

- + implementation of control systems using access badges to allow entry to certain company areas; and
- + entries in management personnel files showing, in particular, salary deductions.

The July issue of Privacy Laws and Business will have an in-depth feature on the impact of data protection laws on management-labor relations.

IG METALL vs GM'S ADAM OPEL: ROUND ONE TO THE COMPANY

Although there are more court cases over data protection issues in Germany than in the rest of Europe put together, last year's court decision in the IG Metall-Adam Opel case demonstrates the impact of data protection laws on management-labor relations Europe-wide.

The case centers on union opposition to Opel's transferring its data processing to a wholly owned subsidiary, Electronic Data Systems (EDS).

In its written decision, the Hesse state court in Darmstadt explained that it did not find violations of the German Federal Data Protection Law (BDSG) in Opel's turning over the automaker's data processing to a new GM subsidiary, EDS. EDS in Germany is a wholly owned subsidiary of Electronic Data Systems of Dallas, Texas, which was acquired by GM in 1984. EDS handles personnel data for Opel as well as functions such as CAD/CAM. In addition to other laws, Opel based its case on the fact that the company turned to EDS to improve its data processing in order to recover from serious losses in recent years.

The court's judgment covered six main points:

The works council retains its legal rights. The court rejected IG Metall's claim that in contracting out its data processing to EDS Opel had deprived its works council of its right to see that employees' personal data was properly protected. The court explained that the company remains answerable to the works council for the data because this responsibility does not end when data processing is turned over to a third party (Article 37, BDSG). When a firm turns over its data to a data processing firm, a contractual relationship exists between the two enterprises, and the company (in this case Opel) remains "responsible for the data." This means that Opel's works council may still exercise its lawful authority over EDS's processing of employees' personal data.

Individual employees retain their rights. In addition, each Opel employee retains his or her right of access and explanation concerning his or her personnel file, as provided in the Law on

the Constitution of Enterprises (BVG). This right is also guaranteed by the data protection law when data is administered by a third party.

The data processing firm is an authorized party. The court ruled that EDS could not be considered an unauthorized third party whose access to data is prohibited by Article 2, Paragraph 2, of the data law because EDS's right to the data is given through its mandate from Opel to process the data.

Illegal data exports are a risk but not a danger. Setting up an EDS subsidiary in Germany to handle Opel's data turned out to be a legally sound move (both are located in Russelsheim, near Frankfurt). The court rejected IG Metall's claim that Article 24 on transborder data transfer was violated. There was a "theoretical possibility" that individual items of data could be sent outside Germany, the court said. But supervising such incidents is part of the general question of supervising data storage, and the "theoretical possibility" is not an indication of a "concrete danger" that EDS would send Opel data illegally out of the country.

The data processing firm is qualified for the task. Opel's claim about EDS's qualifications was not contested by the union, the court noted, and it ruled that there were no grounds for maintaining that the auto firm had not exercised appropriate care in selecting an outside data processing firm (Article 8). For the same reason, the court added, there were no grounds for claiming that Opel had neglected its workers' interests in letting EDS store and process company data.

Violation of constitutional rights did not occur. IG Metall's contention that turning the data over to EDS had violated Opel workers' constitutional right to information also got nowhere. That could not apply to a legally made contract, the court decided.

IG Metall has announced that it will appeal against the court's decision.

DATA PROTECTION MANAGEMENT CHECKLIST

Data protection laws give rights to individuals on whom data records are kept to gain access to those records and correct them if they are wrong. Companies should now make sure that they are prepared for the tensions that could develop when employees read managers' evaluations of their performances.

To help minimize potential problems, companies should appoint a manager who is responsible for complying with data protection legislation. He should ensure that he knows: