

AUSTRIA SIMPLIFIES DATA EXPORT RULES

Austria's new rules on the export of name-linked data mean that companies need to obtain an export licence in fewer cases than under the current legislation. The amended section 4 of the 1978 data protection law was passed in July 1986 and comes into force on July 1st this year.

No Export License Needed

The categories of name-linked data which do not require an export license from July 1st are as follows:

1. Data exports to countries with equivalent legislation

As under the 1978 law, companies will not need to gain a licence to export name-linked data to countries with equivalent laws, as defined by the Federal Chancellor.

The countries with equivalent laws covering both physical and legal persons are: Denmark, Luxembourg and Norway.

The countries with equivalent laws covering only physical persons are: Germany, France and Sweden.

Other countries like Iceland, Israel and the United Kingdom which have data protection laws but which have not ratified the Convention can be included in one or other of the above groups later.

A new element in this part of the law is that it states that countries which have ratified the Council of Europe Convention shall be regarded as offering an equivalent standard of data protection. However, it is unlikely that Spain will be considered to have an equivalent standard of data protection until it has a law in force, even though it has ratified the Convention.

2. Data Exports to other countries

Companies will not need to obtain an export licence if they wish to export name-linked data to countries without equivalent data protection legislation if the intended data export is:

2.1 carried out on the basis of:

* legal regulations (for example, a court order to the social security authorities to release to a creditor information on the address of someone who has failed to make repayments on a debt); or

* international agreements which explicitly define the types of data and the recipient (for example, a double taxation agreement which provides for the transfer of name-linked data on pay, tax and social security payments between countries)

2.2 one where the data subject has requested in writing that data on himself is transferred outside the country -- he would be able to revoke that authority at a later stage

2.3 one where the data has already been made public (for example, a telephone directory, a register of companies or a land registry)

2.4 one where the data is defined as "standard communications," as defined by the Federal Chancellor in an executive order. Such standard communications include data on customers, suppliers, accounting and employees in the private sector; and tax and social security administration in the public sector. They include categories of data where large quantities of information are transferred to foreign countries.

In all cases, data collection and processing has to be permitted by law or by contract between the parties. In addition, care must be taken to ensure that data subjects' interests are protected and that data has been collected in the country of origin in a legitimate way.

Export License Needed

In all other cases not covered above, companies wishing to export name-linked data must obtain approval from the Data Protection Commission (DPC). The DPC takes decisions independently of the government, consists of four members and meets about once a week under the chairmanship of a judge.

The DPC has certain criteria for refusing an organization permission to export name-linked data:

1. if the data to be communicated abroad has not been collected and processed in accordance with the law -- for example, if data may not be released to a third party in Austria, it is not permitted to release it to a third party outside the country.
2. if the data export damages the data subjects' interests.
3. if the data export is in conflict with public interests (for example, national defence)
4. if the data export is in conflict with international law.

The same rules apply to organizations in Austria which have data processed by affiliates or data processing bureaux outside the country. The DPC examines the contract between the parties which must state that:

* after processing the data must be passed back to the data controller in Austria, or

* after processing the data must be passed to a third party only on instruction from the data controller in Austria

* the data is kept secure from improper access

* the data processing organization has a duty to take proper care of the data at all times.

* the data processing organization must give data subjects a right of access, correction and deletion if data is processed by a data processing bureau outside Austria.

* the data processing organization must obtain any information it needs to ensure that the data processing bureau outside Austria is complying with the Austrian law. In short, the data controller located in Austria remains responsible in law.

An organization which is not satisfied by the DPC's decision can appeal to the Administrative Court and the Constitutional Court.

Data Protection a Disguise for Economic Protectionism?

The DPC has publicly declared that the data protection act must not be considered an instrument of economic policy nor should it be an obstacle to free trade between Austria and other countries. This policy stands despite the fact that the DPC recognizes that data processing outside Austria: represents an import of services; has a negative effect on the country's balance of payments; hinders the development of Austria's data processing personnel, skills and equipment; and limits the development of software for the domestic market.

License applications

Companies which need to apply for an export license or which need to seek clarification on how the law affects their data processing should contact: Datenverarbeitungregister beim Osterreichischen Statistischen Zentralamt, Wiedner Hauptstrasse 63-67, 1042 Wien, Postfach 803, Austria. Telephone: (0222) 65 97 34.

Licenses must be processed within 6 months, are normally dealt with in 2 to 3 months, but can be obtained in 4 weeks in urgent cases. In straightforward cases, for example, where a firm already has a licence and merely wants to amend some details, it could take less time. New license application forms will be available about the end of June.

Registration fees are 120 schillings (As) on applying for a form, As 30 on sending in identity documentation, and AS 60 on receiving the license, totalling As 210 (£10).