

MEMORANDUM
on legal and judicial guarantees
against unlawful processing of personal data

The member States of the South-East European Cooperation Process, signatory hereto,

Considering the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and cross-border data flows of 8 November 2001;

Appealing to member States to take all the necessary steps to ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data as well as the Additional Protocol to the Convention;

Taking into account the definitions of the terms of reference established in the instruments mentioned above;

Stressing the necessity to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking into account the increasing flow across borders of personal data undergoing automatic processing;

Reaffirming at the same time their commitment to freedom of information regardless of frontiers;

Recognizing that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between individuals;

Emphasizing the priority of settling and guaranteeing effective legal remedies to individuals, who are victims of an unlawful processing of personal data;

Have agreed as follows:

Article 1

The State Parties will focus all their efforts on strengthening the regional cooperation for the promotion of lawful practices in the fields of automatic processing of personal data.

Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection carried out both in the public and private sectors set out in international and national legal framework.

Article 2

The Parties to this Memorandum will secure under their jurisdiction for every individual, whatever his nationality or residence, respect for his fundamental rights and freedoms, and in particular his right to private life, with regard to the automated processing of personal data relating to him.

To secure the right to private life, the Parties will supervise the respect for the principle of fairness and proportionality necessary for the ensuring access to information of general interest and the free flow of information between individuals.

Article 3

The Parties will unconditionally ensure the right of being informed of the processing operation and of requiring the rectification of his personal data to the person whose data are being processed.

Any restriction with regard to the exertion of these rights must be laid down in the domestic law, must pursue legitimate purposes and must not be abusive.

Article 4

The Parties will not allow the processing of personal data in a way incompatible with the legitimate purposes except for the situation when this operation is expressly permitted by the legal provisions which are necessary in a democratic society.

Article 5

The competent authorities of the State Parties will take technical and organizational measures necessary for the protection of the personal data from their illegal processing; will secure the data subject the access to personal data files which are processed automatically and to object to the processing of personal data relating to him when that data is used unlawfully.

Article 6

The Parties will secure the establishment and the efficient functioning of an independent supervising authority, which shall monitor the national protection system, and shall be vested with investigation and intervention powers in the process of unlawfully processing of personal data.

Article 7

The Parties will ensure any individual who pretends to be a victim of an unlawful operation with regard to the automatic processing of personal data, the access to justice and the examination of the case in a confidential way.

Article 8

The State Parties undertake to establish appropriate civil, penal and administrative remedies as well as sanctions for violations of the international and domestic laws giving effect to the basic principles for data protection.

Article 9

This Memorandum shall enter into force after the deposit of the sixth instrument of ratification by the member States of the South-East European Cooperation Process.

Signed at Chisinau, on October 31, 2008, in English, in a single copy, which shall remain deposited in the archives of the Ministry of Foreign Affairs and European Integration of the Republic of Moldova. The Ministry of Foreign Affairs and European Integration of the Republic of Moldova shall transmit certified copies to each member State of the South-East European Cooperation Process.



Ullas Gjini



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*With reservation
on article 6*

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