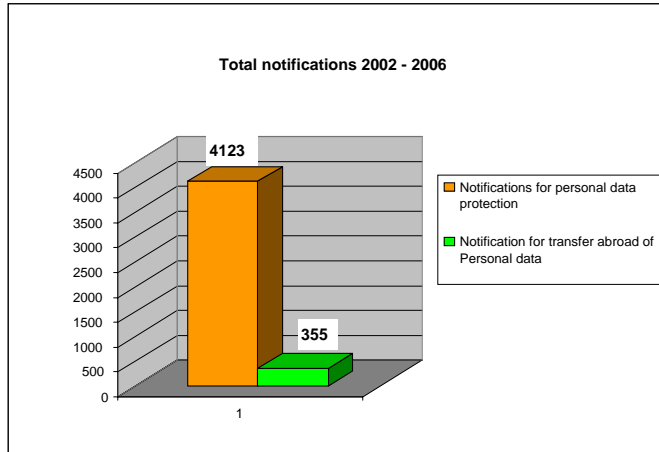
Notification forms have been sent to data controllers both at the seat of the authority and on the territory, within the national information company.

Moreover, in order to assist the data controllers, the supervisory authority has drawn up a *guide for filling in notification forms*, providing for each section, information about filling them in. At the same time, the Guide was made available to interested persons free of charge, at the authority’s seat, as well as on its site.

On the web page there is a section of ”Frequently Asked Questions”, intended to inform natural and legal entities that must observe the provisions of the Law no. 677/2001 explaining a series of legal terms and details providing for a clearer understanding of the legal provisions in the field.

Specialized staff provided the information of data controllers about how to fill in the notification, by means of consulting services provided at the Authority’s seat, through the call centre department, as well as on the occasion of local seminars.

Nevertheless, data controllers sent to the Supervisory Authority inadequately filled in forms, which led to the development of a consistent activity of analyzing notifications and written clarification of the problems.



1.2. Aspects arisen from filling in notifications

The way data controllers understood to fill in notifications engendered various problems, clarified in the process of analysis and registration of notifications.

Often it was requested the opinion of the Supervisory Authority with regard to the fact whether transmission of notification for each personal data processing case is requested. In this context, according to the master law, a notification aims only at declaring, generically, the personal data processing activity in a certain field, by a legal or natural entity.

From the point of view of mentioning the *identification data* of data controllers, divergences related to their names have been found, especially for public services without legal personality, responding to the local public authority.

Another frequently arisen problem was that, though the law stipulates that any legal or natural entity, of private or public law, may be data controller (public authorities, public institutions and territorial structures thereof included), setting forth the purpose and the means of personal data processing, without legal ground, and assumed the role of data controller.

It was found out, at the same time, that data controllers erroneously establish *the purpose* of processing, or that the purposes declared in the notification are not correlated. In order to avoid such situations, the notification form approved by the supervisory

authority highlighted several purposes, according to the main activity object of the data controller, having the possibility to choose one or several correlated purposes.

The supervisory authority underlined that the data controller has the legal obligation to, upon data collection, communicate to the concerned person *the information* provided by art. 12 of the Frame-law.

The information of the person concerned will be made in compliance with the purpose of processing, nature of data processed and means of processing. Verbal information is allowed if only, considering the circumstances of processing, there if impossible to achieve one of the other modalities highlighted in the notification form (in written, by posting or web page). In order to facilitate the choice of one of these options, the supervisory authority made available to data controllers a series of models of information notes, in the contents of the Guide for filling in notifications.

As far as processed data are concerned, there were data controllers who notified the collection of data and excessive data categories in relation to the purpose of processing or that had no relevance for the activity of the data controller. For direct marketing purposes, for instance, it was excessively collected the personal number of the serial and number of the identity document from **all** participants in contests or promotions and not only from validated winners. According to special rules in financial accounting field, the request of data from the ID card is necessary for the award of prizes.

Special data are the ones related to race or ethnical origin, political, religious, philosophical or similar beliefs, belonging to unions, as well as health condition or sexual activity of a person. This class encloses the data related to criminal offences or contraventions, disciplinary sanctions, as well as the ones the criminal record. In relation to declaring such class of information various errors were underlined. For instance, the data concerning *nationality or ethnical origin* have been mistakes for the date related to *citizenship*, that do not fall under the class of special data.

In personal data processing activity emerged situations when the data controller wither communicates or *discloses* certain data or classes of data of other entities. Public authorities to whom personal data are communicated within a special investigation competence cannot be deemed addressees.

Such as indicated, the consent of the concerned person represents one of the *securities* based on which personal data can be disclosed. Other guarantees based on which the data can be disclosed are: normative rules based on which the data controller runs its activity and must communicate the data, the confidentiality obligations /clauses or observance of the professional or business secret contained by a contract or another document and that must be kept secret by the persons having access to personal data.

With regard to the *duration* of processing, the supervisory authority noticed that a series of data controllers erroneously assessed the date of personal data processing operations, indicating in the notifications sent for a short period of time (24 hours, one month etc.) that, in fact, does not comply with the reality, considering a singular processing case, and not the whole of data processing in its activity.

In the case of notifications not containing the express consent of the concerned person to another *destination* of data or for a subsequent processing, upon the completion of processing, the data can be destroyed, erased, archived, according to legal provisions. Moreover, the data can be transferred to another data controller, provided that the data controller initially guarantees that the third parties processing have similar purposes as

the initial processing or can be converted into anonymous data and exclusively stores for statistical purposes, historical research or scientific research.

With regard to storing the data, there are public authorities and institutions that must keep personal data documents for a period of time, according to the terms established by lists based on Law no. 16/1996 concerning national archives, amended and added; thereafter certain documents are destroyed and other are sent to the National Archives. Sometimes, though, these data controllers forget to consider that, at a first stage, the destination of the data is to be "stored", and after due term, according to archive records, to be destroyed, erased, converted into anonymous data or transferred to third parties.

In the case of data processing by automatic and /or non-automatic means, the data controller must protect the data against destruction, loss, modification, disclosure or unauthorized access or against any other type of illegal processing. For this purpose the data controller must establish a security policy, covering suitable technical and organizational measures.

At the same time, it was found that there are deficiencies in accurate identification of the type of *recording system* used by data controllers and of processing *operations* of personal data, which are taken into account by the supervisory authority in case a preliminary control or on site investigation is required.

When the processing of data received are exclusively made for *journalism, literary or artistic purposes* or *statistics purposes, of historical or scientific research*, exceptions may be applied concerning: the provision of the right to information of the concerned person or lack of obligation to inform the person involved, when the information is not directly obtained from it; the absence of the consent of the persons whose data are being processed; the lack of obligation to destroy it, to transfer the data to another data controller or to make them anonymous data, upon the conclusion of processing operations; the communication of the requested information by the person concerned in exercising the right of access, within more than 15 days.

The supervisory authority approached all problems or a deficiency found in the process of recording of notifications and tries too identifying adequate solutions for a better guidance of the data controllers, in order to facilitate the understanding of legal provisions in the field and to contribute in the efficient protection of the rights of the persons concerned.

2. Transfer of personal data abroad

2.1 Legal conditions of the transfer

The transfer abroad of personal data represents a special processing of personal data and the conditions of such action are covered by Chapter al VII of the Law no. 677/2001, amended and added. The two law articles dedicated to data transfer abroad - art. 29 and art. 30 – represent a quasi – identical take over of the provisions of art. 25 and art. 26 of the Directive 95/46/EC.

Therefore, based on community principles of the Directive 95/46/EC, transposed into the Law no. 677/2001, amended and added, a series of rules and exceptions with regard to data transfer abroad has been set forth.

The general rule, mentioned at art. 29 paragraph (1) of the Frame-law, established that the data transfer can be made if only two conditions are met: unless the Romanian

law is violated and if the state intending the transfer provides an adequate protection level.

The assessment of the adequate protection level by the Supervisory Authority is done according to all circumstances of the data transfer, especially considering the nature of the data transmitted, the purpose of processing and the duration proposed for processing, the state of origin, the final destination state, as well as the legislation of the requiring state.

After the access of Romania to the European Union, the level of personal data protection is deemed *adequate* in the member states of the European Union, respectively in the states of the European economic area, i.e. Island, Liechtenstein and Norway, as well as in the states for whom the European Commission recognized a suitable protection. Therefore, by decisions issued based on art. 25 paragraph (6) of the Directive 95/46/EC, the European Commission recognized a suitable protection level in Argentina, Canada, Switzerland, Guernsey, Isle of Man and United States America (in cases an USA data controller, addressee of the data transferred from the European Union, adhered to the principles Safe Harbor).

The decisions of the European Commission, aforementioned, have been implemented in Romania by the decisions of the Supervisory Authority's chairman, issued at the end of 2006.

The transfer of personal data to a state whose legislation *does not stipulate a level of protection at least equal to the one provided by the Romanian*, can be authorized by the Supervisory Authority *if only* the data controller exporting the data, has sufficient guarantees with regard to the protection of fundamental rights of the persons. Such guarantees must be conferred through *contracts* concluded between the data controller exporting the data and the addressee abroad of the data (importer) that must contain sufficient guarantees or the contractual standard clauses.

Such contracts can be concluded based on art. 29 paragraph (4) of the Law no. 677/2001 and on the secondary legislation in force in the field, that implements the decisions of the European Commission. In this sense, the secondary national legislation is represented by two normative documents (decisions of the chairman of the Supervisory Authority) that established standard contractual clauses in the case of personal data transfer to an *data controller* resident in a state whose legislation does not stipulate a protection level at least equal to the one provided by the Romanian law and respectively, by an *agent* resident in a state whose legislation does not stipulate a level of protection at least equal to the one provided by the Romanian law.

At the same time, in the case of personal data transfer to a state *not providing* a suitable level of protection, art. 30 of the Law no. 677/2001, amended and added, regulates a series of exceptions from the rule covered by art. 29 paragraph (1), as follows:

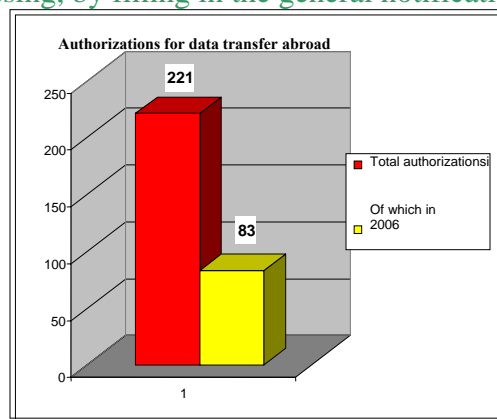
- if the person concerned explicitly and undoubtedly gave the consent, and in case of transfer of special data, in written form;
- if it is necessary for the execution of a contract concluded between the data controller and the person concerned or for the execution of pre-contractual measures ordered by the concerned person;
- if such is necessary for the conclusion or execution of a contract concluded or that is to be concluded between the data controller and a third, in the best interest of the concerned person;

- if such is necessary to meet a major public interest, such as national defence, public order or national safety, for the good development of criminal proceedings or for finding, exercising of defending a right in court;
- if such is necessary for protecting the life, the physical integrity or the health of the concerned person;
- when it intervenes as a result of a previous request of access to public official documents or information that can be obtained from ledgers or any other documents available to the public.

In all excepted situations above, the personal data transfer to another state must be the object of a preliminary notification of the Supervisory Authority, according to art. 29 paragraph (3) of the Law no. 677/2001, amended and added. The only two exceptions from the obligation of notification are provided by art. 29 paragraph (5) and (6) of the Law no. 677/2001, as follows:

- in case the transfer is made based on special laws or another international agreement ratified by Romania, especially if the transfer is made in the purpose of preventing, investigating or repressing an offence;
- in case data processing is made exclusively for journalism, literary or artistic purposes, if the data have been made public by the person concerned or are closely related to the capacity of public person or by the public nature of the deeds such person is involved in.

One must mention that, after the access of Romania to the European Union, the free circulation of personal data in the European space is guaranteed, therefore the authorization of data transfer to European Union member states and European Economic Area is no longer necessary, being enough to declare them, according to the rules applicable to data processing, by filling in the general notification form F1.



2.2 Practical issued concerning the declaration of the personal data transfer

The analysis of notifications submitted by data controllers often revealed that the sections of the notification form related to data transfer abroad cover incomplete or inaccurate information.

The data controllers failed to indicate all classes of persons concerned whose data are being transferred abroad, such as revealed by the data collecting documents. With regard to the information of the person concerned, we must mention that in certain cases no information with regard to the transfer of data abroad are collected directly from the concerned person, by means of forms filled in by it, the data controllers must meet the

legal obligation of informing with regard to the transfer, mainly, through the data collecting document.

During 2006 the supervisory authority made serious efforts to guide the data controllers transferring data abroad for establishing and implementing the guarantees necessary to protect personal data transmitted, especially in the case of states of destination not providing a suitable protection level.

3. Control, investigations, complaints

3.1. General

One of the main assignments falling in the charge of the Supervisory Authority in the field of personal data protection, by which it can fully exercise its competence, conferring also power through means of constriction, is the one of control. From this viewpoint, the Law no. 677/2001 provided at the level of general competence of the Supervisory Authority the monitoring and surveillance, from legal point of view, of personal data processing, which implies making preliminary investigations and controls, either automatically or based on complaints or notifications.

a. Preliminary control. The supervisory authority has the possibility to apply preliminary controls whenever it finds that a processing notified to the authority might present risks for the rights and liberties of natural persons, under the conditions stipulated by art. 23 of the Frame-law. The preliminary control is announced by the data controller within 5 days from the data of the notification, and the decision implemented as a result of such control must be communicated within 30 days from the same date. During this period of time the data controller is not allowed to start personal data processing.

Considering the findings of the analysis of notifications received and of investigations carried out in various fields of activity, but based on the expertise of other similar authorities in the European Union, the Decision no. 89/2006 of the chairman of the Supervisory Authority has been issued, concerning setting forth of personal data processing operations, that might present special risks to the rights and liberties of persons.

The situations regulated by this decision, requesting the run of the preliminary control, are based on:

- classes of data deemed special by the legislation and doctrine related to personal data protection;
- automatic means used for processing, such as geo-localization, Internet, electronic messages, generally, electronic communication networks;
- the purpose of processing, in cases such as: examination of solvability, economical financial situation, facts that might incur disciplinary, contravention or criminal liability of data subjects, scientific research of sensitive data;
- classes of persons concerned, minors respectively.

If the data controllers intend to process data to which the provisions of the Decision no. 89/2006 apply, must notify the supervisory authority at least 30 calendar days prior the start of processing.

b. Investigations. According to art. 25-27 of the Frame-law, the investigations can be made automatically, when the supervisory authority finds out any violation of the law, either as a result of receiving complaints or notifications. The exercise of investigation assignments is limited to situations where no legal proceedings have been made with the same litigants and object.

Law no. 677/2001 and Law no. 102/2005 have established the levers necessary for the fulfilment of investigation powers. Therefore, the chairman of the Supervisory Authority, and its staff have access to classified documents and information, not alleging the state or professional secret in order to prevent the access to elements related to the investigated case.

c. Complaints. Natural persons that consider themselves injured by the way of personal data processing may send complaints to the Supervisory Authority, provided for not having previously filed actions in court with the same object and against the same party. Another condition refers to the obligation to submit, 15 days in advance, a complaint to the plaintiff data controller, for the facts indicated to the Supervisory Authority. The person proving that the cross of such procedure would lead to immediate and irremediable prejudice can be exempted of such obligation.

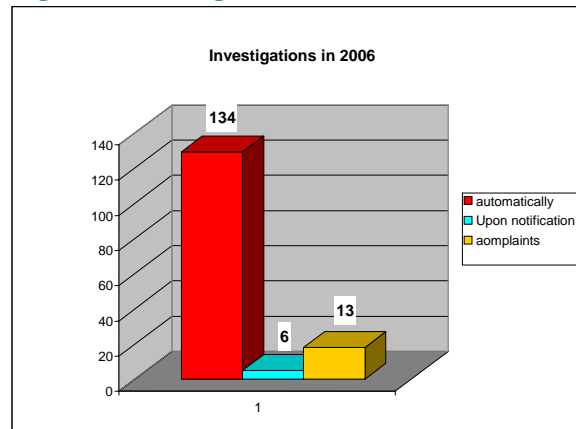
In order to settle the complaint, the supervisory authority has a series of means such as: hearing of the person concerned, of the data controller or the authorized person, making expertise, temporary suspension of processing, object of the complaint etc.

The measures adopted by the supervisory authority after solving complaints, notifications or after making investigations having as a result identification of violation of the legislation concerning personal data protection consist in:

- issuance of a decision for termination, suspension or prohibition of processing and erasure of illegally processed data;
- applying contraventional sanctions;
- informing criminal prosecuting authorities if the deeds have offence content;
- filing for actions in justice.

In order to facilitate the control and investigation activity, a procedure for making investigations and preliminary controls, as well as models for the control identification card, authorization, protocol of findings and payment notification.

According to the procedure, topic based investigations are carried out based on a schedule drawn up in the end of one year for the next year. The procedure encompasses rules, both general, and particular for previous controls and investigations.



3.2. Planning of investigations

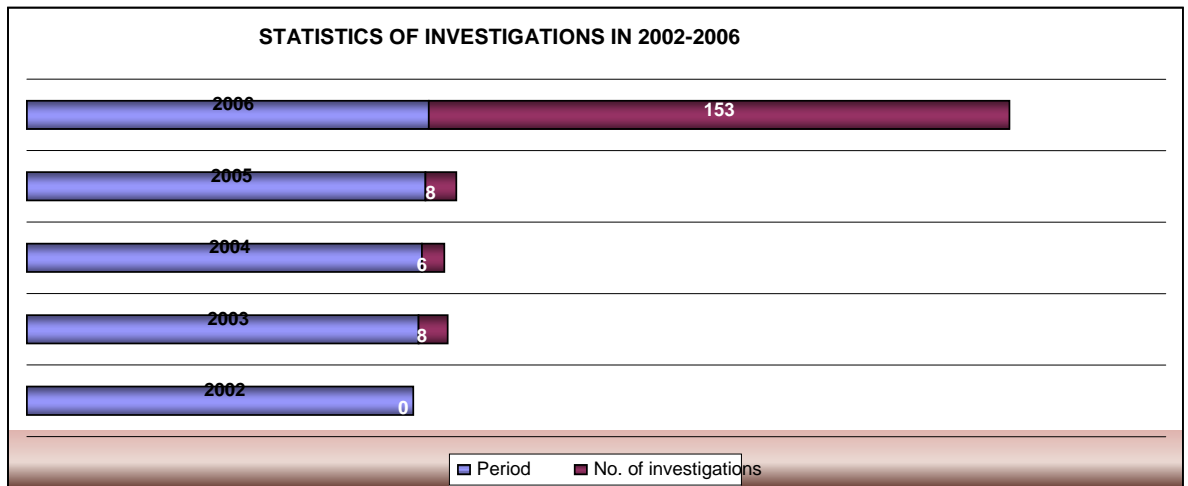
For 2006 there was approved a general plan of investigations scheduled for 12 months. The fields considered are related to video surveillance, records of data in the system of credit offices, advertising campaigns and direct marketing, health services. As a result of controls planned it was decided that, based on ascertainments, the supervisory authority analyses the opportunity of regulating the investigated domains by means of

mandatory rules, such as decisions or instructions. Such rules have been drawn up and are currently as draft, under political debates required by the Law no. 52/2003 concerning the transparency of decisions in public administration.

The total of investigations carried out in 2006 is **153**, of which 134 are automatically made, 13 upon complaints and 6 as a result of notifications. Except for planned investigations, other investigations have been made in fields of activity that needed supervision, in response to the information picked up from notifications, complaints, or other sources, such as mass-media or Internet. The investigations are carried out according to a plan drawn up for each calendar month, to which other controls are added, imposed by the activity of the Supervisory Authority for the previous month. Investigations have been carried out in the following fields of activity: vital statistics, financial – banking services, health services, phone services, selection and employment of personnel, tourism and accommodation services, Internet services, transport, mass-media and publishing houses, public opinion polling, police.

3.3. General investigation findings

The total of investigations conducted in 2006, of 153 represents a 19 fold increase from 2005, when only 8 investigations have been made. At the same time, during 2006, 2 preliminary controls took place, made under the regime of the Decision no. 89/2006, as compared to no control made in 2005.



The National Supervisory Authority for Personal Data Processing has paid special attention to the supervising activity, considering that the Law no. 677/2001 should have already been applied by data controllers as well. Thus, in 2006, there have been given out 65 warnings and 31 fines, in a total amount of 43.800 lei (RON).

Generally, from the areas planned for investigations in 2006, in the field of direct marketing and of the data controllers involved in keeping the evidence of the type of credit offices, there has been noticed that there are knowledge about the legislation regarding the protection of personal data, the only problems being caused by the erroneous manner of interpreting certain legal dispositions, concerning:

- the ways of obtaining the consent of natural persons who participate in promotions, whose personal data are subsequently used in direct marketing actions;

- the collection of certain excessive data for the purpose of their processing in the direct marketing activity, such as the National Identification Number or the Series and number of the Identity Card;
- the ways of informing the persons whose data are transmitted to companies specialized in the evidence of bad-payers (“credit offices”).

In what the video surveillance is concerned, there has been observed that the data controllers working with such systems are not aware of the dispositions of Law no. 677/2001, although by capturing, recording, storing and possibly transmitting the images processed on surveillance cameras, there can be identified natural persons, thus, being carried out a personal data processing.

In the medical field, the supervision at several medical centres revealed that there are processed personal data both related to identification and to health status. Most of the supervised data controllers were respecting the obligations of informing patients about their rights.

3.4. Activity of solving complaints

As it has been previously mentioned, one of the means of practice of the supervisions and surveillance attributions of the National Supervisory Authority for Personal Data Processing consists in the reception and solution of complaints. This legal mean offers natural persons who consider themselves damaged in what the right to personal data protection is concerned, to take legal measures. On the other hand, complaints represent a good informing instrument for the National Supervisory Authority for Personal Data Processing, for the level of fulfilment of the legal obligations by the data controllers accused, aspect which allows the extension of the surveillance and supervision actions over these.

The complaints may be addressed by any person who considers his rights infringed according to Law no. 677/2001, either directly, by means of an association or foundation that represents his interests, according to art. 25 of the same Law. In order for a complaint to be admitted, the claimant must prove to have turned to the data controller 15 days prior, procedure which allows the elimination of the breach in an amicable way. If, before addressing to the National Supervisory Authority for Personal Data Processing, the person in question took legal actions in Court with the same object and with the same opponent, the Authority will not be able to admit the solution of the complaint.

In 2006, there have been received a number of 51 complaints forwarded by natural persons, who have considered themselves damaged in their rights guaranteed according to Law no. 677/2001.

As prevailing object of the complaints, appear those regarding the transmission of personal data to different debtors of Banks to Credit Offices or to the Bank Risk Central, as well as complaint regarding the non-requested commercial communications - *spam*. Out of these, in 18 there have been implied procedures for their solution, including 16 investigations at sight, at the office of the accused data controller. In other cases, the reasons for the rejection of the submitted complaints, as being inadmissible or ungrounded, were:

1. the solicitors did not respect the previous procedure foreseen by the law, situation in which they have been advised to return to the National Supervisory Authority for Personal Data Processing only after the completion of these procedures;

2. *they were claimed deeds in relation with which the National Supervisory Authority for Personal Data Processing had no material or territorial competence to act.*
3. *the claimant had no prove to sustain of the complaint.*

As a result of solving the complaints, in the cases considered grounded, there have been applied misdemeanour sanctions and, when needed, there has been disposed, by decision of the President of the National Supervisory Authority for Personal Data Processing, the cessation of data processing for purposes of direct marketing or of obliging the data controller in question to transmit a response to the requests for the practice of the opposition right in relation with the processing of the data for purposes of direct marketing.

In order to ease the understanding of the legal provisions in the field, including under the aspect of the conditions necessary for the admission of a complaint, the National Supervisory Authority for Personal Data Processing made available on its website, www.dataprotection.ro, a few forms of complaint, personalized depending on the right claimed to be denied, which may be used by any person intending to turn to the Authority, according to Law no. 677/2001.

3.5 Cases from the practice of the National Supervisory Authority for Personal Data Processing, concerning certain complaints

considered to be founded

- Illegal disclosure of personal data:

Object: Citizen X reported the fact that a county police inspectorate divulged information concerning the weapons and ammunition held by the solicitor, to a local daily paper, in relation with the practice of free access to the information of public interest.

Legal grounds and solution:

According to Law no. 295/2004 concerning the weapon and ammunition regime, the evidences concerning the lethal and non-lethal weapons and ammunitions are exception to the free access of citizens, forming part of the classified information's category.

In the same sense, Law no. 544/2001 concerning the free access to information of public interest excludes the disclosure of personal data and of the information classified.

Since the deed notified presented a higher level of social danger than a potential contravention of its competence, The National Supervisory Authority for Personal Data Processing notified the competent parquet about the deeds reported by the solicitor, in relation with the special criminal deed foreseen in the field, aspect brought to the knowledge of the solicitor.

- The inobservance of the right to opposition in what the direct marketing is concerned:

Object: Citizen Z reported the reception on his personal address advertisement information from a bank where he had a loan account opened, advertisement developed on behalf of an insurance company. Upon the subscription of the Loan Agreement with the Bank in question, the solicitor had clearly expressed his right to opposition in relation with the reception of commercial offers.

Legal ground and solution:

According to art. 15 of Law no. 677/2001 the persons aimed may express at any time and for free their right to opposition towards the processing of personal data for

marketing purposes, both in the name of the data controller and in the name of third parties.

The data controller is obligated to solve within 15 days the petitions of the aimed persons of not having their personal data processed for a certain purpose.

The National Supervisory Authority for Personal Data Processing carried out an investigation at the registered office of the Bank accused by the complaint, after which there has been observed that the complaint was grounded, and the data controller was sanctioned. In the mean time, there has been set out the processing of the personal data of the solicitor for purposes of direct marketing, for his right for opposition to be thus respected; the Bank was obligated to notify the solicitor about the accurate response at his petition by which the latter would exercise his right for opposition.

- The Processing of personal data without the consent, for purposes of marketing:

Object: Citizen X' complained that a trade company specialized in distance marketing collected and used his personal data without his consent, within a promotion campaign of own products.

Legal grounds and solution:

According to 5 paragraph (1) of Law no. 677/2001, the processing of personal data is permitted, as a rule, only on ground of express and non-equivocal consent of the aimed person.

In the same way, the subsequent use of the data in other purposes is permitted only with the consent of the person in question, according to art. 6 of Law no. 677/2001.

For the solution of the complaint, there has been set out the effectuation of an investigation at the registered office of the data controller, though being impossible the identification of the real office of the company in question, there have been requested the support of the Financial Guard. On basis of the obtained information, there has been possible to contact and interrogate the former marketing director, taking into account the fact that the activities of the accused company incriminate have been suspended for a period of 3 years. During the investigation there has been invoked the fact that all documents of the company were held by this particular administrator, foreign citizen, who abandoned Romania. From the investigation derived that the data base has been transferred to another company having the former marketing director as administrator. Due to certain potential criminal elements, there has been set out the observation of the criminal prosecution organs, aspect brought to the knowledge of the solicitor.

- Inobservance of the right to access:

Object: Citizen Z' complained that a trade company for intermediation of apartment sales did not respond in due time to his petition regarding his right to access his personal data.

Legal grounds and solution:

According to art. 13 of Law no. 677/2001, the persons concerned have the right to require the data controller the confirmation of the fact that his personal data are being processed, as well as other information, through a written petition, signed and dated, at which he must receive response within 15 days.

As a result of the investigation carried out by the National Supervisory Authority for Personal Data Processing in relation with the company accused, there has been observed that the complaint of the solicitor is grounded, and the data controller was

sanctioned for the inadequate observation of the legal dispositions regarding the right to access (had sent no response in terms of 15 days) being in the mean time obligated to communicate an adequate response to the solicitor.

3.6. Cooperation protocols

In view of the good development of the supervision activity, the National Supervisory Authority for Personal Data Processing initiated, at the end of 2005, proceedings in order to conclude certain cooperation protocols with certain authorities and public institutions with attribution of investigation in the activity fields related to those of data protection.

As a result of these proceedings there has been finalized the conclusion of cooperation protocols with the following institutions (in chronological order):

- 1. National Authority for Consumer's protection**
- 2. General Inspectorate of the Romanian Police**
- 3. Financial Guard**
- 4. Ministry of communications and information technology**
- 5. National Office of Trade Registry**

These protocols have as object a close bilateral cooperation which under the aspect of investigation and control may have as outcome the following types of action:

- *Mutual observation of the cases by each authority taking knowledge of the practice of their own legal competence;*
- *Joint effectuation of certain investigations and researches;*
- *Granting mutual assistance in the solution of certain complaints, claims or observations*

A part of the provisions of these protocols were already set out for application, taking into account the following aspects:

- The National Supervisory Authority for Personal Data Processing notified the Financial Guard in two cases aiming the identification of a company labouring under a fictional name and of the registered office of a direct marketing company. The information obtained as a result of the proceedings, carried out by the Financial Guard in the second case, allowed the National Supervisory Authority for Personal Data Processing to reinitiate the investigation suspended towards the trade company in question.
- The National Supervisory Authority for Personal Data Processing required the support of the General Police Inspectorate of Romania in view of the solution of an observation aiming a supposed illegal installation of a video camera at a trade company from Baia-Mare. By the county inspectorate I.G.P.R. there has been carried out a control of which derived the deactivation of the web camera installed without police authorization.
- The National Authority for the Consumer's Protection transmits to the National Supervisory Authority for Personal Data Processing the observations and complaints received from applicants each time their object concerns illegal aspects of personal data processing.

In what the other cooperation projects are concerned, at the end of 2006 there were in advanced negotiation phase for the subscription of a cooperation protocol with the National Authority for the Regulation in Communication.

Section 2: Specific domains of activity

1. Persons' record

a) Organization of person's record activity

According to Government Ordinance no. 84/2001 concerning the establishment, organization and functioning of public communitarian services for the Person's record, amended and completed, these services work with systems comprising the assembly of personal data of Romanian citizens, derived from the automatic processing of the information obtained on sheet forms. They must assure, depending on the competences established by the normative documents in force, the elaboration, keeping and issuing of the marital status documents, of identity cards, of vox cards and of electoral lists, as well as carrying out, in a sole wicket system of the activity of receiving the petitions and issuing simple passports, driver's licences, vehicle registration certificates and plate number registrations.

At county level and at that of Bucharest municipality, under the councils organized at this level, operate the public communitarian services for the persons' record, with legal personality.

In the mean time, according to the Government Ordinance no. 84/2001, amended and completed, the National Inspectorate for Person Record (*INEP*), as specialty authority of the central public administration, as legal entity, under the Ministry of Administration and Internal Affairs, practices its attributions concerning the organization and coordination of the activities of persons' evidence.

Another structure with competences in the field of persons' evidence, but in a computer specialized system, is the National Centre for the Administration of Data Basis concerning the Persons' evidence (*CNABDEP*) and its territorial offices. *CNABDEP* has attributions in the interconnection of all data basis concerning the persons' evidence, and the National Information system for the persons' record, The national informational system for passports and the national information system for the evidence of driver's licenses and of registration certificates.

The public communitarian services for the evidence and issuing of simple passports, according to the Government Ordinance no. 83/2001, amended and completed, are subordinates of the prefect, able to state the processing of data effectuated by these services, but coordinated from methodology point of view by the General Direction for Passports of the Ministry of Administration and Internal Affairs. Similarly, the public communitarian services for driver's license and vehicle registration regime (subordinates of the prefect) are coordinated on the line of specific activities, by the Direction Regime Driver's Licenses and Vehicle Registration, subordinate of the Ministry of Administration and Internal Affairs.

While exercising their specific legal attributions, these services cooperated with the public communitarian services for the persons' record at local, county and Bucharest level.

The permanent registers constituted, updated, traded and administrated, when needed, the services mentioned previously, are the county and national registries for the evidence of simple passports and of driver's licenses and registered vehicles. And in case of these evidence systems, organized at county and national level there are processed personal data. The data bases also include special character data leading to an exact identification of the aimed person (such as National Identification Number, series and number of Identity Card, series of passport, registration number, biometrical data). Additionally, the administration of such data bases presumes taking all organizing and

technical measures in order to assure an adequate security level in what the risks represented by the processing and the nature of the data protected are concerned.

b) Aspects derived from the manner of filling out notifications

During 2006, the National Supervisory Authority for Personal Data Processing received a significant number of notifications for the public communitarian Services for the persons' record.

In what the identification of the data controller is concerned, the public communitarian services for the persons' record have shown a series of difficulties when establishing its denomination. Due to a non-unitary practice of establishing services at level of localities, cities, municipalities (in the sense that by the resolution of the local council, these services were constituted with or without legal character), there could not be identified, in all situations and terms of the law, the person able to state the processing of the personal data, as data controller, and thus, to elaborate and sign the registration notification for the processing effectuated in compliance with the Law.

These non-clarities were partially due to the legal frame regulating on one hand side, the operation of the communitarian services (*lex specialis*) and on the other hand, the local public administration (*lex generalis*).

From the perspective of applicability of Law no. 677/2001 and taking into account the definition of *personal data controller*, this quality is fulfilled by the communitarian public services especially regarding the keeping of local registries for evidence, regardless of their concrete manner of organization. From the point of view of assuming legal responsibility, in case of the public communitarian services for the persons' record without legal nature, the National Authority for the Supervision of the Personal Data Processing requested the statement on front page of the notification form, filled out by the mayor, considering the legal competences of representation of the administrative-territorial unit in which there has been invested with an executive public authority and by a principal of credits for the local budget.

Regarding the categories of special data, there were services that mentioned the fact that they process data regarding the ethnical origin (nationality) and religious convictions, since they were comprised by the forms – established by Government Resolution no. 113/1997 concerning the content, update and trade of data in the permanent registry of persons' evidence. At the present moment, Government Resolution no. 113/1997 is repealed by Government Decision no. 1375/2006, so that the new forms for data collection no longer comprise religion and nationality, being irrelevant data for the purpose of issuing identity cards.

Also, on marital status line, there has been observed that the standard forms used – contain boxes regarding religion and nationality, on basis of the Methodology of 1997 concerning the unitary application of the dispositions of Law no. 119/1996 regarding the marital status documents. In this context, there is imposed the re-analysis of two normative acts, adopted previous to Law no. 677/2001, amended and completed, for the purpose of conformity with the dispositions of the frame Law concerning the protection of personal data.

c) Transfer of personal data abroad

In the domain of persons' record, the transfer of personal data to third countries is done only through the National Inspectorate for Person Record. The National Supervisory Authority for Personal Data Processing has been informed about the transfer of personal

data in Germany or France with the purpose of recovering credits of Romanian citizens by the entities of these countries and in Poland with the purpose of granting medals and honours to certain Romanian citizens by the authorities of the State of Poland.

Another purpose of the data transfer abroad was that concerning the observation, practice or defence of certain rights of Romanian citizens: identification of heirs, establishing paternity, postponing certain documents or requests for judiciary assistance; for the establishment of the procedure concerning the obtainment of alimony pension abroad; actions in Court; solution of petitions for cross commission; for the identification of biological parents of certain persons who were adopted abroad; confirmation of the authenticity of certain documents; citation in divorce actions; communication of marital status data to Romanian citizens who lose their passport and require travel titles to return to the country; forwarding for verification of certain dactyloscopic cards of Romanian citizens abroad.

d) Analysis and conclusions of annual reports communicated by the services of persons' record

Another attribution pertaining to the attributions of the National Supervisory Authority for Personal Data Processing on ground of Law no. 677/2001, art. 21 paragraph (3) letter j), refers to the focusing and analysis of annual activity reports of the public authorities and of the public administration organs, in the domain of personal data protection. Thus, at the beginning of 2006, there ha been reported a number of 105 public authorities, elaborated for 2005.

There must be mentioned that the National Supervisory Authority for Personal Data Processing provided, to those interested, the pattern structure of such report, as well as a fill-out Guide. The examination of the annual reports showed a high number of petitions for access, which leads to the conclusion that the data controllers have mistaken the right for access of the aimed persons, guaranteed by Law no. 677/2001, with the requests addressed by third parties, for the obtainment of certain information necessary for the development of specific activities or for their legitimate interest.

e) The investigations in the domain of personal data processing concerning the persons' record, of simple passports, of registration certificates and of drivers' licenses.

In this domain, the investigations were carried out 100% pro bono, by offices /services/department from the are of Bucharest (2) and in the territory (20). They mainly focused on the verification of personal data processing, the observation of the rights of the aimed persons, of confidentiality and of security and the fulfilment of the notification obligation in what the notification of the processing is concerned as below:

1. Notification of personal data processing by the National Supervisory Authority for Personal Data Processing
Applicable legal dispositions¹¹

In compliance with the provisions of art. 22 paragraph (1) and (3) of Law no. 677/2001, amended and completed, the data controllers are obligated to notify about the personal data processing the persons in question before initiating the processing. In the cases in which the processing started before the Law no. 677/2001 became valid, the superiors established for the notification to be transmitted in terms of 15 days from this

¹¹ Since the legal dispositions applicable, that are to be developed within this section, are valid for all investigations carried out, regardless of their object, the presentation of the incident dispositions will not be revised in the following sections regarding the activity of investigations.

date. The inobservance of these legal dispositions led to the contravention obligation for the omission of notification according to art. 31 Of Law no. 677/2001, amended and completed. The notification forms were initially approved by the Peoples' Advocate in 2002, and from June 22 2006 became valid the Resolution of the president of the National Supervisory Authority for Personal Data Processing no. 60/2006 which established new standard forms for notification. According to the resolution no. 91/2006 of the President of the National Supervisory Authority for Personal Data Processing there may be notified in simplified form (filling out certain boxes of the standard form) the local public administration authorities at the level of localities, with the purpose of observing their legal attributions and the processing of the personal data carried out with the purpose of keeping persons' record, drawing up, maintaining evidence and issuing simple passports, driver's licenses and vehicle registration certificates as well as license plates, by the local, county public administration authorities and those of Bucharest.

Observations

In most of the situations submitted for analysis, derived that the community services responsible for the persons' record fulfilled their obligation of notification of the processing carried out, starting with 2004, but of a different nature in what the data controller's attributions are concerned.

The Government Decree no. 16/2006, amending the Government Decree no. 84/2001, has foreseen the possibility of constituting these services of legal nature, by resolution of the local councils. The legislative modification only achieved to support the clarification of certain practical situation already existent, non-unitary, in which the local councils decided the establishment and the organization of the services of legal nature, while other councils did not invest in the services of this nature. In practice though, there is a different interpretation of the legal dispositions applicable in the local public administration, since certain services opine that they are subordinates of the local councils, other of the mayor or of the locality, city or municipality secretary, without precisely knowing whom they are led by, aspects which make more difficult the determination of the data controller's responsibility, on grounds of Law no. 677/2001.

Thus, there has been observed that although the notifications forwarded by the communitarian public services for the persons' record have an approximately identical content (as a result of the methodological coordination of the National Inspectorate for Person Record), the data controller has been non-unitarily declared by the local council, mayor, Town hall or the evidence for the persons' record in question.

Regarding the services for the evidence of simple passports and of vehicle registration certificates as well as of driver's licenses, organized without a legal entity within the prefect's institution, have observed that in a sole case of all the analyzed ones, there has been fulfilled the obligation of notification. In two cases, as a result of the investigations, the data controllers have proceeded with the petitions of the National Supervisory Authority for Personal Data Processing and transmitted the notifications in question.

As a result of these observations the National Supervisory Authority for Personal Data Processing have set out procedures at the level of General Department of Passport and Department of Driver's License and Vehicle registration Regime, from within the Ministry of Administration and Home Affairs, with the purpose of submitting

notifications by the local communitarian services, being under their subordination and methodological coordination.

From the verifications made, there have been determined the criteria necessary for the establishment of the data controllers' quality in the attribution of the communitarian services for evidence, regardless of the fact if they were organized as structures with a legal entity or not, given the attributions established by the legal provisions in force.

There has been recommended both to the verified services and to the National Inspectorate for Person Record, to fill out the box concerning 'the denomination of the data controller' in the sense of those above. Thus, in the case of the non-legal services, the legal responsibility belongs to mayors, as well as to the prefects whom these services are subordinates of.

2. Completion or modification of the notifications submitted

Legal dispositions applicable

In compliance with the provisions of art. 22 paragraph (4) of Law no. 677/2001, amended and completed, in the cases in which there is observed that the notification is incomplete, the National Supervisory Authority for Personal Data Processing requires their completion. Only the complete notifications are registered in the evidence of personal data processing open for the availability of the public, according to art. 24 paragraph (1), (3) and (5) of the same law. The number of notifications transmitted as a result of the registration must be mentioned by the data controller on any document collected, stored or transmitted with personal data. In case that during the processing of personal data emerge certain modifications of the information initially transmitted, these must be brought to the knowledge of the National Supervisory Authority for Personal Data Processing, within 5 days. The incomplete notification may lead to contravention responsibility for the omission of notification with bad-will, according to art. 31 of Law no. 677/2001, amended and completed.

Observations

In some cases – of those submitted for analysis – there has been observed that although the public communitarian services for the persons' record have transmitted notifications of the processing of personal data, they have not responded to the requests of the National Supervisory Authority for Personal Data Processing regarding the completion and modification of certain boxes, in compliance with the legal dispositions. For the non-fulfilment of the legal dispositions and of the requirements imposed by the National Supervisory Authority for Personal Data Processing, there have been applied contravention sanctions foreseen by the legislation in the field. Subsequently to the investigations, the data controllers sanctioned and proceeded to the requests of the authorities.

3. Purposes of carrying out personal data processing

Applicable legal dispositions

In compliance with the provisions of art. 22 paragraph (3) letter b) of Law no. 677/2001, amended and completed, the data controller is obligated to mention in the content of the notification the purpose or the purposes in which these are to be carried out. The establishment of the purpose of the processing is important for the determination of the data controller's quality. Thus in compliance with art. 3 letter e) of Law no. 677/2001, amended and completed, the data controller is "any natural or legal person, of

private or public law, including public authorities, institutions and territorial structures of these, which establish the purpose and means of processing personal data; if the purpose and means of processing the personal data are determined by a normative documents or on grounds of a normative document, the data controller is the natural or legal person, of public or private law, which is appointed as data controller by or on basis of that normative document.” As a result, in the situations in which the purposes of the processing are established in basis of normative documents, the data controller is the authority, public institution or public administration authority appointed by that document.

Observations

On grounds of the provisions of Government Emergency Decree no. 50/2004 for the amendment and completion of certain normative documents for the establishment of the organizational and functional frame adequate for the development of issuing and evidence activities of identity cards, marital status document, simple passports, driver’s licenses and vehicle registration certificates, there has been initiated the reorganization of the persons’ evidence services. Prior to this moment, the services for the persons’ record had attributions including in the field of evidence of passports, for which the notifications transmitted to the National Supervisory Authority for Personal Data Processing were regarding this purpose.

By Government Emergency Decree no. 97/2005 concerning the evidence, domicile, residence and identity documents of Romanian citizens there has been allocated the new legislative frame for the activities carried out in this frame.

During the course of the investigations carried out at the level of the services of the persons’ record, there has been observed that in fact, they have not carried out activities in the field of evidence of simple passports, of driver’s licenses and registration certificates, as they declared in the notification, these activities being characteristic of the services organized within the institutions of the prefect. The processing operations carried out by these in the field of passports are restrained to the reception in a small reception system of the petitions for the issuing of passports, and subsequently, to the issue of these documents remitted by the services at county level.

Also, there has been observed that certain verified services have not notified the National Supervisory Authority for Personal Data Processing about the fact that they process personal data and about keeping an evidence of the electors from the electoral circumscriptions, on grounds of which there are elaborated and updated the permanent electoral lists by the mayors and by the services of persons’ record.

Also, on grounds of Government Decree no. nr. 84/2001, amended and completed, the local services may apply sanctions, which implies the processing of the personal data of the persons in question. There has been observed that this type of processing has not been notified to the National Supervisory Authority for Personal Data Processing either.

Given these observations, there has been recommended, both to the services verified and to the National Inspectorate for Person Record, to notify all personal data processing, in conformity with the law, including those related to keeping the electoral evidence and observing irregularities.

4. Categories of processed personal data

Applicable legal dispositions

In compliance with the provisions of art. 3 letter b) of Law no. 677/2001, amended and completed, the personal data are defined by right “any information regarding a natural person identified or identifiable; an identifiable persons is the persons that can be identified, directly or indirectly, particularly by reference to an identification number or to one or several specific factors of his physical, physiological, psychological, economical, cultural or social identity”. The data controller is not allowed to collect but the data that is adequate, pertinent, non-excessive in relation with the purpose of the processing, exact and updated, in compliance with the dispositions of art. 4 paragraph (1) letter c) and d) of Law no. 677/2001, amended and completed. The inobservance of these provisions may constitute the contravention of illegal data processing, in compliance with art. 32 of Law no. 677/2001, amended and completed. For the assurance of the publicity of processing, the data controller is obligated to mention in the content of the notification the categories of personal data which he intends to process.

Observations

The services of evidence of the persons engage in their activities common standards forms, by means of which they collect the personal data necessary for the: issuing of identity cards and passports, change of name via administrative procedures etc. Among the personal data required by means of the forms, there are enumerated a number of data such as: *highest educational level completed, present occupation, military situation, nationality and religion*, which the National Supervisory Authority for Personal Data Processing considers to be excessive in relation with the previously stated purposes, since it is in opposition with the principles of personal data processing foreseen by art. 4 of Law no. 677/2001, amended and completed. Data such as religion are considered special data which require an adequate protection and special processing conditions.¹²

During 2006, as a result of the recommendations of the National Supervisory Authority for Personal Data Processing, INEP required the services of evidence of the persons no longer to collect data such as nationality and religion, by a radiogram transmitted to the county services of persons' record. On the INEP site there has been posted an announcement of this. According to the observations of the investigations carried out by INEP, not all county services for the persons' record have fulfilled the obligations of transmitting the recommendations of the National Supervisory Authority for Personal Data Processing. Thus, during the investigations carried out in 2006 by the services for the persons' record there has been observed that only 50% of the cases investigated have taken into account the recommendations of INEP. None of the services has information regarding the existence of the announcement on the INEP site. In consequence, some of the local services for the persons' record have continued to collect data such as religion and nationality, appearing in the boxes from the forms used by these services.

According to the statements of the representatives of these services for the persons' record, they have not considered compulsory the filling out of the boxes

¹² According to art. 7 paragraph (1) of Law no. 677/2001, amended and completed, in principle, the processing of data regarding ethnic origin and religion is prohibited

regarding religion, leaving this aspect to the appreciation of the applicants although without an express notification about the optional nature of these data¹³.

By the modifications brought to the standard forms by Government Decree no. 1375/2006 for the approval of the methodological Norms of unitary application of the legal dispositions concerning the evidence, domicile, residence and identity papers of the Romanian citizens¹⁴, the boxes regarding *religion* and *nationality* were eliminated. **This modification is in consequence the notification transmitted by the National Supervisory Authority for Personal Data Processing to the Ministry of Administration and Home Affairs in the notification procedure of the Government resolution project previously mentioned.**

Within the notification procedure of this normative document, although the National Supervisory Authority for Personal Data Processing has considered excessive the processing of data regarding the studies, occupation and military situation (also required by the forms used for the issuing of identity cards), the Ministry of Administration and Home Affairs, the initiator of the project of the normative document, did not proceed to our recommendations, arguing that these data are required by the National Institute of Statistics, for the observation of the structure and motion of Romania's population.

The stand of the National Supervisory Authority for Personal Data Processing towards these aspects is that of questioning the necessity, the adequateness, pertinence and exactitude of the collection of these data, considering that the main purpose of the activities carried out by the communitarian public services for the persons' record is not related to the effectuation of exhaustive official statistics over the population of Romania.

Recent modifications emerged in the legislation no longer foresee as compulsory the filling out of the boxes regarding religion and nationality and thus, the National Supervisory Authority for Personal Data Processing recommended INEP to identify a solution for the deactivation of the option of visualising these two boxes of the National computer system persons' record, implemented by the structures of the system, collected in the regime of the previous legislation, since these two categories of personal data are no longer necessary for the achievement of the purposes of the processing, that is the persons' record.

5. Receivers who are informed about personal data and guarantees accompanying the divulgation

Applicable legal dispositions

"Receivers" are defined by art. 3 letter h) of Law no. 677/2001, amended and completed, as being "any natural or legal person, of private or public right, including

¹³ According to art. 12 paragraph (1) of Law no. 677/2001, amended and completed, among other information that any data controller must bring to the knowledge of the aimed persons in the moment of collecting the data, we find the compulsory or facultative nature of providing all data required and the potential consequences in case of deny.

¹⁴ GD no. 1375/2006 has abrogated the Government Decree no. 113/1997 concerning the content, update and valorizing of the data from the permanent Registry of persons' record, published in the Official Gazette of Romania, Part I, no. 71 from 21 April 1997, with its subsequent amendments and completions, and the methodological Norms no. 1/1997 for the establishment of the content, document flow and unitary nomenclatures, which would assure the keeping of evidence and of the permanent Registry of population evidence, issued by the Ministry of Home Affairs, Ministry of External Affairs, Ministry of Justice and the Department for the Local Public Administration.

public authorities, institutions and their territorial structures, to whom there are divulged data, whether it is third party or not". The categories of receivers are mentioned by the data controller in the content of the notification, and in case the receivers are other persons than the data controller, the person aimed or the assignee, it is compulsory to mention that guarantees accompanying their divulgation to third parties.

The main guarantees that may be invoked (and proved) by the data controller are presented by the express and transparent consent of the aimed persons and by the dispositions of a normative document which would foresee the divulgation of the data.

Observations

An important practical order faced by the services for the evidence is that regarding the manner of disclosure of the personal data processed within the permanent Registry for the persons' record, operated at national level by INEP, by the National Administration Centre of the Data Bases. At local level, the services of record "load" the local registries of persons' record of the data collected with the support of the county offices of administration of the data bases, structures of the National Administration Centre of the Data Bases concerning the persons' record.

In the dispositions of the Government emergency Decree no. 97/2005 they are no longer concretely identified the conditions foreseen for the provision of data towards legal persons others than those expressly enumerated, as it has been previously foreseen the Government Decree no. 113/1997.

Thus, in the notification procedure of the Government Decree no. 1375/2006, the National Supervisory Authority for Personal Data Processing recommended the Ministry of Administration and of Home Affairs to include norms that would replace the provisions of art. 9 of Government Decree no. 113/1997, those were to be abrogated. The initiator of the normative document considered for the legal frame constituted by art. 10 of Government Emergency Decree no. 97/2005 to be sufficient. With all this, there is observed a positive aspect, since in practice, according to the observations during the investigations carried out by INEP, the conditions foreseen by Government Decree no. 113/1997 are continued to be taken into account as confidentiality criterion and appreciation of the legal ground of data provision.

During the investigations, there has been observed that the services of evidence engage an orienting guide issued by INEP. The orienting provisions of this guide have determined many of the services of evidence to turn to the National Supervisory Authority for Personal Data Processing in order to require the notification or opinion of its experts in certain cases in which they were asked to provide personal data.

6. Situations in which there have been requested data from the electoral lists

Applicable legal dispositions

In compliance with the dispositions of Law no. 67/2004 for the election of local public administration authorities and of Law no. 373/2004 for the election of Deputy Chamber and Senate, with its subsequent amendments and completions, the permanent electoral lists are elaborated and updated by mayors, together with the services of persons' record, in two originals and are signed by the mayor and the chief of the service of computer evidence. One original is handed over for archive of the administrative territorial unit, and the other to the Court to whom the locality for which the list has been drawn-up pertains. Copies of the electoral lists are made available to political parties, political partnerships, and electoral partnerships, in terms of ten days from the

establishment of the election date. In the mean time, copies of the permanent electoral lists are forwarded by the mayor, in two copies, to the electoral offices of the election sections, three days prior to the election date. A copy is made available to electors for consulting and the other is used on the day of elections. A copy of the copy is kept by the mayor. The electoral lists comprise personal data of the living persons with right to lection from the area of an electoral circumscription: name and first name, National Identification Number, domicile, denomination, number and series of identity card, as well as the number of the electoral circumscription.

Observation

From the cases investigated, there has been drawn the conclusion that although there have been requests by certain organizations of public opinion survey or by certain political parties to be made available the electoral lists, their petition has been correctly denied. From the investigations carried out in the case of certain organizations of public opinion survey turned out that, on one hand side these petitions have been turned down, and on the other hand, they preferred to renounce to such source since in certain cases there has been proved that the information made available by the town hall was not updated.

7. Manner in which there is assured the right of the aimed persons

Applicable legal dispositions

According to art. 12 paragraph (1) of Law no. 677/2001, amended and completed, the data controller has the obligation to notify the persons aimed about the following information:

- identity of the data controller and of his representative, if any;*
- purpose for which he carries out the processing;*
- additional information such as: receivers or receiver categories of the data; whether the provision of all data requested is compulsory and the consequences of denying their provision; the existence of the rights foreseen by the hereby law for the person aimed, specially of the right to access, intervention over the data and of opposition as well as the conditions under which these can be practiced;*
- any other information the provision of which is imposed by the disposition of the National Supervisory Authority for Personal Data Processing, taking into account the specific nature of the processing.*

The manner in which there is assured the observation of this right is mentioned by the data controller in the content of the notification. The manners in which the data controller may prove that he has fulfilled this obligation are: in written form, by postage at the registered office or on private website. The National Supervisory Authority for Personal Data Processing provides forms that may be used for this purpose, by the Guide for notification filling, published at www.dataprotection.ro. The inobservance of the right to information may constitute contravention foreseen by art. 32 of Law no. 677/2001, amended and completed.

Observations

One of the relatively frequent situations drawing sanctioning of the data controllers was the inobservance of the right to information of the aimed persons.

In the case of services for the evidence of the persons, the personal data are collected directly by the persons submitting petitions for the issuing of certain document,

for which they become relevant for the dispositions of art. 12 paragraph (1) of Law no. 677/2001, amended and completed. Thus, besides other information generally known by the person such as the identity of the data controller and the purpose of the processing, the services should have brought to their knowledge the right recognized by Law no. 677/2001, specially the right to access, intervention and oppositions, as well as all the conditions regarding the practice of these rights.

Although the notifications submitted to the National Supervisory Authority for Personal Data Processing, invariably, all services have mentioned that they carry out the notification of the aimed persons by postage, in practice, there have been identified cases where these statements were not observed. Thus, due to these observations, there has been set out the sanction of the data controllers, in compliance with art. 32 of Law no. 677/2001, amended and completed.

As a result of the investigations there has been requested, both by the National Authority for the Supervision of Personal Data and by INEP, the assurance of notification of the aimed persons by means of postages in visible places, in the workplaces with the public. INEP transmitted to the county services for the persons' record a radiogram concerning the postage model, recommended by the National Supervisory Authority for Personal Data Processing.

8. Type of evidence systems engaged in the data processing

Applicable legal dispositions

In compliance with art. 3 letter d) of Law no. 677/2001, amended and completed, "the system of evidence" has been defined in right as "organized structure of personal data, accessible according to certain determined criteria, whether this structure is organized in a centralized or non-centralized manner or is divided according to functional or geographical criteria". The applicability of the dispositions of Law no. 677/2001, amended and completed, is drawn by the processing of the data within a system of evidence, according to art. 2 paragraph (1) of the same Law. The type of system of evidence engaged by the data controller (manual, automatic or miscellaneous) is specified by the data controller in the content of the notification submitted to the National Supervisory Authority for Personal Data Processing.

Observations

The National Computer System for the Persons' record (SNIEP) is structured on three levels: services of persons' record at local level using automatic means for the introduction of personal data within the local registries of persons' record, on grounds of which there are kept the county registries (processed by county administration offices for the data bases regarding the persons' record) and *The national registry* of persons' record. The national registry is in the attribution of INEP and is administrated by the National Administration Centre of Data Bases for the persons' record (CNABDEP). All services are assisted from technical point of view by the county administration offices for data bases, territorial structures CNABDEP. Since it is a centralized system in which these rules of automatic data processing are applicable, the services may be considered from the perspective of Law no. 677/2001 assigned persons, who, on ground of the law, process in an automatic system personal data on account of INEP, as holder of the permanent Registry of persons' record. As a result, the automatic evidence system belongs to the latter.

The services for evidence at local level are also used as manual system of evidence, constituted on grounds of the forma by means of which the personal data are collected and of the supporting documents accompanying these. These documents are organized in files or folders archived according to the archive nomenclatures elaborated in compliance with Law no. 16/1996 of the National archives, of the investigations carried out there have not been observed irregularities regarding the manner of organizing and keeping records at these three levels by SNIEP.

9. Confidentiality and security measures applied for the protection of data

Applicable legal dispositions

Art. 19 of Law no. 677/2001, amended and completed, foresees the obligation of the data controller, of the assignee and of the persons acting under their authority (employees or co-data controllers) to assure the confidentiality of the processing of the data. In order for the personal data to be protected against accidental or illegal destruction, loss, modification, divulgation or unauthorized access, specially if the processing in question comprises data transmissions within a network as well as against all other forms of illegal processing, the data controller and his assignee must take the security measures established according to art. 20 of Law no. 677/2001 and Decree no. 52/2002 concerning the approval of minimum security Requirements of the personal data processing.

Observations

Of the investigations carried out at the services for the persons' record, of simple passport and of driver's license there has been drawn the conclusion that automatic processing of data is in fact supervised by CNABDEP, by means of its territorial structure, organized as county offices. As a result, there has been decided to make certain investigations at the level of some of these county offices, for the verification of the manner in which the security measures for the data processing are being observed. There has been noticed that the program applied by all county offices is similar and observes the security measures necessary for the protection of personal data, from the point of view of all requirements imposed by Decree no. 52/2002.

Also, the county offices are those that establish the passwords and codes of access for all users within a county and assure periodical training of these.

Since the investigations carried out by the National Supervisory Authority for Personal Data Processing in the territory supervised that there are many cases of erroneous application of the dispositions of Law no. 677/2001, for a better knowledge of these provisions and for the identification of better applications of the dispositions in the activity of persons' evidence, A.N.S.P.D.C.P. has in view, for 2007, the effectuation of certain regional seminars dedicated to the activity of the services for the persons' record.

2. Other personal data processing, carried out by the local public services

a) Aspects derived from the manner of filling out notifications

Besides the obligation to notify the processing of the data from the activity area concerning the persons' record and marital status, the local public administrative authorities must also notify the data processing carried out in the other areas of activity carried out by the local public services.

Yet, it is not necessary the notification of personal data processing carried out by the public authorities and institutions, regarding the applicants as well as the personal property, in order to fulfil certain legal obligations of the data controllers according to the

Decision no. 90/2006 of the National Supervisory Authority for Personal Data Processing.

As a result of the seminars organized by the National Supervisory Authority for Personal Data Processing, the local public administrative authorities began to notify other activities carried out by the specialty services from within their area (the collection of fees and local taxes, urbanism and territorial decoration, protection and social protection, issuing authorizations, collecting debits /recovering credits, activity of communitarian police etc.)

In these domains too, upon completion of the notifications there have not been entirely observed the requirements of Law no. 677/2001, amended and completed. For instance, there have been declared by a single institution, by means of a single notification form, almost all purposed of personal data processing. However, the frame-Law refers to the same purpose or to the correlated purposes. Thus, if the purposes were completely different (for instance, there are performed different services) and there is no close relation between these, the processing of the data is considered to be incorrect by a single notification form.

In the situation in which the purposes have not been correctly declared, the notifications were not registered at the Registry of Evidence of Personal Data Processing, being transmitted to guidance regarding the manner of imposing their effectuation.

b) Investigations at the level of local public services

Besides the thematic investigations carried out, the National Supervisory Authority for Personal Data Processing carried out a series of verifications at the level of local public administrative authorities (14) with the sole objective of verification of the observation of the obligation of notifying the personal data processions carried out on grounds of legal attributions, in relation with certain public services performed in the community service. There have been brought to the knowledge of the local representatives the obligations foreseen by Law no. 677/2001, amended and completed, focusing on the observation of the rights of the persons whose personal data are collected, used, divulged as well as on the minimum security measures that must be adopted in order to prevent illegal, accidental destruction or the unauthorized access to the processed data.

3. Financial-banking services

3.1. The processing of personal data by Banks

a) Organization of banking activities.

The banking activity is carried out in Romanian according to Government emergency decree no. 99/2006 concerning the credit institutions and the adequateness of the capital applied to the credit institutions, Romanian legal persons, including to the abroad branches of these and to credit institutions of other member states, as well as of third states, in what their activity in Romania is concerned. The banks may carry out, within the limit of the authorization granted, activities which imply the collection, direct or indirect, of several data and categories of data about natural persons, which subsequently are processed for the achievement of the established purposes.

A characteristic of this normative document is the exemption of the personal data processing carried out by the banks, from the obtainment of consent. The application of this exception is strictly related to the fulfilment of the legal obligations by the banks. Thus, in the case of usage of the personal data collected from customers for the purpose

of electronic communication, for instance, in relation with the products and services offered by the bank, the opinion of the National Supervisory Authority for Personal Data Processing is that for the processing of the data for this purpose, it is necessary the obtainment of the express consent, not being relevant as legal obligation.

In the mean time, although the data are processed without the consent of the aimed person, this does not mean that the principle of proportionality (adequate, pertinent, non-excessive data in relation with the purpose) instituted by art. 4 of Law no. 677/2001, amended and completed, may be infringed.

b) Aspects derived from the manner of filling out of the notifications.

To begin with, there must be mentioned that almost all banks operating in Romania have notified the National Authority for the Supervision of Personal Data regarding the activities within which they process personal data. Of the analysis of the notifications transmitted by the banks and of the documents compulsorily attached to these, there has been observed the fact that there were not observed some of the requirement of Law no. 677/2001 regarding the information of the persons aimed, in the sense that this requirement is not fulfilled by the provision of all information established by the law, in the moment of collection of the data. Some of the banks resume at referring to the purpose of processing and to the rights of aimed persons in a general view, without specifying the conditions under which these rights may be practiced or the receivers of the data.

Also, in the context of information provision, there has been observed the fact that it is very much developing the manner of practice of the rights towards the receivers of the data – the companies of type credit offices – and not towards the bank in question (the data controller). However, in the process of processing the data, the bank is the one to directly collect from the aimed person the data, and as a result is responsible for the observation of the rights guaranteed by Law no. 677/2001, amended and completed. Subsequently, the receiver of the data, in his turn, acting as data controller, has the obligation to inform the aimed person. Usually, the banks fulfil their legal obligation of informing the aimed person by means of the Agreement concluded with the latter, at the section generally entitled “General banking terms for natural persons” or by means of a section entitled “Approval” in the content of which they provide more information. Yet, the size of the letters of these sections is reduced, so that, the aimed person has the tendency to carelessly pass through the paragraphs in question, without an attentive lecture or without reading this information at all.

Another aspect concerning the activity carried out by the banks is represented by the manner in which the banks develop or transmit to third parties the data of their potential customers. Thus, some banks collect data by means of petition for the obtainment of a loan, so before establishing a contractual relation, without informing the aimed person about the verification of eligibility in its data bases of credit offices type.

Generally, in the forms for the obtainment of consent of the aimed person for the verification and transmission of their data in the evidence of the credit offices appear in the petition and/or agreement of the loan. Yet, these forms are not always explicit and they do not give the possibility of choice to the aimed person, the latter being in a power relation favourable to the credit institution. Thus, the solicitor of a loan does not entirely have the possibility of denying to sign a clause of the loan Agreement (adhesion

agreement in which the clauses are non negotiable), without taking into account the risk of being denied the approval of the customer.

In the mean time, from the manner in which the notification forms received by the banks have been filled out, there has been observed that there is not known and correctly understood the dispositions of Law no. 677/2001, amended and completed. In this sense, there have been considered the following aspects:

- there are not know the legal conditions under which the special data may be processed;
- there are not respected the requirements of the law regarding the processing of data;
- there is not delimited the period of storage of the data, which allows the identification of the aimed persons during the period necessary for the effectuation of the purpose stated by the data controller;
- in most cases it is preferred mentioning only the consent of the aimed person, as guarantee for the dissolution of the data to third parties, without taking into account the existence of legal dispositions obliging to the communication of certain data to certain receivers.

Also, there has been observed the fact that the banks have not notified the National Supervisory Authority for Personal Data Processing all the purposes for which they process the personal data of certain natural persons. Thus, for the assurance of the security of their registered offices, the banks carry out video surveillance of the aimed persons – customers, potential customers, employees without taking into account that this activity supposes personal data processing (image) and, implicitly, must be declared by means of notification.

Another type of data processing carried out by banks is represented by the activity of advertisement, marketing and publicity, carried out with the purpose of promoting the services and products of the bank. Thus, the purpose being advertising, marketing and publicity are enough data such as name, address of the customer, telephone number, email address. Carrying out commercial communications by electronic means implies the observation of the dispositions of art. 12 of Law no. 506/2004 concerning the processing of personal data and the protection of private life in the electronic communications' sector, completed, in the sense that the aimed person must be offered the possibility of choosing such processing, before being transmitted commercial messages not implying the intervention of human data controller.

3.2. The processing of personal data by leasing companies

a) Activity management

The activity of leasing companies is regulated mainly by the Government Decree no. 51/1997 concerning the leasing operations and the leasing companies. In the development of the leasing operations, the companies process personal data, and as such they have the obligation to notify the personal data processing they carry out.

b) Aspects resulted of the way of filling in the notifications.

In the activity field of the leasing operations and leasing companies, 7 leasing companies submitted notifications to the Supervisory Authority in 2006. After analyzing the submitted notifications, it was noticed that the leasing companies do not correctly inform the aimed persons. According to those stated through the notification, the information of the aimed person is made either orally, either by posting at the head office, although the personal data are collected through the leasing contracts and the financing

applications; on the other hand, models of the information notes are not sent to the Supervisory Authority, although this is requested by the notification form. Frequently, not all the classes of aimed persons were stipulated in the financing application.

c) Data transfer to other states.

As far as the data transfers to other states is concerned, transfer authorizations were requested for the following purposes: checking the eligibility of the clients, natural persons or authorized natural persons, partners, shareholders, or administrators of legal entities requesting financing and keeping records of the clients of the portfolio, according to the Basel International Agreement II/2004. No problems appeared in this field. The Supervisory Authority issued authorizations for states of the European Union (Austria).

3.3. Personal data processing in the insurances field

a) Organization of the insurance / reinsurance activity in Romania.

The legal ground for organizing the insurance / reinsurance activity is Law no. 136/1995 related to the insurances and reinsurances in Romania, changed and amended. The insurance activity may only be exerted by: Romania legal entities established in joint-stock companies and/or mutual companies authorized by the National Commission of Insurances' Monitoring; the insurers or the reinsured authorized in the member states carrying out the insurance or reinsurance activity on the Romanian territory; branches belonging to mother-companies governed by laws of a third state, authorized by the National Commission of Insurances' Monitoring; subsidiaries of insurers or re-insurers of third states, authorized by the National Commission of Insurances' Monitoring; insurers or re-insurers adopting a form of a European joint-stock company.

b) Aspects resulted of the way of filling in the notifications.

All the insurance/reinsurance companies, regardless the legal form of their establishment, conclude with the insured person a contract specifying numerous personal data of the aimed person or of the aimed person's family (or other persons appointed as beneficiaries of the insurance policy). In this context, the insurance/reinsurance companies are personal data controllers. Moreover, the life insurance company process personal data related to the health condition, data requiring special protection and that may be processed only in the conditions stipulated by art. 7 and art. 9 of Law no. 677/2001, changed and amended.

In the insurances activity field, 20 data controllers are registered in the records of the Supervisory Authority. We found deficiencies related to knowing the meaning of the terms *representative* and *proxy*. Related to the class or classes of aimed persons, the data aimed person' family members are most of the times processed and the information on the rights thereof is not properly made. Related to the special data, certain companies declared processing personal data related to the "health condition" although that particular company did not make life insurances. Other times, they declared as being processed "personal data revealing religious beliefs" data that, compared to the purpose of the processing, are excessive. A life insurance company did not declare the fact that it processes "data related to the health condition" although it had this particular activity object.

As far as the subsequent designation of the data is concerned, their designation is not mentioned or all of them state executing only "archiving", without specifying what happens to the data after the expiration of the archiving periods. The companies offering insurances / health insurances collect data related to the health condition by

questionnaires containing rather detailed questions such as, for example, what medicines have been taken in the last month and which was their exact quantity. In this sector, processing sensitive personal data represents a key-element, as after assessing the health condition, on the grounds of certain criteria and according to certain procedures, the insurance is granted and the freely expressed consent, explicit and non-equivocal is crucial in collecting personal data of this kind.

c) Transfer of personal data abroad.

Related to the data transfer to other states, the data controllers in the insurance / reinsurance field requested transfer authorizations, as it follows: personal data transfer for statistic purposes; personal data transfer with a view to the assessment of the insured events by the re-insurer, namely deaths of the insured persons, payment of the insurance indemnities; data transfer for the conclusion and execution of medical insurance for trips abroad. It was found that not all the lines of the notification form related to the transfer are being filled in, the addressees' name and head office were not mentioned, the transmission of more data than the processed ones is intended, although the consent for processing and transferring such data was not obtained (for example – religion). The supervisory authority issued authorizations for the member states of the European Union (Belgium and Hungary).

3.4. Personal data processing in systems such as credit offices

a) Applicable legal grounds. Premises of creating “credit offices” in Romania.

In the scope of Law no. 677/2001, changed and amended, enters any personal data processing allowing the identification of natural persons, including from the economic and financial condition points of view. From this perspective, art. 17 of Law no. 677/2001 forbids the adoption of all decisions causing legal effects on a natural person, adopted exclusively on the grounds of personal data processing, made by automatic means, meant to assess certain aspects of his/her personality, as well as the professional ability, credibility, conduct or other such aspects (financial solvability for example). As such, the law acknowledges the right of all persons to ask for and obtain the withdrawal or the cancellation of such a decision or, if applicable, the re-assessment of any other decision made related to him/her, significantly affecting him/her, if the decision was adopted exclusively on the grounds of data processing complying with all the aforementioned conditions. The only exceptions admitted by law refer to the following situations:

- that particular decision is made when concluding or executing a contract, provided that the application for concluding or executing the contract, filed by the aimed person, was satisfied or that certain appropriate measures, such as the ability to sustain one's point of view, to warrant the defence of one's own legitimate interest;

- the decision is authorized by a law stipulating the measures guaranteeing the defence of the legitimate interest of the aimed person.

In the financial – banking system, the decision of granting or not a credit to a natural person may meet the characteristics of the aforementioned decision, especially for *scoring* type analyses, requiring the observance of the provisions of Law no. 677/2001, changed and amended.

Taking into account the increasing interest in credit type products and the attraction of the banks in this field, it came out the need to protect the financial – banking system of the potential frauds or of the insolvency of some debtors. Thus, the National

Bank of Romania (*NNR*) issued the Norms 3/2002 related to the standards of knowing the clients, changed by Norm no. 13/2003, stipulating the obligation of the banks, cooperative credit organizations, savings houses in the living field and institutions issuing electronic currency („*credit institutions*”), of adopting efficient policies and procedures of knowing the clients, promoting high ethical and professional standards and preventing the use of the credit institutions by their clients for infringement activities or for other law-breaching activities.

Taking into account the proportions of the credits required by the Romanian citizens during the last years, the banking companies of Romania had the initiative of establishing a joint-stock trading company monitoring the crediting risk, S.C. Biroul de Credit S.A., also established on the grounds of the World Bank recommendations. It must be specified that at present, there are other companies of this type established in Romania, but with a less significant portfolio of clients.

b) Data controllers in incident systems.

S.C. Biroul de Credit S.A.¹⁵ was established as a joint-stock trading company, Romanian legal entity, having as shareholders-founders 24 banks, having as main activity object auxiliary activities to the financial mediations (except for the insurances houses and the pensions houses). S.C. Biroul de Credit S.A. provides financial – banking counselling, it collects, administrates and processes data and information related to the clients portfolio of the banks /credit institutions /other financial and insurances institutions that are information suppliers, offering them appropriate information, data and studies in order to identify and quantify the credit risk, to increase the credits’ quality in the Romanian banking system, to diminish the fraud risk and to protect the creditors. As well, it sets uniform criteria of clients’ appreciation (*scoring*), drafts and promotes specific standards of clients’ appreciation from the crediting risk point of view.

Subsequent to its establishment, S.C. Biroul de Credit S.A. addressed to the institution of the People’s Attorney – accomplishing at that time attributions of supervisory authority, to obtain the approval for collecting data related to the transmission of the debtors’ personal data to the banks (negative information), collected 5 years before its effective operation (August 16th 2004), in order to benefit from a data basis with useful information for the participants, allowing them to make an informed decision in the procedure of being granted a credit. The People’s Attorney Institution considered that the processing of data related to first name, last name, address, personal number and credit situation is admissible, as the forming a data basis of the debtors to the banks that were shareholders to S.C. Biroul de Credit S.A. corresponds their immediate legitimate interest of knowing the conduct of the bank debtors, potential clients, as well as the general interest of providing the security and the integrity of the banking system.

¹⁵ At present, S.C. Biroul de Credit, member since 2006 of the European Association of the Credit Offices (ACCIS), is the most important actor on the market of the companies supplying bank risk information. According to the statistic data published on its site (www.birouldecredit.ro), valid on December 31st 2006, the participants in the Credit Office system were 22 *banks*, 6 *consumption credit companies*, 1 *leasing company* and 1 *insurances company*, 8.9 million Credit Reports were issued (out of which 5.3 million in 2006), 278,24 debtors with current debts were registered, out of which 228,153 debtors with current debts at to only one participant and 50,371 debtors with current debts to several participants and the total amount of the current debts amounted to 419.1 mil. RON, out of which: open account (overdraft) 5.3 mil. RON, consumption credits 257.2 mil. RON, mortgage credit 7.1 mil. RON.

The conditions imposed by the People's Law resided in:

1. *information of the aimed person, both by the banks, before revealing the data to S.C. Biroul de Credit S.A., as well as by the latter, the time of data collection according to the provisions of art. 12 of Law no. 677/2001;*
2. *providing the observance of the right of not being submitted to an individual automatic decision, by the data processing within a centralized system, such as the one held by S.C. Biroul de Credit S.A. , according to art. 17 of Law no. 677/2001;*
3. *confidentiality of the processed personal data, by including a special clause in the deed on the grounds of which the users' access to the data held by S.C. Biroul de Credit S.A. shall be admitted;*
4. *permanent update of the processed information by highlighting the event that lead to the redemption of the debt;*
5. *setting a deadline for stocking such data;*
6. *application of the appropriate security measures to protect the personal data, according to the provisions of art. 20 of Law no. 677/2001 and of the People's Attorney Order no. 52/2002;*
7. *notification of the personal data processing by S.C. Biroul de Credit S.A., according to art. 22 of Law no. 677/2001 and of the People's Attorney Order no. 52/2002 (in force at that time).*

Consequently, S.C. Biroul de Credit S.A. (*The Credit Office*) notified to the People's Attorney the personal data processing. Subsequently, the data controller changed the notification in the sense of extending the classes of participants to the Credit Office system, to financial, leasing, insurances and utilities supplying companies, such as the phone companies.

The Supervisory Authority at that time allowed these changes, with the mention that the data which the participants may send, must refer "strictly to the financial aspects deriving from the commercial relation of services supply to their clients". At the same time, it was recommended that, by the processing of such data in the Credit Office system, not to allow the adoption of individual decisions based on the automatic data processing (scoring type), meant to restrict the access of natural persons to certain essential services for providing a decent living. The same data controller addressed to the Supervisory Authority requesting "the approval of the personal data processing related to the activity of a natural person residing in infractions or offences committed by a participant, having as consequence the establishment, according to the legal provisions in force, of criminal convictions, safety measures or administration or contravention sanctions for that particular natural person, without the express and non equivoque approval of such persons". The Supervisory Authority did not approve this request, specifying that "the institution (the Credit Office) is not authorized to collect, administrate and process information related to natural persons who are not clients of the participants, having committed infringements or offences related to them, in order to use such persons in the Credit Office system.". Related to the stated purpose, it was appreciated that the participants in the Credit Office system may transmit it only the data of their clients related to infringements or offences committed related to them, only on the grounds of the express and non equivoque contentment of the aimed persons.

The **Central Office of Bank Risks** is operation within the *National Bank of Romania*, carrying out its activity on the grounds of the NBPR Regulation no. 4/2004

related to the organization and operation within the National Bank of Romania of the Central Office of Bank Risks. The Central Office of Bank Risks is a mediation centre administrating, on the behalf of the National Bank of Romania, the bank risk information and the information on cards frauds for the users' purposes, in the circumstances of keeping the bank secret.

Another mediation centre operating within *NBR* is the **Central Office of Payments Incidence**, hereinafter referred to as CIP, administrating the information specific to payment incidence for the public interest, including for the users' purposes. This centre was created and operates on the grounds of the *NBR* Regulation no. 1/2001 related to the organization and operation within the National Bank of Romania of the Central Office of Payment Incidence.

During the year of 2006, the National Bank of Romania informed the Supervisory Authority on its intention to conclude a protocol with S.C. Biroul de Credit S.A., to transmit it part of the information administered by the latter, in order to avoid in the future a superposition of the administered information, related to the due payments of natural persons, between the two systems (of the Credit Office and of *NBR*). Subsequent to this request, the Supervisory Authority appreciated that the administration of the risk information related to the debtors - natural persons made by the two data controllers (having different goals and objects of activity) is made for different purposes.

Therefore, the Supervisory Authority appreciates that there is no superposition of the information administered by the two entities, stipulating that the transmission to the National Bank of Romania of the data basis administered by the Credit Office, including the information from the credit institutions and the financial non banking institution, related to the payment conduct of the debtors natural persons as a whole, is made without observing the provisions of art. 12 paragraph (2) of Law no. 677/2001, changed and amended (previous information of the aimed person).

Moreover, the Supervisory Authority appreciates that the processing made by the Credit Office, in the conditions of art. 5 paragraph (2) letter e) of Law no. 677/2001, changed and amended (the legitimate interest of the data controller or of the third party to whom the data are being revealed) can be done only if the rights of the aimed person are not prejudiced (the right of the aimed person to be informed on the addressees to whom his/her data are being revealed). At the same time, it was appreciated that the information of the aimed person does not imply a disproportional effort compared to the legitimate interest of the Credit Office, as data controller or of the third party requiring the access to the processed data – *NBR*. Otherwise, such disproportional effort must be proved by the data controller, which was not achieved in this case.

S.C. Expert Credit Bureau S.A., as data controller, processes personal data for the execution and supply of services of the credit office type, namely reports and analyses related to the financial conduct of the aimed person. On the grounds of the contract concluded with S.C. Expert Credit Bureau S.A., its partners transmit personal data in order to be processed.

S.C. Delos Creditinfo S.R.L. processes personal data of bad payers natural persons, persons involved in the activity of trading companies. The access of the data controller to the information held in the data basis is possible upon the express request of the trading companies or of the natural persons interested in obtaining update, complete

information, helping them in the process of making a decision related to a client, business partner etc., observing the confidentiality regime imposed by the data controller.

c) Investigations carried out at the data controllers with incidence in the field.

In 2006, we carried out 25 investigations meant to check the conditions of transmission and processing personal data to the participants in the records system, of Credit Office type.

Out of the made investigations, it was found the existence of dysfunctions in the appreciation procedure, subjective sometimes, on the grounds of which the data controllers' employees make the decision to report certain personal data of their clients or potential clients.

For the Credit Office, to avoid the abuses in their report to the persons who used documents considered invalidated by the banks, the Supervisory Authority constantly asserted that only by final and enforceable legal decisions can one set the guiltiness of a (possibly) fraudulent person. The Supervisory Authority recommends the banks to appoint specialized persons to correctly assess those documents, from the point of view of their legality.

As well, of the complaints addressed to the Supervisory Authority, it came out that certain banks report to the Credit Office information related to the tiny due amounts that are not directly caused by a fault of the debtor, but by the bank's information deficiencies.

Hence, the Supervisory Authority appreciates that it is necessary to set a minimum limit of the debts gathered by each debtor, as a condition for reporting the negative data to the systems such as the credit offices. The recommendation of the Supervisory Authority was taken into account by the banks that decided, at the end of 2006, that the debts less than 10 lei are not to be reported to the Credit Office.

As far as the positive data are concerned, it was found that some of the participants did not inform their clients in advance on the fact that their data had been sent to the Credit Office, in the circumstances of not having their express consent, the data having been collected before the operation of the Credit Office.

In these circumstances, the Supervisory Authority considers as rightful the requests of the persons whose positive data were sent to the Credit Office, of erasing such information of the records system of the Office, as they had not been informed in advance and, therefore, all the processing legal conditions were not observed.

As well, the Supervisory Authority appreciates that when admitting phone companies and the utilities ones in the Credit Office system, system that is meant for being used in the financial – banking system to answer the prudential norms imposed by NBR, we may reach an excessive reporting of the personal data on the natural persons financial situation and payment conduct. This may create prejudices and it even may be detrimental to providing a decent living level in Romania. In other words, the person requesting the supply of essential services (phone, gas, electricity) may be put in the situation of being refused the contract conclusion, on the grounds of a debt to the bank, that may create the premises of its exclusion from the benefit of a service with social security potential.

The Supervisory Authority asserts that the personal data processing made in records systems such as the credit offices cannot operate on the sensitive data (except for the personal number), as well as of the data related to criminal actions or offences

committed by a natural person, except for those ascertained by a final legal decision, only related to the activity carried out by the institutions with crediting specific attributions.

Moreover, The Supervisory Authority reckons that reporting to the records system such as the credit offices of the data in connection with the first payment delay may be made only by the written notification of the aimed person at least 30 calendar days before the date of the first transmission. The personal data related to the applications informed by the participants may be kept in the records systems of the credit office type as long as necessary in order to solve the non payment situations, yet not longer than 3 years from the date of the last update. The archiving period of the personal data in the records system such as the credit offices is of maximum 2 years from the end of the retention period, then the archived data may be destroyed / erased or transformed in anonymous data and stocked exclusively for statistic purpose.

This point of view of the Supervisory Authority concretized into a decision project related to the personal data processing made in records systems of the credit office type, which was submitted to public debate on the institution's site, related to which the aimed data controllers sent opinions and remarks, and the representatives of the Supervisory Authority had several discussions with those concerned.

At the same time, The Supervisory Authority considers that the goal of evaluating the financial condition, solvability and payment conduct of the natural person to which credit type products was granted or who requests the granting of such products may be attained:

- by the processing of the negative data of such persons by the institutions involved in the processing;
- by the reporting by the participants in the systems of the frauds / deviations found by final legal decisions, having direct connection with the crediting relation between the participant and its client;
- by excepting the phone companies and the utilities suppliers of the scope of the participants in the records systems of the credit office type.

Consequently, the Supervisory Authority appreciates that the personal data related to the financial situation of the persons aimed by the processing in records system of the credit office type are excessively processed at present, related to the provisions of Law no. 677/2001, changed and amended.

3.5. "SWIFT Case"

The Society for Worldwide Interbanking Financial Telecommunications (SWIFT), head office in Brussels, is a corporation with the majority shareholders made up of banks from various states, providing to the banks a computer service operating a transmission channel for international financial transfers. The records of this data basis contain names, addresses, account numbers of the senders and of the addressees of the transfers made through the financial banking international network.

After the reveals of the American press made during the year of 2006 and related to the access of the USA Treasury Department to the information related to the financial international transactions held by SWIFT, in order to monitor the financing of the terrorism actions, the authorities of the personal data protection of the European Union, as well as the European Parliament, publicly expressed their concern for the breach of the

EU citizens' rights related to the unauthorized transfer of the personal data on the USA territory and the access of the authorities in this state in non particular situations.

By the opinion no. 10 of November 22nd 2006 related to the personal data processing by SWIFT, issued by the Work Group Art. 29, SWIFT and the financial institutions are required to take the necessary measures to remedy without any delay the present situation, including by informing the clients of the financial institutions related to the data transfer in the USA and the possible access to data from the Treasury Department of the USA.

As such, the Supervisory Authority initiated in September 2006 a preliminary investigation, requesting in writing the National Bank of Romania (*NBR*) and the Romanian Association of Banks (*RAB*) information relate to the following aspects:

- if a local SWIFT Belgium office is established in Romania and which are its relations with the financial banking institutions of Romania, namely with the central bank;

- of NBR or RAB or the financial banking institutions that are members of the association, were aware of the transfer of data sent by SWIFT on the USA territory, to the stocking centre used by this company;

- if NBR or RAB have authorized such a transfer;

- if the banks in Romania were aware of the request of the access of the USA authorities to the information stocked by SWIFT on the territory of that state; if so, if measures were taken and which were exactly;

- if the banks in Romania were aware of the fact that the data stocked on the USA territory to which the access of the authorities of that state was permitted, belong to clients of financial banking institutions of Romania.

Of the answers sent by the National Bank of Romania and namely by the Romanian Association of banks, the following came out:

1. there is no local office of SWIFT Belgium in Romania. At present, all the banks of Romania are SWIFT members, each bank having a direct relation with SWIFT Belgium ;
2. the members of RB are aware of the fact that, in order to be transferred to the addressees, all the SWIFT messages are stocked in the data bases in the SWIFT operations centres; in exchange, NBR is not aware of the of the data transfer transmitted by SWIFT on the USA territory;
3. the banks authorize the transfer of the messages representing financial transaction in the SWIFT network, in order to deliver them to the addressees, according to the operation way of SWIFT system;
4. neither RAB nor NBR were aware of the USA authorities request to have access to the information included in the SWIFT data basis;
5. neither of the informed institutions do not have information related to the data accessed by the USA authorities and their appetite to clients of the financial – banking institutions of Romania.

Taking into account the resolutions expressed by the Opinion no. 10/2006 of the Work Group Art. 29, the Supervisory Authority requested the measures that the banks have in mind to observe Directive no. 95/46/EC and specifications related to the provision of appropriate information to the clients of the financial institutions of Romania using SWIFT services. The investigation shall go in 2007 as well, taking into account the evolutions registered at the level of the Work Group Art. 29.

4. Health services

a) Activity organization related to the provision of health services.

The activity related to public health assistance is mainly regulated by the following normative documents: Law no. 95/2006 concerning the health reform, changed and amended, The Government's Order 124/1998 concerning the organization and operation of medical rooms, republished, the Order no. 626/2001 for the approval of the Norms related to the establishment and authorization of the pharmaceutical units, as well as of their organization and operation Conditions, with subsequent changes and amendments, Order no. 1552/2004 for the approval of the goof pharmaceutical practice rules and last but not least, the deontological code of the doctor, of the dentist and of the pharmacist.

The public health assistance is carried out by all types of state or private medical units. Ministry of Public Health represents the central authority in this field that it coordinates. Nursing is provided by the medical rooms of the family doctors and of other specialization doctors, diagnostic and treatment centres, medical centres, health centres, laboratories, hospitals, unities specialized in emergencies and medical transport, recover ambulatory units, as well as other medical units in the public or private field.

Pharmaceutical assistance is provided by the preparation and issue of medicines and other health products and medical devices, made according to the law, namely by the pharmaceutical units.

The entities providing the specific activity of health services provision are the personal data controllers and they have the obligation to state the data processing they make. Among the classes of data processed in automatic or manual system, we can find many sensitive data, especially data related to the health condition, but other special classes of data such as race origin, religious beliefs, sexual life, biometric data, generic data as well as those having identification role – personal number, series and number of the identity document. These undergo special protection rules, set by art. 7, art. 8 and art. 9 of Law no. 677/2001, changed and amended.

b) Aspects resulted of the way of filling in the notifications.

In the field of health services supply, in 2006 29 data controllers submitted notifications, out of which Ministry of Public Health, county public health authorities, hospitals, private medical centres, individual or associated medical rooms (family doctors or dentists) foundations and associations having as activity object the provision of medical services, national institutes, other medical units of the public or private field.

The main activity stated in the notification is the one of health care provision. As well, some of the data controllers stated the carrying out of medical scientific research, as well as other activities carried out in the accomplishment of the legal attributions. As well, the data controllers in this field make processing in the following purposes: report adverse reactions to the National Agency of Medicine within the pharmacovigilance system; execution and monitoring of clinical studies, medical studies and medical clinical investigations within the pharmacovigilance system ; the execution of commercial contracts with business partners; conclusion of sponsorship contracts with physicians; on-line commerce with parapharmaceutic products and medical instruments; transmission to the National House of Health Insurances and the county houses of health insurances of the medical prescriptions the patients benefited from, as well as the

documents enclosed to it; advertising, marketing and publicity (issue of loyalty cards for the clients, programs of clients' fidelity).

The main deficiency found by the Supervisory Authority was the one related to the way of informing the aimed personas. As well, some of the data controllers considered as being sufficient the patients' information related to the rights they have according to Law no. 46/2003 concerning the patient's rights, without taking into account their quality of aimed persons, guaranteeing them certain specific rights. In this field, the two legal norms are complementary and do not exclude each other.

Within the advertising, marketing and publicity field it was specified that special data are being processed, such as the personal number, for the organization of fidelity programs (offering a discount of the service's cost) that, compared to the purpose of the processing, is excessive. The reason of the collection was the one related to the structure of the computer program used for the records of the patients that did not allow the avoidance of the personal number.

At the pharmacies' level, according to the order of the Minister of Health, no. 1552/2004 for the approval of the good pharmaceutical practice Rules, a data basis of the clients must be created – patients with chronic diseases or determining the constant purchase of certain medicines, in order to provide high quality pharmaceutical services. The pharmacist shall have exclusive access to this data basis, individual that is forced to keep the professional secret, in order to know the history of the patient's medicines and his/her appropriate counselling, as well as a better control of the medicines' effect.

At the same time, the Order no. 1552/2004 stipulates that the inclusion of the patient in this data basis shall be done only with his/her previous explicit consent and the pharmacist has the obligation to offer a system guaranteeing the patients' data confidentiality. Despite all these, some data controllers of this filed asserted that this way of processing personal data does not require obtaining the express and non equivoque consent of the aimed person, invoking another legal grounds, related to the achievement of the patient's interest to benefit from quality services and the achievement of a legal obligation (Decision no. 1/2005 concerning the deontological Code of the pharmacist), argument that the Supervisory Authority did not accept, the need to obtain the consent prevailing, according to Order no. 1552/2004.

c). Transfer of personal data abroad.

The data controllers providing health services stated the fact they are transferring personal data abroad, authorizations being required for the following purposes: the execution of clinical studies and the improvement of the medical services' quality, experimental clinical studies of testing new medicines on human subjects. The aforementioned purposes proposed special data transfers, such as: biometric data, genetic data, data related to the health condition, series and number of the identity document, personal number etc. The addressees of these statements were data management companies, companies for the statistic processing of these data as well as to collaborating agencies / investors (medical stuff).

We found deficiencies as far as the appropriate information of the aimed persons is concerned, as well as related to the observance of the minimum security requirements of the personal data processing.

Another notified problem was the intention to transmit abroad excessive data compared to the purpose of the transmission. As well, we encountered disagreements between

the personal data included in the collecting documents and those declared to the Supervisory Authority, by the notification form.

d) Investigations in the personal data processing field in the scope of medical services..

According to the investigations annual thematic plan for 2006, 11 investigations were carried out at the level of some hospitals, medical clinics and pharmacies, out of which 2 in the territory. Taking into account that the concerned data controllers are *a priori* having the obligation to observe personal data confidentiality by the nature of the doctor¹⁶, profession itself, the main aimed objective in the investigations was the achievement of the obligation of notification and information of the aimed persons. It was found that the operations of personal data collection are made using type forms, containing the identification data of the aimed person and the medical diagnosis data, set on the grounds of the laws in the field, especially necessary in the doctor – patient relations and doctors – health insurances houses. In approximately 90% of the investigated cases, the controlled data controllers were sanctioned for the inobservance of the obligation to inform personal data processing that they were making in connection with the provision of the medical services. All the data controllers observed the recommendation of registering within the Supervisory Authority.

Of the carried out investigations, it came out that the data controllers in the medical field post in visible places the patients' rights, as they are stipulated by Law no. 46/2003 concerning patient's rights. We also recommended the posting of the rights stipulated in Law no. 677/2001, changed and amended.

One of the **previous controls** made by the Supervisory Authority in 2006, under the regime of Decision no. 89/2006, aimed at checking the conditions in which data on the health condition were to be collected then processed in automatic system the processing was notified by a foundation acting as monitor of the patients with chronic diseases and of the treatments applied to them, correlated with bearing the costs of the treatments and the development of clinics or hospitals, within a program approved by the Ministry of Public Health and under the auspices of the Ministry of Education and Research, to which certain important university hospitals in the country take part. After the previous control, we issued a decision allowing the data controller to begin the notified processing, yet with the obligation of adopting the following measures:

- The data controller, its collaborators and its contract partners must take all the necessary measures to provide the quality and the accuracy of the personal data introduced in the system;

- the form by which it is obtained the agreement of the aimed persons related to the processing of their personal data must be changed to comply with the requirements of Law no. 677/2001, changed and amended;

- the persons giving their consent must have full judgment ability and the persons with limited judgment ability or lacking judgment ability, the consent shall be obtained from the legal representatives thereof;

- the users of the personal data of the aimed persons must be exclusively doctors or other persons having the obligation to keep the professional secret. In this sense, the

¹⁶ The doctor's obligation to keep the professional secret was asserted for the first time in the Oath of Hippocrates and in the modern ages, in the Statement of Geneva of the World Association of Doctors (1948).

persons having access to personal data must sign a confidentiality engagement, observing the patients' rights from the point of view of Law. no 677/2001 and of Law no. 46/2003;

- observing the minimum security measures of the personal data processing, stipulated by Order no. 52/2002, shall be made by adopting a written security policy, the effective implementation of the security measures, including by the time to time training of the users, at the level of the data controller, its collaborators, contract partners and the employees of the empowered person;

- both when collecting the data and during their processing, the rights of the aimed persons must be observed;

- the data controller, its collaborators and contract partners must comply with the legal provisions in the field of medical scientific research and of the execution of clinical studies;

- the data controller must set the period of stocking the processed personal data, either in a physical form, either in an automatic form, depending on the purpose of data processing and taking into account the data protection legal provisions, those specific in the medical field, as well as the applicable provision of archives' keeping;

- the processed personal data may be included in scientific research reports only after their transformation in anonymous data;

- the personal data representing the medical file of the patient must be processed distinctly from other classes of data.

The controlled data controller (the foundation monitoring various patients) complied with the decision issued by the supervisory Authority.

5. Phone services

a) Applicable legal provisions.

Law no. 506/2004 regulates the specific conditions of guaranteeing the right to the protection of private life concerning the personal data processing in the field of electronic communications. The applicable laws are completed with the provisions of Law no. 677/2001, changed and amended. These legal provisions apply to the suppliers of electronic communications public networks and to the suppliers of electronic communications meant for the public, as well as to the suppliers of value added services and to the suppliers of subscribers' registers that, within their commercial activity, process personal data. The suppliers of fix or cell telephony are part of this class. As far as the telephony services are concerned, the provisions of Law no. 304/2003 are applicable for the universal service and the rights of the users related to electronic communications networks and services.

b) Aspects resulted of the way of filling in the notifications.

The data controllers of this field omitted to state the authorized persons processing data on their behalf and they did not explicitly mention the addressees or classes of addressees of the data, so as to provide clear information of the aimed persons. In the used subscription contracts generic mentions were introduced related to the natural persons / legal entities to whom the personal data of the subscribers are revealed. They have the obligation to supply to the aimed persons information concerning the data controller's identity, the purpose of the data processing, the addressees or the classes of addressees of the data, if the supply of all data is mandatory and the consequences of the refusal to supply them, the existence of the rights of access, intervention and opposition and the way to exert them. As well, the data controllers have the obligation to offer the

aimed person the possibility to choose between accepting or refusing the information for the data controller's promotion of the provided services. In other words, it must obtain the express and non equivoque consent of the client or of the potential client, prior to sending commercial messages by electronic communication means that do not require the intervention of a human data controller.

Other data controllers inserted in the contracts, at the sections in which the information of the aimed person was carried out and their consent was obtained, much too general clauses related to the classes of processes data and the purpose of the processing. This way, they used collocations such as "any personal data and any other information supplied", "any other activities related to marketing, telecommunications, (...) and in the purpose of achieving a legitimate interest. For the establishment of a data basis and the use thereof, whichever may be required."

As far as the registration of the phone conversations made "for identifying the needs of the clients and improving the provided services" are concerned, the Supervisory Authority drew the attention of the data controllers related to the cumulative observance by the data controllers, on the grounds of the provisions of art. 4 paragraph (5) of Law no. 506/2004, of the following conditions:

- a) the subscriber or the user was provided accurate and complete information, according to the provisions of art. 12 of Law no. 677/2001, among others – related to the purpose of the stocking or the access to the stocked information;
- b) the subscriber or the user was provided the possibility to refuse the stocking or the access to the stocked information.

As far as the personal data transmission to the "credit offices" by the data controllers supplying telephony services is concerned, the Supervisory Authority appreciated that such processing does not observe the principles of the personal data protection.

c) Investigations in the field of telephony services.

In 2006, two investigations were carried out at the most important cell telephony of Romania. The objective of one of these investigations was set after finalizing the solution procedure of a claim, at the end of 2005, by which a possible unauthorized data revealing by the employees of this data controller was notified.¹⁷ After the investigations made in 2006, it was found that that particular company observes the security policy by the entire company, not being able to identify a breach of the provisions of Law no. 677/2001, changed and amended.

In the second case, the cell telephony company was controlled from the point of view of observing the provisions of art. 12 of Law no. 506/2004, concerning the need to previously obtain the addressee's¹⁸ consent to receive the commercial communications. .

¹⁷ At that time, the Supervisory Authority could not further investigate the complaint, taking into account that the litigation between the claimant and the data controller was pending at the courts of Law, (in this case applying the complaint inadmissibility exception stipulated by art. 25 paragraph (2) and art. 27 paragraph (2) of Law no. 677/2001).

¹⁸ Art. 12 (1) – „It is forbidden to make commercial communications by using appealing automatic systems that do not require the intervention of a human data controller, by fax or electronic mail, or by other method using the electronic communication services meant for the public, except for the case when the aimed subscriber previously expressed his/her express consent to receive such communications.”

The investigation was started after receiving a complaint from a subscriber of this company. From the investigation of the communication content, it came out that the information sent to the subscriber were not commercial, as they regarded information strictly necessary for the invoice payment. As well, it was found that the investigated telephony data controller respected in 15 days term the subscriber's request of not receiving commercial messages on the cell phone (SMS), activating this option in its electronic record system.

6. Manpower selection and placement

a) Organisation of the activity related to manpower selection and placement.

Law no. 156/2000 related to the protection of the Romanian citizens working abroad stipulates in art. 5 that on the Romanian territory, classes of legal entities having as object of activity manpower recruitment and placement, referred to as *manpower selection and placement agencies* may carry out mediation activities of the Romanian citizens employment broad. Such agencies provide mediation services for hiring the Romanian citizens residents in Romania, requesting to work on the grounds of the jobs' offers abroad. Therewith, by agreements, understandings, treaties or conventions with similar public authorities of other countries, the protection conditions of the Romanian citizens residents in Romania and working abroad were set.

b) Aspects resulted off the way of filling in the notifications.

The data controllers having as activity field manpower selection and placement may execute the notification in a general form. Related to the way of filling in the notifications, deficiencies were found related to the section *Declaration*, not knowing the terms of *representative* and *proxy*, the incomplete description of the measures taken to provide the security of the processing. As well, declaring the public authorities as addressees was often omitted, although from the analysis of the normative documents regulating the protection of the Romanian citizens working abroad, it comes out that care personal data are also revealed to some competent authorities in the field.

c) Transfer of personal data abroad.

As far as the data transfers abroad are concerned, several notifications were registered for manpower the selection and placement. Of the way of filling in the notifications, including of the sections related to the data transfer abroad, it was found that most of the times, they omitted to specify the name of the addressees and their head office. At the same time, some data controllers did not mention on the notification form the transfer of all data to be found in the documents enclosed to the notification. Other times, the data controllers declared transferring more data than those processed on the Romanian territory, namely more than those effectively collected.

The Supervisory Authority issued six transfer authorizations in this field.

d) Investigations in the manpower selection and placement field.

We carried out an investigation in this field after receiving a notification (manpower recruiting through the Internet). The controlled data controller was sanctioned for the notification omission and at the same time, he was forced to submit the notification of the personal data processing made in this purpose.

7. Tourism and accommodation services

a) Organization of the activity.

Mainly, the activity of the companies in this field is regulated by the Government's Order no. 107/1999 related to the activity of marketing tourist services

packs, changed and amended, Government's Order no. 58/1998 related to the organization and execution of the tourism activity in Romania, changed and amended. The administrators of the tourist accommodation structures, except for the tourist and agro tourist pensions, must provide the registration of all tourists in operative records, upon their arrival and fill in the form "Sheet announcing the arrival and the departure". At the time of their arrival, all tourists fill in this form, on the rounds of their identity documents, namely: full name, place and date of birth, citizenship, residence address, arrival date, departure date, series and number of the identity document, the purpose of the trip to Romania, signature.

b) Aspects resulted of the way of filling in the notifications.

After the notifications were submitted, it was found that the data controllers collect personal data, for this type of activity by the contract of marketing the tourist services pack, so that an appropriate information of the aimed persons should be made in writing, by these documents. Despite all these, the data controllers choose to declare the information variant of posting at the head office or on the web page.

Another frequently encountered situation refers to the omission of the data controller to inform the aimed persons on all the purposes of the processing, as they are notifying processing in addition to the main purpose, such as, for example, direct marketing actions or the organization of advertising lotteries.

c) Transfer of personal data abroad.

A particular aspect in this field is the extremely large number of addressees abroad to whom the data are transmitted. For example, for the booking required by the clients of the travel agencies, the Supervisory Authority exceptionally requested the generic specification of the addressees' class, recommending the keeping of an accurate record of the documents certifying that aspect, at the level of the data explorer.

As well, there were situations when the data controller declared that the transfer is made on the grounds of a contract with standard clauses, yet after more careful analysis, that particular contract tuned out not to be of the class of those regulated by the People's Attorney Order no. 6/2003 concerning the establishment of the standard contract clauses in case of personal data transfer to an data controller established in a state whose laws do not stipulate a protection level at least equal to the one offered by the Romanian laws.

d) Investigations in the tourism and accommodation services.

In 2006, 16 investigations were carried out in this field, out of which 10 at the level of travel agencies and international transport companies. After such research, the lack of knowledge related to the legal provisions on personal data protection was found, 80% of the controlled data controllers not being registered at the Supervisory Authority for the processing related to the provision of accommodation and transport services offered to the clients.

Despite an obvious processing of the clients' personal data, collected by contracts of marketing tourist services and transmitted to the contract partners in the country / abroad, it was found in certain cases that the travel agencies did not admit the fact that the provisions of Law no. 677/2001, changed and amended, were applicable to them.

As far as the accommodation services are concerned, 6 investigations were carried out at several hotel units in the country where it was found that the legal provisions concerning personal data protection were unknown and, consequently, the processing

made related to keeping records of the clients were not notified to the Supervisory Authority, nor did they inform the aimed persons on the rights stipulated by law.

After the findings resulted of the investigations carried out at the data controllers in the field of tourism and accommodation services, in *twelve* cases we decided contravention of the faulty ones, on the grounds of art. 31 of Law no. 677/2001 and their obligation to submit the notifications for the carried out processing. As well, *four* of the data controllers were sanctioned for the inobservance of the information right of the aimed persons stipulated by art. 12 of Law no. 677/2001, and in *two* cases, we found the non adoption of appropriated measures of providing the personal data processing security.

8. Advertising, marketing and publicity

a) Organization of the activity.

Most of the times, the data controllers promote the own products and services by actions of advertising, marketing and publicity. Other times, they carry out such services to their data controllers, through the databases they own. The promotional campaigns need to be carried out on the grounds of a regulation and / or any other document on the grounds of which the publicity lottery shall be carried out, taking into account the provisions of the Government's Order no. 99/2000 concerning the marketing of products and services on the market, approved by Law no. 650/2002. This regulation must comply with Law no. 650/2002 and with Law no. 677/2001, changed and amended. As well, the organizers have the obligation to calculate, withhold and transfer the tax due for the income obtained by the winners, on the grounds of Law no. 571/2003 related to the Tax Code, with subsequent changes and amendments. By such activities, the organizer of promotion campaigns process personal data, requesting the [participants and the winners, along with the personal data such as the full name, address, phone / fax number, e-mail address and other data of the identity document, number and series of the Identity Card, information related to consumers' preferences / conduct. Therewith, the organizers of promotion campaigns have the obligation to reveal to the public, after appointing the winners, their names and the winging granted.

b) Aspects resulted of the way of filling in the notifications.

The data controllers, namely the companies promoting their own products and services or holding data bases for the execution of marketing and advertising services, make the notification in general.

In the field of direct marketing, there is, even since 2004, a Conduct Code of the Romanian Association of Direct Marketing (*ARMAD*) concerning personal data processing, applying to all 32 companies that are part of this association.

It was found that some of the data controllers, when they are organizing promotions, notify the Supervisory Authorities the stat of those promotions, within which they are processing personal data, only a few days before their commencement or even after their commencement in certain situations. In other circumstances, although the data controller mentioned carrying out the processing by the authorized persons, it did not transmit also a copy of the contracts concluded with them, to allow the Supervisory Authority to check whether the provisions of art. 20 paragraph (5) of Law no. 677/2001, changed and amended are being observed. Another problem that was identified in this field resides in the data controllers collecting , sometimes in an unjustified manner, the personal number or the series and number of the identity documents from all the

participants in the promotion campaigns and not only from the prizes' winners, as it is stipulated by the applicable tax laws.

The personal data having identification role, such as the personal number, series and number of the identity card, are required to the winners according to the obligation imposed by the Tax Code, being necessary for the sole identification of the participants in the promotion contests in case of winning a prize. Such data, although they are collected in compliance with the law, are not declared in the notification forms by all the personal data controllers activating in this field.

As well, there are data controllers that for the data processing for direct marketing direct actions, market studies and statistics carried out after the transfer of money to the partner banks, use the same coupon for both activities. Thus, to respect the proportionality principle, inscribed in art. 4 of Law no.677/2001, there must be a separation between the data necessary for the money transfer, for the banks requiring certain special data and those necessary to take part in the promotion campaigns. For this latter purpose, minimum data about the aimed person are sufficient in order to be contacted for being granted a prize or for the transmission of publicity materials.

In such cases, the data controllers of this field do not enclose to the notification the campaign or publicity lottery rules, detailing the way in which personal data processing is executed and that is a useful instrument of the Supervisory Authority, in order to analyze the observance of the requirements of Law no. 677/2001 or of Law no. 506/2004. As well, not few were the cases when it was found the in the regulations that the conditions of obtaining a free consent on image revealing are not observed. Thus, the award of the winning is conditioned by the image registration and its transmission by television, without taking into account the image right of the aimed person.

Related to the classes of aimed persons, although in certain promotion campaigns it is specified in their official regulations, that minors may also participate, the prizes being collected by their legal representatives, the declaration of such classes is omitted. Consequently, increased attention should be paid to these classes of aimed persons and also to the personal data that are intended to be collected, taking into account the restrained judgment ability of the minor or even the lack of such judgment ability. Thus, the data controller must make sure, in certain situations that the consent of the minor's parent or tutor exist so that its data can be provided and, subsequently, provided in other purposes. As far as the data collection through on-line forms or coupons is concerned, a minimum of elements is not supplied, such as: the processing aim, the data addresses or the classes of addressees, whether the data are transferred abroad or not, the existence of the rights stipulated by Law no. 677/2001, changed and amended, especially of the access, intervention on the data and opposition rights, as well as the conditions they may be exerted in, namely by a written, dated and signed application.

Sometimes the aimed persons are not provided the possibility to choose to receive promotion materials by various electronic communication means (e-mail, fax), not involving the intervention of a human data controller. In other words, the aimed person is not unconditionally provided the possibility to express in advance his/her consent for receiving such commercial communications.

Related to the **data transfers abroad**, few opera in this field declared they are making transfers and required authorizations in this purpose, motivated by the direct sales through stores and pharmacies, as well as distance sales.

c) Investigations in the field of personal data processing for direct marketing.

Due to the economic need of the trading companies to attract clients by multiple and various promotion offers, the services of the specialized companies in the field of direct marketing are often used. They have at their disposal already established databases or they carry out their activity in order to form new ones, dedicated to the contracting company for building customer loyalty.

The use of such beneficial methods from the economic point of view, may raise some problems from the point of view of the law on the protection of the data of the persons for whom the direct commercial offers are meant, reason for which the Supervisory Authority monitored the check of the data collection means and, implicitly, of creating the databases belonging to the direct marketing companies, the observance of these persons' rights, the data addressees and means of ensuring security and confidentiality. The investigations were carried out not only at the direct marketing companies, but at other ones carrying out activities of advertising, marketing and publicity, as such operations may also be executed **in house**, by the companies interested in promoting the products and services by its own means.

Because this a recently appeared activity on the market, the persons receiving directly addressed commercial offers (by mail, for example) from various companies, do not show a total attitude of rejecting such practices, as the information. This finding also results of the small number of complaints received at the Supervisory Authority having as object personal data processing in direct marketing. Of the information offered by the National Authority for Consumers Protection (*NACP*), this institution is perceived rather as the addressee of the most frequent complaints related to receiving publicity content messages.

Otherwise, this finding represents one of the reasons for starting several meetings between the representatives of the Supervisory Authority, aiming at establishing a unity frame for the practice of the companies activating in the field of direct marketing, to use the same methods of personal data collection, to identify the best methods to solve the complaints and to establish the opposition lists to sending commercial messages. Generally, it was found that the companies to which the investigations were carried out did not notify the personal data processing, either as data controllers, either indirectly, as proxies of their clients, for which they organized publicity lotteries and subsequently, data bases for the direct marketing operations.

In 2006, 20 investigations were carried out having as object the check of the conditions of personal data processing within the direct marketing activities. Of these, 85% were carried out ex officio, according to the annual schedule of thematic plans and the rest of 15% - answering to complaints. Of the investigated data controllers, 8 of them were contravention sanctioned.

The investigations aimed at monitoring the observance of law on personal data protection for data controllers in the field of sweets, alcoholic drinks, cosmetics, children articles, vehicles, gambling, banks and editorials.

Out of the checks made during the investigations, the following **findings** resulted:

➤ Generally, the important companies on the Romanian market carry out promotion and direct marketing activities, on the grounds of contracts, using specialized trading companies. In such circumstances. These companies have the quality of **proxy**. To organize promotion in order to promote its own services or products, the data controllers

or the proxies drafted regulations, according to Government's Order no. 99/2000, that were submitted to the Ministry of Public Finances and made public by being posted.

Of the executed investigations it came out that part of the data controllers did not observe the regulation provisions, including in the coupons changed information compared to the real way of personal data collecting and namely processing. In such cases, it was the fault of the data controllers' proxies for the way of putting into practice the contract obligations related to, implicitly, personal data processing. All things considered, the data controllers, according to Law no. 677/2001, cannot be exempted of observing the legal provisions, even if they chose to process personal data through the mediation of empowered persons.

Another finding refers to the **telemarketing operations**. In one of the cases, the data controller – a non banking financial institution, authorized approximately 500 mediation companies to attract clients to buy a card issued by the data controller, by calling the natural persons in the data basis of that proxy, situation that was discovered and controlled, after an investigation at one of the providing companies. For the omission of declaring to the Supervisory Authority all the trading companies with which contracts of execution of telemarketing services execution were concluded, contravention sanction were applied.

One of the cases encountered, with impact on a large number of persons (approximately one million) whose data were introduced in databases, refers to the **transfer of databases** between the companies involved in direct marketing activities. Thus, we discovered the conclusion of a data basis sales contract, in fact, a transfer of such data basis from the data controller (having the activity suspended during the control) to the proxy. Taking into account the possible elements considered as offences concerning the signing of such document, the case to remit for investigation to the competent court of law.

➤ We must specify that the personal data processing carried out related to the advertising, marketing and publicity activity represent a significant part of the **notifications registered** in the records of personal data processing. Among the controlled situations, only in three cases did we find that the processing was not notified to the Supervisory Authority, prior to their commencement. Hence, the contravention sanctioning of the faulty data controllers was ordered.

➤ Most of the times, it was found that the data collected during promotion are kept in order to be subsequently processed for **direct marketing**. The Supervisory Authority monitored whether correct **information** of the persons related to the multiple purposes of the processing and of the potential addresses was carried out, if appropriate. Thus, in one of the investigated cases, the data controller was obliged to change its materials of personal data collection, to offer the correct information of the persons whose personal data it is processing. Thus, the data controller was requested to mention the compulsory / optional character of data supply, the consequences of a potential refusal, specifying the purpose of publishing the data of the winners and of checking the accuracy of certain data, by consulting authorized sources.

In order to achieve a unity practice of personal data **collection** for direct marketing direct, with the freely expressed **consent** of the aimed persons, a series of meetings took place between the representatives of the Supervisory Authority, of NACP and ARMAD. With this occasion, they discussed about the identification of feasible

measures to insert in the coupons of participation in the public lotteries of some boxes to express the option related to the subsequent personal data processing for direct marketing.

A method used in the other states of the European Union might reside in drafting opposition lists made up of the contact data of the persons who can express their refusal to receiving commercial offers, list that might be consulted by the data controllers of direct marketing to avoid the use of those persons' data. ARMAD engaged in identifying practical means of implementing such a measure in Romania.

➤ Considering the classes of processed personal data, in 2006 the Supervisory Authority tried to impose a certain discipline as far as the ***number and type of data*** that may be collected in promotions or subsequently processed for direct marketing are concerned.

Thus, the Supervisory Authority considered that data such as the personal number, series and number of the identity card are excessive to the purpose of their processing, namely direct marketing to promote commercial; activities.

Taking into account the legal provisions and the circumstances specific to their processing, after certain investigations, the *cease* of processing personal data related to the personal number, series and number of the identity document in other purposes than those related to the validation of winnings and the *erase* of the data from the data controllers' databases was ordered. As well, the previous express consent was requested for processing personal data such as: image, phone number, e-mail address, especially for data processing for marketing purposes. The measure took into account the fact that this type of personal data allow on the one hand, the certain identification of the aimed persons and, on the other hand, their direct approach, by phone or e-mail, aspects meant to cause possible damage to the individual's privacy.

➤ Concerning the class of ***aimed persons***, the Supervisory Authority paid particular attention to the processing of minors' personal data processing, where it is necessary to obtain the agreement of their legal representatives. In addition, to observe the proportionality principle, in was necessary to cease the data processing of certain minors in direct marketing operations and the erase of the processed data, finding that they were stocked in the data controller's data basis without being necessary.

➤ Considering the way in which the data controllers in this field provide the ***information*** of the aimed persons, it was found that most of the times, the promotions' regulations can be obtained only after personal steps of the persons concerned. The Supervisory Authority considers that this information way is not sufficient, that is why it needs to be adapted depending on the ways of promotions' carrying out.

At the same time, they consider that the most appropriate means of informing the aimed persons is the one allowing the direct acknowledgements of the information imposed by Law no. 677/2001, the time of personal data supply, in order to make an informed decision.

Likewise, some data controllers have been sanctioned for omitting to inform the aimed persons about the transfer of their data to other data controllers or addresses. Besides the right to information, we also monitored the way of observing the other rights stipulated by law, if such rights were exerted by the aimed persons. After solving a complaint having as object the reception of commercial offers from a bank, despite having expressed the opposition right to personal data processing for direct marketing the

time of signing the contract with the bank, it was ordered the contravention sanctioning of the data controller for illegal processing, taking into account the inobservance of the provisions of art. 15 of Law no. 677/2001, concerning the opposition right.

➤ In compliance with the disposals of art. 4 and art. 6 of Law no. 677/2001, it is not allowed to *stock* personal data that might lead to the identification of natural persons, but for the time necessary to achieve the processing purpose; after this time, the data controller, if it did not obtain the consent of the aimed persons for subsequent processing or in other purposes the initially collected data, is obliged to adopt one or more of the following measures: to destroy / erase the data; to transform them in anonymous data and stock them for statistic purposes; to transfer them to a third party, guaranteeing that it shall process them in similar purposes; to archive them, only if the applicable legal provisions are incident. These ways are specified, as a rule, in the notifications submitted by the data controllers to the Supervisory Authority. Within the activities related to the promotions' carrying out, several circumstances were found:

- if the subsequent data processing for direct marketing was not intended, the data controller generally chose to destroy the participants' data, except for the winners' data, archived for accounting records. In some of the cases, the Supervisory Authority imposed the destruction of the participating blank coupons of the promotion campaigns within a set deadline from finalizing the procedure of validating the winnings and granting the prizes and, if applicable, either the erase of the data that were further stocked, or the transformation in anonymous data of the data thus collected, for their statistic processing;

- if the data controller intended to further use the data for direct marketing after the end of the promotion, the data of the persons who did not express their agreement are destroyed, namely erased, the rest being introduced in data bases oriented to future direct marketing operations. In this last case, the data bases are created either by the data controller itself, *recte* the promoting company, either by a specialized company in the field of databases and direct marketing administrating / brokerage, on the behalf of the data controller, on the grounds of contract relations.

➤ The carried out investigations also aimed at checking the security measures that need to be implemented by the data controller and/or its proxy.

Generally, it was found that the companies in this field are aware of the laws applicable to the security of processing and observe it. Despite all these, some contravention sanctions were applied, namely to the data controllers that did not adopt a policy of security and confidentiality of the processing in writing or that were not diligent enough to introduce in the contracts concluded to with the proxies the clauses imposed by art. 20 paragraph (5) of Law no. 677/2001. These refer to the obligation of the proxies to exclusively act on the grounds of the instructions of the data controllers and to apply o, in their turn, security measures to protect the processed data. Consequently to the ordered sanctions, the data controllers were requested to remedy the found deficiencies and to regularly check the way of respecting the obligations to the proxies, if the use of their services was chosen.

9. Video surveillance

a) Organization of the activity.

besides the provisions of Law no. 677/2001, in the field of video surveillance, are also applicable the provisions of Law no. 333/2003 concerning the guard of objectives,

goods, values and personal protection, changed and amended, containing special regulations related to the installation, assembling and operating conditions of the technical systems of burglary protection and alarming, that may include closed circuit alarming systems. Related to the use of video surveillance means in casinos, by the Government's Decision no. 251/1999 concerning the authorization, organization and operation conditions for gambling, the casinos must install video surveillance systems.

b) Investigations in the field of personal data processing by means of video surveillance.

In the period November 2005 – December 2006, 11 investigations were carried out, aiming at checking the conditions of personal data processing by means of video surveillance, among which 10 ex officio and one investigation – answering a notification received via e-mail.

Taking into account the higher impact of video surveillance in public places, the investigations carried out in 2006 mostly had in sight the systems installed in means of transport, banks, big stores, casinos, highways, kindergartens and schools. In five of the cases, the investigations started from the information gathered in the press or on the Internet.

The investigations mainly centred on checking the following aspects:

1 – checking the video surveillance systems: who is the data controller and eventually, the proxy; the purpose for having installed the video surveillance system; whether the taken images allow the identification of natural persons; whether the images are stocked and for how long; which are the operations that are carried out on the personal data; the subsequent designation of the processed data; who has access to the stocked images; whether confidentiality contracts are concluded with the persons having access to such information; whether and to whom the processed images are revealed; whether the minimum security requirements are being observed; whether there are connections with other processing or records system; whether the rights stipulated Law no. 677/2001 are exerted and which was the solution to those particular applications; whether the processing was notified to the Supervisory Authority;

2 – checking the condition of the video cameras installation: position, distance, mobility, existing warning and information announcements related to the video surveillance.

Of the checks carried out during the investigations, the following **findings** came out:

➤ For the *subway stations* of Bucharest, the investigation revealed that the system having been installed in November 2005 for monitoring the traffic in this station, with fixed surveillance cameras in most of the stations and a central dispatcher's office that did not allow the registration of the taken images and the technical possibility of approaching the images did not lead to the identification of natural persons. In none of the stations were warning announcements related to the video surveillance. Considering these findings, we were not able yet to certify a breach of the provisions of Law no. 677/2001, as the provisions of this law apply only to personal data processing taking place in a record system allowing the identification of natural persons. Taking into account that during the investigation more performing video surveillance systems were installed that had the technical possibility to record and stock the taken images, the Supervisory Authority intends to make a new investigation in this field in 2007.

➤ As far as the *big stores* are concerned, the video cameras were installed inside in order to prevent thefts of the merchandises exhibited for sale, as well of the premises' security¹⁹. In only one of the cases a video surveillance announcement was posted, yet not in premises visited by all clients of the store, but only in one of its sectors. The large number of installed cameras, their position and mobility allow the taking of images helping to the identification of persons, hence the provisions of Law no. 677/2001 become applicable to the personal data processing by these data controllers as well.

At the same time, during the investigations carried out in the big stores, we generally identified the same faults as for the other data controllers, consequently we applied the same sanctions for having omitted to notify and the illegal processing of personal data, by the inobservance of the information right.

➤ As far as the *casinos* are concerned, the video cameras were installed both outside the building to monitor the entrance and inside, to ensure the security of the premises. In the premises that were controlled, it was found that there were warning and information announcements related to the video surveillance. Although the took and registered images allowed the identification of the natural persons, the trading companies administrating the casinos were not aware of the obligations incumbent upon them according to Law no. 677/2001, the processing not being notified to the Supervisory Authority. Related to the investigations' results, we ordered the contravention sanctioning of these companies for the omission of notification as well as for the illegal processing of personal data, as a consequence of the inobservance of the obligation to inform the aimed persons on the data controller's identity, the purpose of the processing and the rights stipulated by Law no. 677/2001. In addition, the non adoption of the security and confidentiality measures set according to the minimum requirements foreseen by the Order no. 52/2002 lead as well to the contravention sanctioning.

➤ A particular kind of personal data processing is the one related to the *web cams* that allow the real time monitoring of images. In such a case, we made a control through County Police Inspectorate of Maramures, on the grounds of the collaboration Protocol concluded with the General Inspectorate of the Romanian Police, at a store Baia Mare, where we ordered the deactivation of the web cam, as it was not installed by an authorized company, according to Law no. 333/2003.

➤ Besides the closed public premises, such as those aforementioned, we also carried out an investigation for the use of the video surveillance system by the installation of cams on the *highway*, as means of monitoring the road traffic and of preventing and fighting the violation of the applicable law. The video surveillance and radar system used on the highway is connected to the national records system of the driving licences bearers, as well as with the national records system of the holders of registered vehicles, to allow the offenders' identification. Consequently, the video recording of the vehicles' registration numbers leads to the indirect identification of the natural persons, the disposals of Law no. 677/2001, changed and amended being applicable. Due to the fact that the ongoing processing was not notified prior to its commencement, the contravention sanction was applied for the notification omission. As well, the data controller had to adopt the

¹⁹ A proof of the lack of knowledge of the law in the field of personal data protection is the fact that, in one of the investigated cases, the data controller contested the applicability of Law no. 677/2001, considering that the video surveillance devices are used not to monitor persons but to the safety of the merchandises exhibited in the store.

specific measures of informing the aimed persons and to set a determined period for images' stocking, if a contravention is not found, compared to the established purpose of the processing.

➤ In the second semester of 2006, we also carried out investigations at some *kindergartens* in Bucharest where video surveillance systems were used. In these cases we discovered that the cameras' installation was carried out after the express demand of the parents, to monitor their children via Internet. Thus, written agreements have been signed between the kindergarten and the parents. As well, in one of the cases, the consent of the administration personnel was obtained for the processing of their images. In the other cases, the Supervisory Authority requested the remedy of the found situation, in the sense of the administrative personnel of the kindergarten too expressing their written consent. Of the investigations carried out, we found that each parent only has access to the video surveillance of the room where the group of which his/her child is part of carry out their activity and, if applicable, of the premises used in common (dining room, playgrounds). The online access of the parents is carried out on the grounds of common username and password. As we found the lack of appropriate information means related to the rights provided by Law no. 677/2001, changed and amended contravention sanctions were applied for the illegal processing of personal data, stipulated by art. 32 of the same law.

Taking into account certain deficiencies identified related to the provision of security measures, we requested the data controllers to implement a security policy compliant with the provisions of Law no. 677/2001, changed and amended and of the Order of People' Attorney no. 52/2002, by which to allot to each system user (the parent) an individual username and password, permitting the monitoring of the history of the accesses to the online vide surveillance system as well as the training of the personnel having access to the records. At the same time, as the personal data processing residing in the taking, recording, using and revealing the images of natural persons was not notified, we ordered the contravention sanctioning including for the notification omission, according art. 31 of Law no. 677/2001.

In one of the investigated cases, the General inspectorate of the Romanian Police was notified as well, taking into account that the installation of the video surveillance cameras was executed without its approval, approval that is necessary according to Law no. 333/2003, fact that was subsequently confirmed by the informed institution that ordered at the same time, the application of the necessary remedy measures.

10. Services on the Internet

a) Aspects resulted of the way of filling in the notifications.

After analyzing the notifications submitted by the data controllers providing internet services, we noticed that they encountered difficulties in filling in the section related to the *purpose of the processing*, namely that they stated on only one notification form, several purposes of processing personal data, without a correlation thereof. Data processing on the internet, especially of the special data, has certain particularities and implies greater risks, so tat the inobservance of the legal provisions related to the personal data protection may lead to important breaches of the individual's right to a private life. Generally, the persons administrating or managing a site must have and post a confidentiality policy of the personal data. At the same time, the information of the

aimed person related to the way in which his/her personal data are being processed is very important, taking into account the specifics of the activity.

b) Investigations in the field of services' provision on the Internet.

In 006 we carried out an investigation after receiving a notification, at a company on-line marketing products, by the sale of informatic components. The potential clients fill in the electronic form available on the site used by the trader and on the grounds of the information thus collected, financial – accounting documents are being drafted to certify the sales of that particular product. We found that that particular data controller was not registered at the Supervisory Authority, therefore it was contravention sanctioned and obliged to submit the personal data processing notification. In this case also this unawareness and the inapplicability of the law were invoked, although the proofs of data processing were clear.

From the random check of the Romanian sites by which personal data are being collected related to the online marketing of certain products or related to other activities, we may find an improvement of the way of understanding and applying the stipulations of Law no. 677/2001, these sites including, special sections related to the personal data protection and the observance of their confidentiality.

11. Other activity fields

11.1. The legal authority

a) Organization of the activity.

According to Law no. 304/2004 related to the judicial organisation, republished, with subsequent changes and amendments, justice is made through the following courts: the High Court of Cassation and Justice, courts of appeal, courts of law, specialised courts of law, military courts and judicatures.

The courts of appeal are courts with legal personality, in the are of which several courts and special courts are operating, on the grounds of the organization set by law. As well, the courts have legal personality, being organised in each county and in the city of Bucharest and they include of the judicatures in the county, namely of Bucharest. . The judicatures have no legal personality, organised within the counties and in the city of Bucharest. The specialised courts do not have legal personality and they operate in the counties and in the city of Bucharest.

The Public Ministry exerts, through the prosecutors, the attributions set in art. 63 of Law no. 304/2004 related to the judicial organisation, republished, with subsequent changes and amendments. Among these, most of them belong to the criminal law but they also have abilities in solving civil actions and in taking part in the judgment, in the circumstances and in the conditions stipulated by law. At the same time, some of the prosecutor's offices, such as the ones near the courts of appeal, also have abilities in the organisation of contests for the vacant jobs for the auxiliary personnel.

The Higher Council of Magistrature, according to Law no. 317/2004, changed and amended, is the constitutional authority accomplishing attributions concerning the acceptance in magistrature, the assessment, training and examination of judges and prosecutors, thus organising contests and examinations.

b) Aspects resulted of the way of filling in the notifications.

Depending on the specific of each separate activity, the courts collect numerous data and classes of data - out of which some special data – from the participants in the trial: claimants, defendants, intervening persons, lawyers, wrongdoers, accused, victims,

witnesses etc. Such data are registered both physically, on the paper and electronically, in records system accessible according to certain criteria. Subsequently, the data are being processed by several operations – organisation, stocking on various supports, as long as necessary to achieve the goal, change, extraction, consultation, use and then they may be archived or transferred to a different data controller, in certain circumstances, such as the ways of attack, of change of the court's competence etc.

The courts of law, depending on the legally set abilities, also carry out activity in the field of human resources, related to its own employed personnel, as well as to the recruitment of personnel for the speciality auxiliary departments. In these fields too, the courts are processing personal data. If for its own employees, the data processing carried out to accomplish certain legal obligations, compliant with Decision no. 90/2006 of the Chairman of the Supervisory Authority, is exempted of notification, in exchange, for the organisation of the contests for the auxiliary vacant jobs, of the personnel promotion or for professional training courses, the data processing are notified to the Supervisory Authority.

The specific authority carried out by the prosecutor's offices in the field of the criminal law involve personal data processing that are being notified in Form F2. The activity carried out for exerting other legal attributions than the one in the field of criminal law is notified to the Supervisory Authority in Form F1, simplified notification.

So far, 127 processing for justice administration were registered. The results showed deficiencies in the way of filling in the notification forms, such as those concerning the omission to mention all the requested information or the declaration of uncorrelated purpose. In addition, some forms were sent in an appropriate format, although in all the correspondence with the data controllers, regardless of their field, the Supervisory Authority pointed out the need to transmit approved type forms, indicating the sources where they can be obtained.

After the consultations with the Supervisory Authority, the Higher Council of Magistrature made several notifications to the courts of appeal and to the prosecutors' offices belong to them, related to the obligation of the courts and of the prosecutor's offices to notify the data processing that they are making within the other obligations that are incumbent upon them in the context of Law no. 677/2001, and in August 2006 the Higher Council of Magistrature issued a new collective report containing also recommendations related to the notifications' reconfirmation by the institutions of the legal field.

c) Annul reports related to the activity of personal data processing.

In compliance with the provisions of art. 21 paragraph (3) letter j) of Law no. 677/2001, part of the courts and prosecutor's offices transmitted annul reports related to the activity of personal data processing for the year 2005. As far as the judicial authorities are concerned, the same misunderstands of the aspects related to the access right of the aimed persons were noticed. The data controllers mistook the notion of "access right" with the supply of certain data according to the regulations of the civil procedure Code or for the access to the public interest information. At the same time, other problems notified to the Supervisory Authority were those related to the difficulty of separating the information related to private life from the public interest information and from the classified information.

11.2. Private investigators

a) Organization of the activity of private investigators.

In 2003, Law no. 329/2003 related to the exertion of the private investigator profession, changed and amended was adopted, by which the activity of the private investigators in Romania is regulated and in 2004 the application norms of this law were adopted.

According to Law no. 329/2003, with subsequent changes and completions, the activity of the private investigator cannot contrary to the internal legal regulations or to the international regulations Romania is part of, to the national safety, to the public order or to morals and manners. The information obtained after the carrying out of the activities of the private investigator is exclusively meant for its client, in the conditions of Law no. 329/2003. At the same time, the data and information obtained by the private investigator during his/her investigations may be informed, upon request, in the conditions of the law, only to the courts of law and to the Public Ministry, if they are useful for finding out the truth about criminal causes.

b) Aspects resulted of the way of filling in the notifications.

For the carrying out of their own activity, the private investigators are processing personal data either of their clients (natural persons), through the mediation of the contracts concluded with them, either of the persons who are being observed. In the activity field of the private investigators, only a small part of the private investigators agencies submitted the notifications to the Supervisory Authority.

An important aspect is the fact that the private investigators process numerous special data supplied by the clients or collected within the carried out investigations: data revealing the ethnic origin, genetic data, data related to the health condition, data related to offences, data related to discipline sanctions, data related to contravention sanctions, data related to the criminal convictions/ safety measures and data related to the criminal record. Thus, appropriate technical and organisation measures are imposed for the personal data protection, together with the observance of the legal provisions regulating this type of activity.

Another aspect refers to the term of data archiving, some of the data controllers mentioning the term of *ten* years. Yet, the Supervisory Authority appreciates that the data controller must impose the archiving terms depending on the processed data or classes of data, as well as the aimed persons (the clients or the investigated persons), the term of ten years not being a justified one.

Chapter III

The Regulating and Consultation Activity of the Supervisory Authority

Section1: Normative deeds issued on the grounds of Law no. 677/2001

The Supervisory Authority carried out in 2006 the regulating activity of the personal data protection field, starting from the aspects found in its current activity, observing the recommendations of the European Commission after the assessment missions. At the same time, we analysed the existing regulations at the level of the European Union, applicable to the national specifics.

To apply the provisions of Law no. 677/2001, the Supervisory Authority issued the following **decisions**:

- Decision *no. 60/2006* related to the establishment of type forms of notifications stipulated by Law no. 677/2001 for the persons' protection related to the personal data protection and the free circulation of such data, published in the Official Journal, Part I, no. 507 of June 12th 2006;
- Decision *no. 89/2006* related to the establishment classes of operations of personal data processing, susceptible to present special risks for persons' rights and liberties, published in the Official Journal, Part I, no. 654 of July 28th 2006;
- Decision *no. 90/2006* related to the cases when it is not necessary to notify the personal data processing, published in the Official Journal, Part I, no. 654 of July 28th 2006;
- Decision *no. 91/2006* related to cases when the simplified notification of the personal data processing is allowed, published in the Official Journal, Part I, no. 654 of July 28th 2006;
- Decision *no. 167/2006* related to the establishment of the standard contract clauses in case of personal data transfer to a proxy resident in a state whose legislation does not provide a protection level at least equal to the one provided by the Romanian laws.

The standard contract clauses set by this decision aim at providing sufficient guarantees related to the protection of the persons' fundamental rights.

As well, during the year of 2006, several decision projects were drafted intending to regulate the personal data processing of certain activity fields, by establishing specific rules. This, the following were drafted:

- ✓ Decision project related to the personal data processing using the means of video surveillance;
- ✓ Decision project related to approval of the minimum security requirements concerning personal data processing;
- ✓ Decision project related to related to the establishment of a model conduct code for the professional associations whose members are processing personal data;
- ✓ Decision project related to the personal data processing carried out in records system such as the credit office;
- ✓ Decision project related to the establishment of certain authorization forms for the transfer abroad of the personal data.

Section 2: Normative deeds issued for the implementation of the community acquis

- Decision no. 167 of November 27th 2006 to the establishment of the standard contract clauses in case of personal data transfer to a proxy resident in a state whose legislation does not provide a protection level at least equal to the one provided by the Romanian laws
- Decision no. 172 of December 11th 2006 related to acknowledgement of an appropriate protection level of the personal data in Argentina, that transposes the Decision of the European Commission no. 2003/490/CE;
- Decision no. 173 of December 12th 2006 related to acknowledgement of an appropriate protection level of the personal data, provided by the Canadian law of April 13th 2000 concerning the protection of personal information and electronic documents that transposed the Decision of the European Commission no. 2002/2/CE;

- Decision no. 174 of December 13th 2006 related to acknowledgement of an appropriate protection level of the personal data in Switzerland that transposed the Decision of the European Commission no. 2000/518/CE;
- Decision no. 175 of December 14th 2006 related to acknowledgement of an appropriate protection level of the personal data in Guernsey that transposed the Decision of the European Commission no. 2003/821/CE;
- Decision no. 176 of December 15th 2006 related to acknowledgement of an appropriate protection level of the personal data in Man Island that transposed the Decision of the European Commission no. . 2004/411/CE.

Section 3: Approval of the normative deeds

The Supervisory Authority is consulted when projects of normative deeds related to the protection of persons' rights and liberties are being drafted, concerning personal data processing, on the grounds of the provisions of art. 21 paragraph (3) letter h) of Law no. 677/2001, changed and amended.

Consequently, in 2006, the following projects of normative deeds were approved:

- *Project of the Government Decision for the approval of the Methodological norms of unity application of the legal provisions related to the records, domicile, residence and the identity documents of the Romanian citizens*

Need to adopt this normative deed was provided by the entering into force of the Emergency Government Order no. 97/2005 related to the records, domicile, residence and the identity documents of the Romanian citizens, normative deed introducing new criteria related to the domicile, residence and issue of identity documents to the Romanian citizens, in order to facilitate the applications' solution, to diminish the bureaucracy and to restrain the risk of breaching the identity documents regime. The project of this decision was approved by the Authority with certain remarks.

After the recommendations of the Supervisory Authority, the initiator of the project of normative document introduced an article establishing that the supply and use of the personal data in the National Register of Persons' Record shall be done observing the provisions of Law no. 677/2001.

- *Project of the Government Decision related to the form and content of the identity documents, , of the self-adhesive related to the establishment of the residence and of the building book*

The promotion of this decision substantiated on the entering into force of Emergency Government Order no. 97/2005 related to the records, domicile, residence and the identity documents of the Romanian citizens.

The project of this normative deed materialized in the Government's Decision no. 839 of June 28th 2006.

- *Law project related to the obligation of the air transporters to inform data on the passengers*

The Supervisory Authority favourably approved the project of the aforementioned normative need, with the remark that it is required to complete the provisions of the project with a new thesis referring to the disposals of Law no. 677/2001 concerning the information of the aimed persons, taking into account that the projects transposes the Directive of the European Union Council no. 82/2004.

The recommendation of the Supervisory Authority was appropriated by the initiator and the normative deed stating the obligation of the air transporters to

communicate data about the passengers was adopted as the Government Emergency Order no. 34/2006, approved by Law no. 452/2006.

- Legal initiative of changing and completing Law no. 677/2001 for the protection of persons related to the personal data processing and the free circulation of such data, changed and amended

This legal proposal belonged to some members of the parliament and aimed at setting a particular regime in the field of medical services for the personal data having general applicability. The opinion of the Supervisory Authority was a negative one, showing that the project does not bring elements justifying the amendment of Law no. 677/2001, as this normative deed in force protects all the classes of processed personal data, not only those the legal initiative refers to.

This legal initiative received a negative opinion from the Government as well, and at present it is being debated within the speciality commissions of the Parliament.

- The project of the Government's decision for the approval of the methodological norms of applying the Government's Emergency Order no. 102/2005 related to the free circulation on the Romanian territory of the citizens of the member states of the European Union and of the Economic European Space and to set the form and content of the documents that are being issued to the European Union citizens and to their family members e

The Supervisory Authority provided a favourable opinion on the project, after the analysis made related to the compatibility with the law related to personal data protection, without any remarks.

- The Law Project related to the establishment and organisation of the National System of Genetic Data

In order to increase the citizen's safety degree, to prevent and fight against offences, to check and compare the genetic profiles trans-borders offences, this law project proposed the creation of the National System of Genetic Data, including the personal data basis, a data basis about the case and a data basis with genetic profiles.

This project was endorsed with observations, approved by the Ministry of Administration and Internal Affairs, and the project of this law shall be submitted to the parliamentary adoption procedure.

Section 4: Endorsement of conduct codes of professional associations

The Supervisory Authority informed the professional associations regarding their obligation to issue conduct codes to include adequate standards for the protection of rights of those persons whose personal data are being processed. These codes are submitted for approval to the Supervisory Authority, according to the provisions of art. 28 from Law no. 677/2001.

The National Union of Insurance and Reinsurance Companies from Romania contacted the Supervisory Authority and discussions were carried out in order to issue a conduct code project for insurances and reinsurances.

Likewise, the Brokers' Association answered the mentioned legal obligation, **Notification no. 170/2006** being issued, regarding the *Conduct Code of Brokers' Association pertaining to the processing of personal data within the activity carried out by its members.*

Section 5: Recommendations

The Supervisory Authority is entitled to draw up recommendations for all matters related to the protection of fundamental rights and liberties, regarding the personal data processing, on the basis of provisions of art. 21 paragraph (3) letter j) from Law no. 677/2001, modified and supplemented.

This attribution granted to the Authority represents an extremely important factor in order to accomplish a unitary application of national and European regulations within the field of personal data, also in agreement with the practice at the level of data protection authorities all along the European Union.

1. At the demand of the **National Inspectorate for Population Statistics**, the Supervisory Authority issued a recommendation regarding the provisions of the modification project for Labour Methodology no. 677/2001, modified and supplemented by the services of population statistics. With this occasion, the Supervisory Authority recommended the identification of some legal grounds adequate for revealing personal data to different categories of applicants, which may consist in the permission of the interested persons or in certain special legal disposals, depending on the concrete cases with which these services confront with.

2. A series of public authorities and institutions (**the Chamber of Deputies, the Ministry of Public Finances and the Ministry of Environment and Water Management, the Academic Clinic County Hospital Timișoara**) required the point of view of the Supervisory Authority regarding the interpretation of the application modality of disposals of Law no 544/2001 regarding free access to public information, modified and supplemented, with reference to those of Law no. 677/2001, for the situations in which the media or some non-governmental organizations require information considered public, containing personal data.

In its answers, the Supervisory Authority underlined that Law no. 677/2001 expressly established the conditions under which the personal data may be processed, respectively revealed to third parties, without the consent of that person. At the same time, the text of law exceptionally establishes that the personal data may be processed by documents accessible for the public, according to the law.

Regarding the personal data such as name, salary, as well as other compensations and increments obtained by the persons whose data are required to be revealed, these are considered to be personal data, some of them representing an indicator of that person's economic and financial situation. As a consequence, in order to reveal these personal data categories the consent of that person is necessary or the situation must be one of those mentioned below.

Within this context, the Constitutional Court stipulated that the possible expenses are being provided, per chapters, in the budgets of public authorities and institutions including those with the personnel and salaries. The Court notices that the salaries of the personnel of institutions within the budgetary sector are established by normative documents, which are also public. But the Court considers that the concrete salary of a person, established within the minimum and maximum limits provided in the normative documents, taking into consideration the work, the contribution to the accomplishment of duties and the personal situation, are not considered as public anymore, but private data of that person. (Decision no. 615 /2006).

Corroborated with the above-mentioned provisions, in the situation of personal data processing for journalistic purposes, art. 11 from Law no. 677/2001 institutes an

exception, meaning that the processing may be done without the existence of the consent of the person in cause being necessary, if the processing concerns personal data which were revealed in public by that person or which are strongly related to the public person quality of that person or to the public character of the deeds that person is involved in. As a consequence, it was appreciated that the personal data of those persons may not be revealed unless the situation is considered to be an exceptional one provided by art. 11 from Law no. 677/2001, modified and supplemented.

Taking into consideration these situations, the Supervisory Authority comes to the conclusion that the existence of a derogatory regime from the general principle of the existence of that person's consent, in the situation of data processing for journalistic purposes, represents an application reflection of the fundamental constitutional principle of freedom of expression, as well as of the principles enumerated in Directive 95/46/EC of the European Parliament and in art. 9 and 10 from the Agreement no. 108 from 1981 of Europe Council.

Within this context, we underline that, unlike other European states (for instance Bulgaria) where there is no specific regulation regarding the processing for journalistic purposes, by art. 11 from Law no. 677/2001 was aimed at insuring the balance between the application of the two principles: the one of defending the right to intimate, family and private life, and the one of freedom of expression.

3. Another type of situations aimed at the legal character of revealing personal data included in the electoral lists, by issuing copies or consulting them

Thus, **the Community Public Local Service for Population Statistics Pascani** required a point of view regarding the possibility to issue copies of the permanent electoral lists to the territorial branch of a political party.

The Supervisory Authority examined the presented situation and appreciated, as reported to the legislation pertaining to personal data that the permanent electoral lists of administrative-territorial lists, as well as copies of these lists, are documents which store personal data in registers, in order to exercise the right to vote provided by art. 36 from the Constitution of Romania, republished, and in order to establish the result of the vote. The permanent electoral lists include the full name of the voter, the personal code, his/her residence, the series and the number of the identity document, the number of the constituency, the number of the voting section, as well as a column for voter, according to art. 14 paragraph (5) from Law no. 373/2004, modified and supplemented.

As a consequence, putting the "copy of the permanent electoral list" at the disposal of the political parties is a personal data processing, respectively "disclosure to third parties". Thence, the data controller may execute this processing, respectively, disclosure to third parties, only as established by law and for the categories of addressees expressly provided by it. According to legal disposals, the copies of the permanent electoral lists shall be put at the disposal of political parties within 10 days from the date when the elections are established.

The Community Public Local Service for Population Statistics Braşov required a point of view pertaining to the consultation of permanent electoral lists by the institutions which analyze the public opinion. The Supervisory Authority stipulated that the personal data may be disclosed to third parties only if that person expressly and clearly agrees or under the conditions established by the law as exceptional.

One of the exceptional situations is personal data processing without the consent of that person, when executed exclusively in statistic aims, for historical or scientific research, and the data remain anonymous all along the processing, according to art. 5 paragraph (2) letter g) from Law no. 677/2001.

Under this aspect, *anonymous data* are considered those data which, due to their origin or to the specific processing modality, may not be associated with an identified person or to one which may be identified.

Accordingly, the Supervisory Authority considered that the legal disposals in force expressly and limitative establish the categories of addressees to whom the electoral lists or copies of these lists may be given in order to be consulted, and the institutions for sampling the public opinion are not among these.

4. The Direction of Community Police Department Cluj-Napoca required the point of view of the Supervisory Authority regarding the on-line access of the county data basis comprising the computerized population statistics within county of Cluj, taking into consideration the attributions of this direction.

Since Law no. 677/2001 establishes the conditions under which the personal data may be disclosed to third parties, meaning when that person expressly and clearly agreed or under the condition established by art. 5 paragraph (2) in the same normative document, the Supervisory Authority appreciated that the Direction of Community Police Department may have on-line access to the county data basis containing computerized registration of persons within the county of Cluj, under the above-mentioned legal conditions.

At the same time, in order to efficiently solve the presented situation and in order to receive the approval to access on-line the mentioned data basis, the Direction of Community Police Department was recommended to address to the National Centre for Administration of Data Basis regarding Population Statistics.

5. S.C. Metrorex S.A. required the point of view of the Supervisory Authority regarding the disclosure of some personal data required by televisions Antena 1 and Pro TV.

Since from the presented situation resulted that there was a disclosure of some images caught by observation cameras installed inside the underground stations in order to identify a missing minor, it was considered that the requirement received by S.C. Metrorex S.A. from the two television stations may be carried out. Thus, considering the presented situation and the aim of personal data processing, it was stated that the personal data may be processed without the consent of that person, when the processing was necessary in order to protect life, physical integrity or health of that person, according to art. 5 paragraph (2) letter b) from Law no. 677/2001.

We must emphasize that the image represents a personal date since it may lead to the identification of one person, reason for which processing the image of some persons must respect the legal provisions within the field.

6. The National Unit Europol within the Center for International Cooperation among Policemen required a point of view regarding the implementation of the Information System of Europol at the level of the National Unit Europol.

The implementation of the Information System of Europol at the level of the National Unit Europol implies information exchange between public authorities from Romania and the European Police Office Europol, and the transfer towards another state

of personal data which are the object of a processing or are meant to be processed after the transfer, may take place only if they do not infringe the Romanian law, according to art. 29 paragraph (1) from Law no. 677/2001.

At the same time, the data transfer executed on the basis of a special law or of an international agreement ratified by Romania, is excepted from notification, especially if the transfer is done for prevention, research or repression of a crime, according to art. 29 paragraph (5) from the previously mentioned normative document. It was also underlined that processing of personal data regarding commission of crime by those persons or penal convictions, safety measures or administrative or contraventional sanctions, may only be done by or under the control of public authorities, under the limits of powers invested by law and under the conditions established by special laws regulating these matters, according to art. 10 paragraph (1) from Law no. 677/2001.

The activity of Europol is controlled by the Joint Supervisory Body (*JSB*), European organism made up from the representatives of supervisory authorities of European Union member states.

Section 6: The activity of representation before Court

The field of personal data protection is a very new one in Romania. Its specificity implies rules which may depart from common law regime, in some cases. This is the reason why the control and application procedure of sanctions against those who are guilty for failure to respect Law no. 677/2001 is a special procedure, approved by the decision of the president of the Supervisory Authority, where both the standards established by data protection legislations and the ones provided in Government Ordinance no. 2/2001 regarding the legal regime of contraventions are being taken into consideration.

In order to determine the infringement of Law no. 677/2001, the persons authorized by the president of the Supervisory Authority go to the head office of the data controller who shall be controlled, check the documents and the statistics systems within which personal data are processed, and the findings there, corroborated with the information from the Supervisory Authority, as well as the identified evidence means are at the basis of the sanction measure. The establishment of such a procedure was determined by the complexity of situations in practice and the different difficulty degree in appreciation of various categories responsibility of controlled entities.

A special importance is generally granted to the observance of those persons' rights, especially of the information right, reason for which the Supervisory Authority applied sanctions for failure to respect this right, including to the data controllers within the public sector.

Within the litigations which had as an object the disproof with the sanctions imposed by the Supervisory Authority, a non-unitary practice of Courts was noticed. Thus, a part of them understood the need to adopt a specific control procedure, even though there were situations when only the provisions of Government Ordinance no. 2/2001 were considered to be applicable, without taking into consideration that Law no. 677/2001 set up a derogatory procedure from it, under the aspect of the official examiner quality and the nature of the establishment document.

Chapter IV

European integration, internal and international cooperation

Section 1: Protection of personal data within the context of Romania's integration within the European Union

Within the European Union, the right to data protection is a fundamental right, being registered in the Charter of Human Rights, adopted at Nice in 2000. Besides, this Charter was included in the Treaty setting up a Constitution for Europe. According to the Charter, each member state must set up an independent control authority in order to watch the observance of data protection principles. In the context of Romania's integration within the European Union a strategy regarding the internal and international cooperation, with those structures to offer the Supervisory Authority the full possibility to exercise the attributions, both by consultative support, and by collaboration protocols, was imperatively necessary.

a) Contributions for the County Report in May 16th 2006. In the report of the European Commission from May 16th 2006, the important progress regarding data protection in Romania is being stated: „a significant progress was registered within the field of personal data protection and now Romania has the legal and administrative ability to implement the *acquis*.”

The content and the organization of international relations, including the participation within international cooperation, has as legal support the provisions of article 10 letter i) from Law no. 102/2005 especially, according to which the president of the Supervisory Authority makes insurances regarding the cooperation with similar institutions from abroad.

The priority in developing international relations is represented, without a doubt, by the cooperation with the European Commission, Europe's Council, as well as with other independent authorities for data protection from the countries of the European Union, whose activity is governed by the same principles based on the *acquis communautaire*, as also on the principles governing the activity of the Supervisory Authority.

The elementary legislation of the European Union within the field of personal data protection which was transposed in the legislation of Member States includes Directive 95/46/EC for the protection of persons regarding personal data processing and free circulation of these data, Directive 2002/58/EC regarding personal data processing and protection of private life within the sector of electronic communications, as well as Agreement no. 108 for the protection of persons regarding the automate processing of personal data.

According to the commitments assumed by Romania during the integration process within the European Union in 2006, the Supervisory Authority transmitted to the Council of the European Union and to the European Commission, by the Ministry of European Integration and Ministry of Administration and Internal Affairs, a series of reports regarding the registered progresses. Thus, the contribution of the Supervisory Authority to the quarterly report of progresses was transmitted regarding the study of accomplishment of commitments due to Chapter 24 – *Cooperation within the field of justice and internal affairs*.

Moreover, a reference regarding the study of the achievement of measures within the Plan of preferential measures for European integration was sent every month.

b) The consultative activity within inter-ministry work groups. Schengen and Europol problems.

The Supervisory Authority collaborated with the Ministries involved in the accession of Romania to the European Union in order to respect the procedures regarding the correct implementation of community legislation within the field of personal data protection.

During 2006, the Supervisory Authority collaborated with several institutions and authorities, especially with the Ministry of European Integration, Ministry of Administration and Internal Affairs, the Romanian Information Service, Ministry of Justice, Ministry of Communications and Information Technology and Special Telecommunications Service within inter-ministry working groups.

The Supervisory Authority participated to the *inter-Ministry group, constituted at national level in order to analyze the provisions of the Frame-Decision project of the European Council regarding personal data protection processed within the police and judicial cooperation in the penal field* and the establishment of Romania's position within negotiations regarding the Frame-Decision project. This working group includes also representatives of the Ministry of Administration and Internal Affairs, Ministry of Justice and Ministry of European Integration.

The Supervisory Authority considered welcomed the initiative to adopt a Frame-Decision to regulate at community level the personal data protection related to the information exchange necessary in the police and judicial cooperation within the penal field, especially within the current international context, dominated by the threats to the address of security and public order.

The representatives of the Supervisory Authority participated to the meeting of this group, occasion with which they presented the opinion of the Supervisory Authority regarding certain provisions of the Frame-Decision. Moreover, a complex material was drawn up and sent to the working group, comprising both the legal frame of personal data protection in Romania, and a comparative analysis between certain provisions of the Frame-Decision and the provisions of Law no. 677/2001.

In the opinion of the Supervisory Authority, the provisions of the frame-decision must be applied both to cross-border information exchanges, and to personal data processing at national level, by authorized bodies within the field of justice and police, in order to achieve some uniform standards for data protection among the member states of the European Union. In the end, the members of the inter-Ministry working group agreed with this opinion, regarded as official position of Romania within the debates from the Multi-disciplinary Group from the Council of European Union (Bruxelles, Belgium).

In November 2005 *the inter-institutional working group, expert level, in the field of storage of data resulted from communications* was set up. The group was made up of representatives of the Romanian Information Service, Ministry of Justice, Ministry of External Affairs, Ministry of European Integration, Ministry of Communications and Information Technology, Ministry of Administration and Home Affairs and the Service for Special Telecommunications, to which joined in 2006, the representatives of the Supervisory Authority.

The objective of this inter-institutional group was to establish the position of Romania within negotiations for the project of EU Directive on this theme, and following

its adoption, to coordinate the transposition process of the Directive in the internal Directive.

During 2006, the representatives of the Supervisory Authority participated to *coordination reunions within the European field*, organized by the Ministry of External Affairs and the Ministry of European Integration. Within these meetings, reunions COREPER I and II and reunions of councils (ECOFIN, Agriculture and Fishing, Transport, Telecommunications and Energy, EPSCO) were prepared. Moreover, signals from the Permanent Representations of Romania near the European Union, as well as other themes of interest were discussed. COREPER is the most important committee assisting the European Union Council and it is made up of representatives of the member states, being a permanent body, diplomatic, which prepares the meetings of the European Union Council, proposals for decisions, as well as compromise suggestions. The members of COREPER are permanent representatives with the rank of ambassadors (COREPER I) who are assisted by a permanent adjunct representative (COREPER II).

The active observing member status, preliminary to the member status, allowed Romania to express its position regarding community initiatives all along their entire debate process. In order to issue and promote the national positions at national level, Romania defined the National Coordination System of taking decisions process and adoption of positions within European businesses.

During 2006 the Supervisory Authority collaborated with the Ministry of Administration and Home Affairs for *Schengen problems*, within the process of preparation for the accession of Romania to the Schengen Agreement. This Agreement was signed in 1985, between France, Luxembourg, Germany, Belgium and the Netherlands and aimed at creating a space without internal borders.

In order to finish the negotiations regarding Chapter 24 – *Cooperation within the field of justice and Home Affairs*, the state members of the EU required to the candidate countries the presentation of an action plan pertaining to the application of preliminary criteria for participation within Schengen space. In November 30th 2001, The Government of Romania sent to the Accession Conference of Romania – the European Union, the Complementary Document with the Position of Romania in the process of accession to the European Union in Chapter 24, which had Schengen Action Plan annexed. As in the previous years also, in 2006, Schengen Action Plan was examined, the Supervisory Authority bringing its contribution to the section „Personal Data Protection”.

The Supervisory Authority collaborated with structures within Ministry of Administration and Home Affairs concerning *Europol problems*. Thus, representatives of the Supervisory Authority participated to a working session organized by the Center for International Police Cooperation, with the theme “The Development Project of Europol”. Within this reunion the specific aspects regarding inter-connection to the data system of Europol was emphasized. Europol mission is to assist the authorities responsible for the application of law within the member states in their fight against severe cases of organized crime.

Within Schengen and Europol fields, two bodies responsible for observation and control of the processing modality of personal data are set up by the central units by which the information exchange is accomplished. The two bodies named *Joint Supervisory Body (JSB)* are made up from representatives of data protection authorities within member states, Romania following to be represented by the National Supervisory

Authority for Personal Data Processing after the moment of accession to the two conventions.

Section 2: Experience exchanges with other supervisory authorities

The constant activity in view of making the Supervisory Authority operational and the need to train the personnel within the field of data processing at the level of European Union standards determined the achievement of some experience exchanges, the establishment of partnerships and cooperation with similar institutions from states belonging to the European Union. Moreover, the experts of the European Commission within the assessment mission from December 6th 2005, recommended a few experience exchanges with authorities for data protection in countries belonging to the European Union for the implementation of community legislation within this field.

Thus, during 2006 the basis of bilateral relations with similar institutions from other states were established and experience exchanges were organized with countries from the European space with a large knowledge of personal data protection related issues, as well as a long activity within the field.

Such an example is **Italy**, where the supervisory authority (*Garante per la protezione dei dati personali*) is well experienced in the field of personal data protection. The main issues discussed within experience exchanges with the institution of the Garante were: the investigation practices, the organization of public relations activity and activities with media, the procedure to solve complaints, organization of the informatics system of the authority, the procedure to register the notifications. Within the meeting, the representatives of the authority in Italy expressed their availability to continue the collaboration, possibly by signing a bilateral cooperation agreement.

Within the collaboration relations with the supervisory authority from Italy, experts of this authority visited Bucharest, with the support of TAIEX (The Office for Technical Assistance and Information Exchange of the European Commission) participating to the seminar with theme *Identification and improvement of the best techniques for solving the complaints in the field of data protection* where the following subjects were discussed: legislation on the basis of which the complaints are being solved in Italy and in Romania, description of the procedure to solve the complaints in the two countries, training the personnel in Romania in order to improve the means used to solve complaints, implementation of knowledge acquired by discussing relevant cases.

On the basis of this collaboration, Mr. Francesco Pizzetti, the Garante for personal data protection in Italy, honored the invitation of Ms. Georgeta Basarabescu, president of the Supervisory Authority in Romania, to come for a visit in Bucharest. On the occasion of this visit, the remarkable progresses of the Supervisory Authority were noticed for such a short period of time from the moment it started functioning. At the same time, the modalities in which the relations between the two authorities can be continued were outlined, including the aspect of collaboration at the level of international bodies in this line. As Mr. Francesco Pizzetti thinks, the Authority demonstrated seriousness in approaching the problems it confronts with, but also interest for the equal implementation of community provisions, declaration supported also when he was received by the Senate of Romania. At the end of this meeting it was agreed to conclude an agreement between the two authorities, signed in London, in November 2nd 2006, on the occasion of the International Conference of Commissioners for personal data protection.

Another country with a large experience in the field of supervisory authority is **Spain** (*Agencia Espanola de Proteccion de Datos*) which involved in supporting Romania's integration since 2005, when the Accession Treaty of Romania and Bulgaria to the European Union was signed. The meetings among representatives of the two authorities resulted in an increase of efficiency of the investigations activity, modifications and transfer, but also into the much more severe coordination of those at the level of the Supervisory Authority in Romania. One of the important objectives of the experience exchange with the Spanish authority consisted in getting acquainted with the phases used in order to issue the registration system of notifications electronically, necessary to the Supervisory Authority in order to finalize the implementation operations of a similar informatics system, to optimize the specific activity carried out.

Another significant experience exchange was the one with the representatives of the National Commission for Computer Science and Liberties from **France** (*Commission Nationale pour l'Informatique et Libertés*). The subjects discussed on the occasion of experience exchanges aimed at: on-line notification procedures, personal data protection within the public and private sector, investigations, penalization procedure, international data fluxes, public relations and communication strategy. On this occasion, the representatives of the French authority suggested to the Supervisory Authority to present aspects regarding rendering the authority operation in a record time to the Meeting of Independent Francophone Authorities for Data Protection in September 2006.

The collaboration with the Commissioner for Information and Data Protection from **Ireland** (*Data Protection Commissioner*) is part of a program of the Supervisory Authority for personnel training, with themes like: legislation within the field of personal data protection, the modality to solve complaints, the procedure for investigations, international transfer problems, registration activity of notifications, politics of documents' recording, conduct codes, the activity within the field of public relations, status of the authority's personnel.

On the occasion of the experience exchange from Dublin, in April 2006, the president of the Supervisory Authority had a formal meeting with the ministry of justice from Ireland.

In July 2006, the Commissioner for Data Protection from Ireland made an official visit in Romania, participating to the official launching of the on-line program for the registration of notifications, as well as to a press conference organized by the Supervisory Authority. Within the press conference, the Commissioner for Data Protection from Ireland appreciated the progresses registered by the Supervisory Authority for strengthening its administrative ability and its concomitant involvement in the implementation of Directive 95/46/EC.

The Commissioner for Data Protection from Ireland invited experts within the Supervisory Authority in order to participate, alongside their Irish colleagues, to training courses with European experts.

Having a great experience in the field of data protection, **Germany** is one of the countries playing an important role in the European structures for data protection. Thus, the experience exchange between the Supervisory Authority and the federal Commissioner for Data Protection from Germany (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*) materialized in a series of discussions in connection with the following subjects: data processing within the European penal law

field, visas and passports, telecommunications, regarding data protection within police, secret services and classified information, archives of the former security in Eastern Germany, STASI. The German authority addresses a few questions to the Romanian party regarding the establishment of a good relation with the media.

On the occasion of discussions in Bonn, Mr. Peter Schaar, the federal Commissioner for Data Protection from Germany and, at the same time, president of the Working Group Art. 29, agreed for Romania to take part, by the representatives of the Supervisory Authority, to the sub-groups organized during the intervals of time between plenary meetings of the Group, as observer. The sub-groups are specialized per activity fields and debate problems regarding data protection. They prepare specialty documents regarding data protection which are subsequently adopted as working documents or opinions of WP Art. 29.

The Supervisory Authority also collaborated with similar authorities from states recently accepted in the European Union and with accession states, within some meetings which had as main aim the discussion of solutions they identified for overcoming the difficulties emerged in the pre and post-accession period of time: the Czech Republic, Hungary, Poland, Slovakia, Bulgaria.

In the case of all the above-mentioned similar institutions, the collaboration and dialogue relations were continued all along year 2006.

Section 3: International conferences and seminars

In 2006, the Supervisory Authority took part, by its representatives, to international conferences and seminars, playing a special role in the pre-accession period of Romania to the European Union.

Thus, the Supervisory Authority participated, in 2006 to the following international conferences and seminars:

- **The conference regarding public security and data protection (Poland, Warsaw)**, within which it was emphasized that the efforts of member states for training, adoption and implementation of some special prevention and fighting measures against organized crime and terrorism, at international level, accentuated the necessity of a balance between an improved security on one side, and limitation of private life, on the other side. The main aspects considered were: human rights and security, data protection in the field of justice, liberty and security, data protection within the context of introduction of the second generation of Schengen Information System (SIS II), sensitive data processing by the agencies for the implementation of laws, limitations of confidentiality within the context of neutralization of the financial fraud, obligations of telecommunications services suppliers and consumers' data protection.

- **The 8th Reunion of Personal Data Supervisory Authorities from the countries in South-Eastern Europe (Bulgaria, Varna)**. This event, which takes place every year, focused on the following problems: the freedom of expression, public interest – a basis for disclosing personal data, popularization of personal data supervisory authority, political marketing – personal data protection for the members of political parties, video surveillance, the procedure of solving the complaints within the context of personal data protection, marketing aspects related to personal data protection, aspects regarding the application of Schengen Agreement. Within the press conference organized at the end of this reunion, the Supervisory Authority presented the progresses registered by Romania within the data protection field.

- **The Reunion of data protection authorities from countries belonging to the International Organization of the Francophonie (Monaco).** Within this reunion, the representatives of the Supervisory Authority from Romania presented the Romanian legislation regarding data protection, history of the institution, its actual achievements, its collaboration relations with other similar authorities from other countries, as well as the management politics of the authority. Following this presentation, the participants declared to be truly impressed by the progresses registered by the Romanian authority and formulated questions, by which they demanded more information concerning the already presented specific achievements, showing a particular interest for them.
- **The International Conference of Commissioners for personal data protection (Great Britain, London).** Representatives from over 40 countries took part at this event, both at the level of national and European data protection authorities, and at the level of executive power from Great Britain, of civil organizations and organizations for the protection of human rights, private companies, including those activating in the field of computer science. The debates of the Conference had video surveillance in the forefront, aspect which became a component of the current society and an everyday reality.

Section 4: International working groups and sub-groups

During 2006, Romania – by the Supervisory Authority, was invited to participate, both as an observer, and as a member, to different working groups and sub-groups of the Council of Europe, Council of the European Union, European Commission, but also to the reunions of the international working Group regarding data protection in the field of telecommunications.

The working groups and sub-groups of those meetings which presented a maximum interest for the Supervisory Authority during 2006 are:

- **The Working Group Art. 29**, with **subgroups**: ITF (Internet Taskforce), PNR (Passenger Name Records), Financial problems –SWIFT case, Medical data, RFID (Radio Frequency Identification Device), Safe Harbor and BCR, Enforcement

- **T-PD and T-PD-BUR**

- **The international working group regarding data protection in the field of telecommunications**

a) Working Group Art. 29

The most important working platform for the cooperation both with the European Commission, and with other supervisory authorities from the member states of the European Union is **Working Group Art. 29**, constituted on the grounds of art. 29 from Directive 95/46/EC. This is an important body of the European Commission, with independent status and consultative role, with representation at the highest level, respectively, the managers of data protection authorities. The declarations and opinions adopted within this working group address especially to *The European Commission and Committee Art. 31* for Personal Data Protection constituted on the grounds of art. 31 from Directive 95/46/EC and they are considered as recommendations.

In 2006, Romania, accession country to the European Union participated, as observer, to all plenary reunions of the Working Group Art. 29

Among the main aspects debated during 2006, there are: interpretation, application and future developments of Directive 95/46/EC; data processing by Internet; medical data; data processing by technologies using radio frequency; data transfer to other states (mainly the transfer of passengers data to the United States of America);

archives and private life; problems in the financial sector – the SWIFT case. All the adopted documents are posted on the European Commission site: http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2003_en.htm.

At the same time, Romania participated as observing member to the reunions of the working group, having the role to prepare the themes, problems and document projects which are to be debated and adopted within the plenary meeting of the Working Group Art. 29. The main documents at the preparation of which Romania also assisted shall be presented hereinafter.

Subgroup PNR (*Passenger Name Records*)

Passenger Name Records (PNR) represent that data set of passengers the air companies must transmit to the American authorities before the plane takes off for the destination United States of America.

The agreement regarding PNR concluded between the European Union and the United States of America ceased its applicability in September 30th 2006, as a consequence of its annulment by the decision of the European Court of Justice from Luxembourg. The data transmission of passengers who travel in the United States is done on the basis of a temporary agreement, rather similar to the previous one, following that, in 2007, an agreement for a long term to be concluded. As regarding the lack of regulation at European level, the member states, beginning with October 1st 2006, applied the national legislation regarding the transfer of passengers' data to the United States.

Within this field, the Working Group Art. 29 adopted several Opinions regarding:

- the implementation of Directive 2004/82/EC of the Council regarding the obligation of transporters to communicate data regarding the passengers;
- regulation by the European Court of Justice regarding data transmission to the United States of America and the necessity of a new agreement;
- control of transmissible diseases and collection of information regarding passengers.

At the same time, the use of a new system allowing air companies to transmit their passengers' data in the USA was established, as compared to the existing situation under the regime of the previous agreement, when the American authorities could extract data directly from the basis of air companies.

Within the PNR subgroup, to which the Supervisory Authority from Romania participated, a new opinion project was issued regarding the information modality of passengers who travel in the United States of America.

The subgroup Financial Problems – „the SWIFT case”

SWIFT is a corporation with banks from several states as major shareholders, with head office in Bruxelles, which puts at the disposal of banks an informatics system functioning as a transmission channel for international financial transfers. The registrations of this data basis contain names, addresses, account numbers of addressers and addressees of transfers executed by the financial-banking international network. In June 2006, the media in the United States of America published a series of articles by which a program carried out by the Treasury Department of the USA for tracking the financing of terrorism acts was disclosed, by which the access to information regarding international financial transactions was allowed regarding international financial transactions held by the Company for World Inter-Banking Financial Telecommunications (SWIFT), beginning with 2001. The legal basis for the access of

authorities from the USA to the data of SWIFT is represented by a series of normative documents adopted by this state, following the events in September 11th 2001.

Within the Working Group Art. 29 debates started about „SWIFT case”, Romania participating inclusively to reunions on this theme of working subgroup *Financial Matters*. In November 2006, the Working Group Art. 29 adopted Opinion no. 10 from November 22nd 2006 regarding personal data processing by the Company for World Inter-Banking Financial Telecommunication (SWIFT).

The conclusion expressed by Working Group Art. 29 in this opinion sums up the following aspects:

- a. SWIFT and the financial institutions are responsible together, although in different proportions, for personal data processing as data controllers, and in the case under discussion, their responsibility of infringement of Directive 95/46/EC was retained;
- b. the continuous processing of personal data, respecting the USA legislation, admission of authorities access for law implementation, is not compatible with the initial commercial aim for which the data were collected;
- c. neither SWIFT, nor the financial institutions from the European Union supplied information to registered persons especially as regards the transfer of personal data in the USA;
- d. the control measures implemented by SWIFT, pertaining to the access of authorities from the USA, can not replace the independent control exercised by the supervisory authorities;
- e. SWIFT did not obtain transfer authorization abroad from the Commission for the protection of private life from Belgium (where it is its head office).

In the end, the Working Group Art. 29 requires taking the necessary measures by SWIFT and the financial institutions in order to repair immediately the current situation, inclusively by informing the clients of the financial institutions regarding data transfer in the USA and the possible data access from the Department of the USA Treasury.

Subgroup MEDICAL DATA

During 2006, the representatives of the Supervisory Authority participated in Bruxelles, Belgium, at the working meetings of subgroup „Medical Data”, within Working Group Art. 29, occasion on which they took part to the debates about the project of opinion having as an object **EHR** (Electronic Human Record). This record includes medical electronic data of each patient, a part of an informatics system created at national level in each member state. The project of opinion discusses the problems related to data protection and the guarantees which need to be accomplished by the users of such a program.

The document „*EHR and personal data processing regarding health condition*” shall be analyzed during the first part of year 2007 and subsequently submitted to discussion in the general meeting of Working Group Art. 29.

Subgroup RFID (Radio Frequency Identification Device)

Working Group Art. 29 showed its concern related to the possibility that certain applications of RFID technology could prejudice the human dignity and the fundamental right to data protection. In fact, there is the doubt that some governments or bodies might use RFID technology in order to get into citizens’ private life. The problem is aggravated by the fact that, because of low costs, this technology is at hand for many persons, even

for ordinary citizens. In 2006 the bases of a document regarding the personal data concept were settled.

The project of this document, carried out by subgroup RFID, submitted the definition “personal data” for analyze within the context of RFID use, from the perspective of Directive 95/46/EC. This document may be considered a guide not only for Working Group Art. 29, but also for the large public.

Subgroup RFID debated aspects related to the use of RFID technology, which may be relevant in other domains regarding personal data protection, too. This is the reason why the subgroup followed three directions:

- the analysis of identification concepts, anonymous data, the connection which may be established with a natural person and the determination, with the help of specific applications, of the extent the use of RFID technology is regulated by the provisions of the Directive;

- the assessment of the measure in which the interests of data protection field are appropriately regulated by the existing legal frame;

- the proposals to modify the legislation applicable in this field.

The Subgroup for Safe Harbor and BCR Principles (Binding Corporate Rules)

Within this subgroup, the application modality of Decision 520/2000/EC was analyzed, by which the European Commission admitted that **Safe Harbor Principles**, issued by the Department of Commerce of the USA offer a protection level adequate to the personal data transferred from the European Union to the USA.

As regards the transfer of personal data from the European Union to the USA, on the basis of Safe Harbor Principles, a legal person from the USA which wants to accede to these principles has two main obligations:

a) to stipulate, by its observance politics of the right to private life, that it accedes to Safe Harbor Principles, as well as the concrete modality in which it respects these principles;

b) to communicate to the Department of Commerce from the USA that it accedes to these principles and that it respects them; at the same time, it must comply with the authority of Federal Commerce Commission, which has the authority to impose Safe Harbor Principles to a legal person, only following its public engagement to respect them.

If the addressees of the data in the USA did not accede to Safe Harbor Principles, the transfer of data to this state may happen on the basis of some standard contractual clauses, regulated by Decision 2001/497/EC and decision 2002/16/EC, as well as by Decision 2004/915/EC, which modifies Decision 2001/497/EC.

As regards **the Binding Corporate Rules (BCR)**, some multinational companies, due to the complexity of their structure at international level, required to enjoy the possibility to adopt some mandatory rules when executing data transfers within the company, in order to establish adequate guarantees. These must not be considered though as the only or the best mean for data transfers abroad within multinational corporations, but only an additional method.

Subgroup Enforcement

Working Group Art. 29 decided that, within the activities carried out by subgroup *Enforcement*, investigations at international level should be performed in order to analyze the modality to put into practice and to respect the legal provisions within this field.

In 2006, the Supervisory Authority participated, as observer, to one of the reunions of working subgroup *Enforcement*, which had as an object the adoption of a uniform framework regarding personal data protection for health insurances within the private sector.

On the basis of the mandate established within the subgroup, the supervisory authorities performed investigations at national level and transmitted their results to the secretariat of the subgroup in order to be analyzed, and the group shall issue a Report based on them.

By this document, it is aimed at knowing the implementation degree, application and observance of legal provisions regarding personal data protection within this activity field. Thus, following the observations of this report, the aspects within this field on which the national supervisory authorities should canalize their attention may be identified in order to reach a high degree of implementation, application (harmonized at European level) and observance of relevant legal provisions.

This is why the Supervisory Authority from Romania, on its turn, took the necessary steps at national level, to share the assessment on the way medical data are processed by private insurances companies, whose results are going to be analyzed during 2007.

Subgroup ITF (*Internet Taskforce*)

This subgroup is in charge with, as much as possible, the analysis and solving of issues concerning Internet data processing and consequences of its use in the contemporary society.

Concerning personal data processing through Internet related activities, several issues were discussed such as: e-Call initiative, e-mail communication surveillance, recent Google developments, review of the e-Communication legal framework, including e-Privacy Directive 2002/58/EC.

As a result of the subgroup's debates, an opinion was adopted related to the review of the electronic services and communications` legal framework, mainly concerning the e-Privacy Directive. Through this document the working group expresses its concern for the processing of personal data via electronic communications, bringing into discussion aspects concerning insurance of safety in this kind of processing.

Other issues discussed within the Working Group Art. 29

1. Archives and privacy

The security bodies` archives from the former socialist countries, and more others, contain sensitive data whose protection must be guaranteed. For this reason, the Polish supervisory authority's representatives recommended to be drafted a document in which to be approached the personal data protection issue, in connection with archive data processing, mainly archives belonging to security services from the former European totalitarian states.

The existence of some specific issues was highlighted regarding access to the European Union, the Red Cross or (in Germany) the Nazi regime's archive data, access of historians to the secret services or (in France) the police's archives. Therefore, it was concluded that certain common rules should be enforced in order to guarantee a fair balance between the right to be informed and the right to personal data protection.

The Romanian Supervisory Authority provided the participants to the debate with an instrument related to access ways to documents held by the National Council for the

Study of the Security Archives (CNSAS), under the provisions of the national law in these matters.

2. Traffic data storage

The Working Group Art. 29 considered that the project of the directive related to traffic data storage under debate since the beginning of 2006, must take into account the warranties provided by this directive for data protection. Therefore, Opinion 3/2006 concerning Directive 2006/24/EC was adopted related to the retention of data processed by communication public services, and which amends Directive 2002/58/EC, adopted by the Council on February 21st, 2006. According to this Opinion, for the purpose of research, prevention and fighting against serious offences, only a limited number of data can be stored by electronic communication services providers and for as much shorter a period as possible, and access to such data can be granted only against a court resolution.

b) The Consultative Committee of the Convention no. 108/1981 for the protection of individuals with regard to Automatic Processing of Personal Data and the Bureau of the Consultative Committee of the Convention no. 108 (T-PD and T-PD-BUR)

T-PD - The Consultative Committee of the Convention no. 108/1981 is incorporated at the Council of Europe level and gathers representatives from the Council of Europe's member states that ratified the Convention no. 108. The Consultative Committee of the Convention no. 108 is the Council of Europe's main body in matters of personal data protection.

Other international countries or organizations can also participate in this Committee's assemblies, as observers. Romania is a member (the Convention no. 108 was ratified by Romania by Law no. 682/2001) of the Consultative Committee of the Convention no. 108. In 2006, the Authority's representatives participated in two assemblies of the Bureau of the Consultative Committee, which took place in May and September.

During those two assemblies, there were discussions about the issue of personal data in the framework of the global telecommunication networks and aspects related to data protection in the field of police and legal cooperation, as well the increase of knowledge in matters of personal data and the content of the fundamental right to personal data protection.

c) The international working group with regard to data protection in the telecommunications field

Another important working platform is the international working Group with regard to data protection in the telecommunications field. The aspects discussed within this working group include: recent development of countries participating in the international working Group related to data protection in the telecommunications field; telephone communication through Internet; voice analysis technology; privacy and transborder marketing; on-line availability of electronic registration of data in the health field; Internet services and issues related to privacy; *spam*; e-Government; processing of data through recording devices placed in vehicles.

The Supervisory Authority has also participated in the following assemblies during 2006:

- **The working group with regard to data protection organized at the European Union Council level**

- **The working group with regard to integration of data protection in the field of pharmaceutical research and security of notification**

Section 5: Internal and international collaboration protocols

a) Internal collaboration protocols

For the good functioning of the control activity, at the beginning of 2005 the Supervisory Authority took actions for the conclusion of some collaboration protocols with certain central public authorities and institutions having responsibilities in activity fields contingent with that of data protection.

We want to remind the fact that this objective was also foreseen in the Supervisory Authority's action plan for 2006, by taking over some of the recommendations of the European Commission and member states' experts who participated in the two assessment missions for Chapter 24 *Cooperation in the field of justice and home affairs –Personal data protection* section, in December 2005 and March 2006.

As a result of these proceedings, the conclusion of the collaboration protocols with the following institutions (in chronological order) was completed:

- *The National Authority for the Consumers Protection*
- *The Romanian General Police Inspectorate*
- *The Financial Guard*
- *The Ministry of Communications and Information Technology.*

These protocols establish a tight collaboration at the bilateral level and pursue a common approach of the support and assistance activities intended to strengthen the protection of rights of natural persons whose personal data are subject to processing procedures, in sectors specific to each authority.

Another protocol was concluded with the National Trade Register Office (ONRC), in order to access free of charge the ONRC's on-line database, with the purpose to obtain real-time accurate and updated information about personal data controllers registered in this database.

At the end of 2006 the negotiations for the signing of a collaboration protocol with *The National Regulatory Authority for Communication*, whose main objective will be the establishment of a common collaboration and action way for carrying out the duties conferred to those two authorities pursuant to Law no. 506/2004 related to personal data processing and privacy protection in the field of electronic communications, modified and completed.

b) International collaboration protocols

Regarding the establishment of bilateral relations with data protection authorities from other countries, the Supervisory Authority established a long-term cooperation framework with the Italian Data Protection Authority, which resulted in a collaboration agreement signed by both institutions for 2007-2008. This agreement was signed in London on November 2nd 2006 when the two authorities leaders participated in the International Conference on data protection Commissioners.

This kind of collaboration shall apply to the following sectors considered by the two authorities as sectors where their specific common activity can bring mainly benefits:

- legislative development, for the assurance of an adequate protection of the citizens' rights;

- cooperation in fields related to international development, for the purpose to offer harmonized solutions;
- exchange of information and practical experience primarily referring to the enforcement of legal provisions in the field;
- exchange of information and practical experience primarily referring to new technologies and their relevant evolution.

At the same time, as a result of the experience exchanges with data protection authorities (mainly Spain, the Czech Republic and Slovakia), basis was laid for future collaboration protocols in 2006.

Chapter V Communication and Public Relations

Section 1: Communication and public relations activity

For an operational and efficient functioning of the Supervisory Authority, the communication activity was one of the main priorities during the course of 2006. The importance of this activity was highlighted, ever since the beginning, by the Regulation for organization and functioning of the Authority, by being included in the organizational chart of the Legal and Communication Bureau. On the other hand, the European Commission showed a special interest in the Authority's planning actions in the communication field and monitored both their application and efficiency during the implementation process of the provisions of Directive 95/46/EC. The program established by the Supervisory Authority ever since December 2005 was provided to European experts involved in the assessment mission for Chapter 24 – *Cooperation in the field of justice and home affairs*, which mainly stipulated the following actions:

a. Publishing and distribution of informative materials

During 2006, over 5,000 brochures have been published by the Supervisory Authority, whose content referred to its main duties, as well leaflets about the citizens' rights in the field of personal data protection. The materials were distributed both in Bucharest and all around the country, with the support of the central and local public authorities. Informative materials are also available anytime at the Authority's head office, in the public hearing premises.

b. www.dataprotection.ro website

Making the Supervisory Authority's official website www.dataprotection.ro, in March 2006, was appreciated by the Assessment Mission's experts referring to its purpose, namely to offer information to the general public.

The Supervisory Authority's website is an important media, containing information about community and national legislation with regard to data protection, notification forms established to standardize notifications, a guidebook intended to help data controllers about the notification filling in procedure, projects of some proceedings and resolutions, the Authority's organizational chart and contact data, as well information of public importance.

This site offers support for both concerned persons who can address complaints to the Authority and data controllers who can request its opinion, using including the e-mail address provided for this purpose: anspdc@dataprotection.ro.

c. Seminars and round tables

In order to increase the public's level of information and awareness related to the personal data protection field, the Supervisory Authority took specific measures at the level of the entire country.

The informing of data controllers from Bucharest Municipality about their duties was performed by organizing of 13 seminars held at the Authority's head office, where personal data controllers coming from relevant activity fields took part, as follows:

- "Personal data protection within activities carried out by real estate agencies" (January 2006);
- "Personal data protection within activities carried out by telephony services" (February 2006);
- "Personal data protection within activities carried out by professional training services" (March 2006);
- "Personal data protection within activities carried out by law offices" (April 2006);
- "Personal data protection within activities carried out by hotels" (May 2006);
- "Personal data protection within activities carried out by insurance and reinsurance companies" (May 2006);
- "Personal data protection within direct marketing activities" (June 2006);
- "Personal data protection within activities carried out by supermarkets and hypermarkets" (June 2006);
- "Personal data protection in the financial and banking field" (October 2006);
- "Personal data protection within activities carried out by sport clubs" (November 2006);
- "Personal data protection within activities carried out by pharmacies" (November 2006);
- "Personal data protection within activities carried out by casinos" (December 2006);

The informing of the local public administration authorities' representatives about their duties, as provided by Law no. 677/2001, was directly performed at the level of the local public authorities and by organizing ten seminars in each area, with the support of the prefect's institution, as follows: Baia Mare, Maramures County (May 2006); Oradea, Bihor County (May 2006); Slobozia, Ialomita County (June 2006); Alba Iulia, Alba County (July 2006); Bacau, Bacau County (October 2006); Botosani, Botosani County (October 2006); Piatra Neamt, Neamt County (October 2006); Sibiu, Sibiu County (November 2006); Slatina, Olt County (November 2006); Ramnicu-Valcea, Valcea County (December 2006).

Each of the foregoing seminars consisted of a Power Point presentation of the Supervisory Authority's duties, the principles regulating personal data processing and the provisions as provided by Law no. 677/2001, as well the filling in procedure of notification forms.

The participants in the seminars have carefully examined the provisions contained by above Law, a framework with regard to personal data protection, and they asked for information about the registration procedure as personal data controllers in different activity fields.

d. Hearing and calling services

Ever since the beginning of 2006, in order to meet the duty of informing citizens about their rights, as well data controllers about their legal obligations, the Supervisory Authority set up calling and hearing services.

These services are a quick and efficient way of helping citizens and data controllers, namely to offer them, in a direct manner, useful information regarding the concerned persons` rights and the specific obligations of data controllers, as provided by Law no. 677/2001.

e. Consultation of the Register of Personal Data Processing Operations

The Register of Personal Data Processing Operations, kept by the Supervisory Authority, is open for public consultation, according to provisions of article 24 indent (5) of Law no. 677/2001.

During the course of 2006, relatively few requests for consultation of this Register have been received, both by e-mail and by mail, in which people requested for information regarding the notifications made by certain companies, including banks, as well public authorities. The Supervisory Authority paid special attention to quick replying to its applicants.

f. Requests for information about Law no. 677/2001, modified and completed

In 2006 the Supervisory Authority received 204 requests in which people requested for information regarding the enforcement of Law no. 677/2001, of which 84 were sent by e-mail.

The main aspects requested for concerned the notification obligation, the establishment of the quality of data controller or empowered of some companies with different activity fields, as well some public institutions, obligations of data controllers, including those related to insurance of security and confidentiality of data processing, the amount and payment ways of the notification fee, requirements for performing personal data transfers abroad, etc.

g. Requests for information as provided by Law no. 544/2001 related to free access to information of public importance

During the course of 2006 requests for information have been addressed and expressed as provided by Law 544/2001 by the Institute for Public Policies and the daily publication "Evenimentul Zilei", West Edition.

An exchange of letters between the Institute for Public Policies and the Supervisory Authority focused on the enforcement of provisions of Law no. 544/2001 and Law no. 644/2001. Regarding the same aspects, the Supervisory Authority has also participated in the public topic debate "*Information of public importance and/or protected personal data?*" which took place on November 1st, 2006.

The daily publication "Evenimentul Zilei", West Edition, requested for information about the Supervisory Authority's management, remuneration of staff and economic information about the institution's activity, which were notified as provided by Law no. 544/2001.

Statistically speaking, the information and public relations activity is highlighted in the following table:

No. crt.	Indicators	Number of works during January 1 st – December 31 st 2006
1.	Requests for information	204
2.	Information campaigns all over the	24

	country (starting since March)	
3.	Audiences (starting since March)	908
4.	Phone calls to the Authority's call service (starting since March)	981

Section 2: Relationship with the media

Regarding the relationship with written press, radio and television stations, it should be noted that during the course of 2006, the data protection field has been sporadically under the spotlight. The lack of spectacular information related to illegal processing of personal data determined the Supervisory Authority to make its activity public. This was done mainly by press releases and press conferences held both in Bucharest and particularly locally, during the information campaign performed at the national level. The Supervisory Authority's representatives also participated in shows broadcast by public radio and television stations, where the main aspects of the data protection activity were presented.

a. Press releases

In order to popularize the institution's activity and the specific regulations in the field, 27 press releases were published and transmitted for the main press agencies and also submitted on www.dataprotection.ro website.

Through the same website but also by direct contact, professional associations could be informed about their duty to draft and submit to the Supervisory Authority for approval codes of good manners consisting of adequate guidelines for the protection of rights of those persons whose personal data may be processed by its members.

b. Press articles

The Supervisory Authority's activity during the entire year was reflected in the written press through several articles which focused on different aspects. Thus, some of these materials presented the novelty and importance of the data protection field at the European and national level, the necessity of registration as an data controller of natural and legal persons, the rights granted to citizens in this field (mainly the right to information and complaint), as well the Supervisory Authority's role. Other materials focused on the means provided by the Supervisory Authority for the punishment of data controllers infringing legal provisions in the field, insurance of the security of the database by each data controller and the amount of the notification fee - considered significantly high. At the same time, there were presented the risks and consequences of revealing personal data, performed under conditions others than those provided by law, as well the trend of the nowadays society towards an increase use of biometric data. These articles were published both in the central written press (the daily publication *Adevarul*, *Biz* magazine), and in the local press from Bacau, Botosani, Piatra-Neamt, Sibiu, Slatina, Slobozia.

c. Press conferences

The Chairman of the Supervisory Authority held a press conference on July 29th 2006 at the Authority's head office, with the participation of Mr. Billy Hawkes, Data Protection Commissioner in Ireland, and presented the activity in the first semester 2006.

During the entire course of 2006, the Chairman of the Authority has held several press conferences in the following Municipalities: Baia-Mare, Oradea, Botosani, Piatra-Neamt and Sibiu, which was an excellent opportunity to popularize the institution's duties in the field of data protection, the rights of citizens and obligations of data controllers. On this occasion, information was provided concerning the activity within the Authority's departments (including statistical data), legal regulations in this field and measures taken as a result of the investigations and controls performed by the Supervisory Authority. Reporters were also informed about the most important decisions made by the Chairman during the course of 2006.

d. Radio and TV shows

During the course of 2006, Mrs. Georgeta Basarabescu, Chairman of the Supervisory Authority, appeared live on "The Files of Joining the European Union" show broadcast in July 2006 on the radio public station Romania Cultural. For 45 minutes, the Chairman of the Supervisory Authority has explained together with Mr. Billy Hawkes, Data Protection Commissioner in Ireland, the importance and necessity of the development of personal data protection field.

Chapter VI

Administration of the Supervisory Authority's Computer System

An adequate enforcement of Law no. 677/2001 requires the creation of an electronic database as a support for an efficient management of all the Supervisory Authority's information on personal data protection and which offers to citizens the possibility to have access, under the law, to the register of personal data processing operations. This implies the creation of a computer program for the on-line registration of notifications, compatible with the free search module of personal data controllers and notified and registered processing operations made by such data controllers.

The creation of such computer programs was recommended to member states by the European Commission, and therefore the Supervisory Authority started to focus on accomplishing it. Moreover, the computer program is also used for the identification of data controllers to be included in the thematic verification of the legitimacy of personal data processing operations, through previous investigations and controls, thus proving its usefulness in several competence fields of the Supervisory Authority.

Section I: Implementation of the document management software

The Supervisory Authority purchased in 2006 a computer system (software) for the management of documents and document flow within the institution, as well for the management of notifications submitted to the Authority.

Performing an electronic management of document flow implies efficient organization of legal working proceedings and improvement of services offered to citizens.

In this effort of modernizing the document flow, the electronic registration of work increases in importance as an important element in the management of documents for any institution, particularly, for the Supervisory Authority, and provides a sequence order of the correspondence flowing within the Authority (inputs and outputs). The

electronic registration of work through this computer system provides **sequentially and temporal allocation**, with classification in a univocal manner.

From the point of view of the infrastructure, the new solution has the following characteristics:

- Interdependency between components. The solution is completely independent of the external environment: operation system (Windows, Linux, Unix), databases (customary databases such as Oracle, MSSQL, MySQL, DB2, PostgreSQL etc), workflow. The solution offers the possibility to relatively easily port the database to another engine, if this is required due to rapid development of activity or if meanwhile, another more advanced database engine is purchased.
- Modularity. The solution proposed offers the possibility for the system to be divided in modules and subsystems integrated between them, though independent, in order to allow users to choose among the functionalities provided (only registration, registration and digital signature, digital signature and management of documents, process management – workflow).
- Scalability. The system offers the possibility of rapid adjustment to the changes of basic parameters: users, documents, workflow modification, etc. by using several servers for various levels.
- Integration. The system uses standard communication components and protocols (JAVA, XML, SOAP, POP, SMTP), intended to simplify the integration with other external systems.
- Interoperability. The system uses an open architecture and in this way interoperabilities may be subsequently built with other applications, for example through web services.
- Integration with Certification Authority for possible verification and digital signing of documents.
- Integration with certified mailing systems.
- Programmable, connected with interoperability: the basic functions, registration of documents, management of documents and flow of documents, of which the system is consisted are available through API interface of other systems as well.
- Identification: users can identify themselves by username/password (HTTPS) transmitted encrypted with compulsory modification of password on a monthly basis.

Specific features for registration of personal data processing operations notified by data controllers

Registration of notification-type documents

The computer system allows the registration of notification-type documents received both in physical format (manually filled in forms) and posted on-line, on the Authority's website.

Registration of notifications received in physical format

A document submitted to the registry and/or scanned is given an entry registration number in the general input-output register. The Supervisory Authority's staff takes the next step by manually assembling the notification` data and sending them in electronic format to the database.

Section 2: Implementation of the on-line Register of personal data processing operations

Registration of notifications submitted on-line on the Supervisory Authority's website

The computer system contains a module which can be accessed from the web, on the Authority's webpage, which allows personal data processing entities to submit their notification on-line.

The submission of a notification consists of filling in an electronic form, sending it to the Authority's server, processing of data in a database, as well the automatic issuance of registration in the general Authority's input-output register.

At this point the system does not require identification in order to submit a notification, but once the final implementation is done, digital signature will be used.

On-line registration of a petition, complaint, and request-type document

The computer system allows taking over petition, complaint, and request-type documents from the web, through the Authority's webpage, registering them in application, as well the flow pertaining to such take over in the input and output for this type of document.

Chapter VII The Supervisory Authority's Staff

Section 1: Categories of staff

Regarding **the authority's staff** the following aspects shall be mentioned:

- 19 persons were hired from the Ombudsman Institution, as provided by Law no. 102/2005;
- during the course of 2005 another 30 persons were hired as a result of an examination.

According to type of graduated education, the staff is structured as follows: jurists, economists, persons from other higher education fields, from average education fields and drivers.

To practice the activity of personal data protection the employees are higher educated in different fields of study, most of them being graduates of higher education institutions of law.

Section 2: Perfection training of staff

In 2006 costs were incurred by the following fields: IT, public purchase, human resources, accounting in public institutions, audit. 21,635 lei were spent for perfection training courses.

The institution's employees participated in seven courses, and 12 of them account among the persons whose presence at these training seminars was certified by participation diplomas.

Due to the peculiarity of this activity field, the employees who directly carry out their activity in the investigation and notification field could not be sent to specialization courses at Romanian universities, because such institutions did not provide programs in the field of data protection. Nevertheless, certain universities have supported the Supervisory Authority for the prompt handling of some issues in the law field (for example: *Lucian Blaga* University of Sibiu and *Hiperion* University of Bucharest). Yet, the institution has received the support of authorities from other European countries, in its activity field.

Therefore, during the course of 2006, the Data Protection Commissioner in Ireland has organized specialization courses for the staff, with the support of the European Commission experts. Because of a good relationship between the two authorities, five Romanian employees received specialization training.

For the same purpose of providing specialization training to employees, the Supervisory Authority dealing with the field of investigations and complaint handling, a seminary was organized at the Authority's head office, at its initiative, called *Identification and perfection of the best complaint handling practices in the field of data protection*, taken place during July 3rd-7th, 2006. This seminary was organized with the financial support of TAIEX and two experts of the similar Italian authority, *Garante per la protezione dei dati personali* (Warrants for personal data protection), were invited to participate.

As a result of this experience exchange, the Supervisory Authority has improved its means of complaint handling. To facilitate the way to address the Authority, some samples of complaints were posted on www.dataprotection.ro website, which may be used by any concerned persons.

Chapter VIII

Economic Management of the Supervisory Authority

Section 1: Allotted budget and budgetary execution for 2006

The last part of this report refers to the financial-accounting situation for 2006, as well aspects related to the budgetary execution. This chapter too reminds of the special functioning conditions under which the National Supervisory Authority for Personal Data Processing started is organized, as we may well find from the data and observations made in other chapters of the report.

It must be taken into account that, being the institution's first year of activity, operational costs were incurred for the fulfilment of recommendations received as a result of the assessment missions.

Thus, the Supervisory Authority started an information campaign taken place at its head office and locally, by publishing through its own efforts several brochures and leaflets and travelling around the country for investigation purposes.

It must be observed that, though the Supervisory Authority was granted budget since January 1st 2006, several difficulties were encountered, partly related to meeting the administrative requirements due to the inexistence of a proper head office. The Government could not provide the institution with premises for carrying out its activity through the Romanian Authority "Administration of the State Protocol's Patrimony" and, therefore, the Supervisory Authority was forced to appeal to space leasing on the free market; while prospecting the market had to be done according to all legal provisions in the field of public purchase.

In February 2006 the institution leased the building from 23 Olari Street, sector 2 in Bucharest Municipality, which they arranged to provide the best conditions for the good functioning of the institution's activity.

The difficulties encountered at the beginning of 2006 normally generated an atypical way of functioning for an authority, which was accomplished in a record time of two months until the next assessment mission which took place at the beginning of March

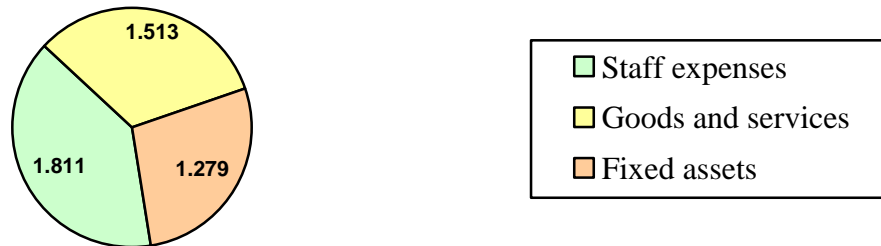
in the same year. Regarding this aspect, we consider that the budgetary execution for the first trimester was a success as the objectives suggested regarding the investment activity were met and necessary measures taken to insure the necessary infrastructure to carry out the activity.

For 2006, the Supervisory Activity received from the public budget, through the reinforced budget, credits amounting to **4,651 thousand lei**, of which 4,603.39 thousand lei were actually used, thus resulting a budgetary execution of 98.98%.

Here is a short presentation of the way budgetary credits allotted to the authority were used during the accounting period January 1st 2006- December 31st 2006. We mention that the institution fell within the limits prescribed for budgetary credits by the public budget, at all chapters, articles and indents.

According to the statements of account from the end of 2006, here are the expenses per categories as a share of total expenses:

Distribution of expenses per categories (thousand lei)



The authority's staff expenses represented 39% of the total used credits, which amounted to 1,811 thousand lei and the breakdown of this expenditure is as follows:

- ❑ Expenses incurred by **high officials**: around 85.4 thousand lei, representing 4.7% of the total amount allotted to staff expenses;
- ❑ Expenses incurred by the **managing staff**: around 457 thousand lei, representing 25.25% of the total amount allotted to staff expenses;
- ❑ Expenses incurred by the **specialty staff**: around 934 thousand lei, representing **51.6%** of the total amount allotted to staff expenses;
- ❑ Expenses incurred by the **administration staff**: around 333.8 thousand lei, representing 18,45% of the amount allotted to this category;

Expenses incurred by goods and services purchased by the Supervisory Authority represented 33% of the total amount of used credits, which amounted to 1,513.28 thousand lei and the breakdown of this expenditure is as follows:

- ❑ Purchase of different goods and services: 38% - office accessories, fuels and lubricants, expenses with mail and telecommunication, Internet, heating, electricity, water, sewage, security services;
- ❑ Inventory items: 8%. Significant recovery was achieved as compared to the price on the market, because of the Supervisory Authority's economic policy concerning the purchase of goods from manufacturers, thus avoiding significant and artificial price increases due to repeated commercial additions.
- ❑ Lease costs: 36%. The Romanian Government, who had to provide the Authority with premises, promptly took actions according to the Emergency Order no. 163/2005 and allowed the Supervisory Authority for Personal Data Processing to

purchase an adequate space on the real estate market. The insurance of meeting the legal provisions for the lease proceedings of the said premises, only after providing the financial resources, was the main obstacle in providing the premises for the authority, so much more that the Ombudsman Institution continued to be the credit chief accountant until the end of 2005 for the entire activity of personal data protection. Thus, the lease of premises currently occupied by the Supervisory Authority was performed in 2006, after providing the financial resources by the Romanian Government for this purpose.

- Professional training, books and publications: 3%
- Expenses incurred by travelling for working purposes: 15%. The peculiarities of the Authority's activity include travelling for working purposes. The Supervisory Authority which carries out its main objective through controls performed on the Romania's territory, but also by participating in assemblies of different international organizations, working groups on data protection or in conferences of authorities in the field from European or other countries. Concerning expenses for travelling purposes, we mention that the participation of the Supervisory Authority's representatives was required at the assemblies of the Working Group art. 29, organized by the European Commission, at conferences on data protection, as well in the European Council's assemblies related to the Convention no. 108, which refer to the automatic processing of data.

As far as goods and services expenses are concerned they fall within normal limits, of which lease expenses are the highest. Concerning this aspect, it should be mentioned that the premises is provided with air conditioning, computer network, private heating system, which meant significant recovery of costs in matters of utilities and acquisitions.

1513.28 thousand lei was used for the Good and services category in 2006, thus resulting a budgetary execution for this expenses category of 97.51%.

The relatively low level of goods and services expenses was determined by several factors, as follows:

- the criteria of the lowest price applied in acquisition proceedings, associated with carefully established technical requirements;
- the evolution of the parity of leu and euro as compared to assessments when the authority's budget was drafted;
- the lease of an office building of AA category, provided with the minimum equipment necessary for carrying out the activity.

One chapter to whom it was given a great importance was the **Capital expenses** where the amounts attached to the fixed assets purchased represented 28% of the credits used and 1,279 thousand lei, as follows:

- *Passenger cars of local origin: 126 thousand lei;*
- *Office automation equipment: 477 thousand lei;*
- *Software and licenses: 194 thousand lei;*
- *Expenses for the internal computer network: 26 thousand lei;*
- *Expenses for the security of the building and databases: 418 thousand lei;*
- *Other products necessary for the good functioning of the authority's activity: 38 thousand lei.*

Recovery of costs was achieved by purchasing the necessary equipment for the communication activity. The passenger cars were directly purchased from the

manufacturer, from the internal production, there being only one observation to make concerning the high level of fuel consumption in the crowded cities. It must be mentioned that the cars are absolutely necessary to efficiently carry out the main activity object in the field of thematic or previous controls, but also to correctly and directly inform any Romanian concerned data controllers and persons.

IT products were also purchased, as according to above figures, which were necessary for the functioning of the specialty software used for the management of data protection field and the insurance of its security. The main acquisitions made in 2006 concerned the providing of institution with computer equipment adequately adjusted to its basic activity's peculiarity, namely the supervisory of personal data processing operations.

Office automation and software equipment provided for the Supervisory Authority's needs represents a significant share, namely 65.7% of the total capital expenses. It can also be observed the institution's preoccupation for the security of data and premises, the expenditure for this field representing around 21% of the total amount specified in the list of investments. The communication activity and associated needs incurred 1.8% of the capital expenses amount, besides the office automation equipment and without including material expenses and efforts made by the employees within specialty departments.

Actually, the budgetary execution for expenses incurred by the investments field represented 99.77%.