

COMPANIES FACE PROBLEMS WITH REGISTRATION BUT NOT INTERNATIONAL DATA FLOWS

When the majority of current data protection laws were passed in the late 1970's and early 1980's, most company fears were centred on restrictions on their international flows of data, and national registration procedures were seen as minor bureaucratic requirements. In fact, more than half the time spent drafting the Council of Europe Convention was devoted to Article 12 covering transborder data flows, according to Peter Hustinx, the Chairman of the Council of Europe's Committee of Experts on Data Protection. Now a survey by the UK's Manchester Business School shows that companies' experience is the opposite of their original fears. Ian Walden of Trent Polytechnic explains the results.

The survey carried out earlier this year was based on a telephone survey of 297 small, medium and large companies in the UK and in-depth interviews with 27 multinational companies in four countries; Austria, France, the Federal Republic of Germany and the United Kingdom. All the companies were in the service sector and included mail order, retailing, accountancy, banking, insurance and other financial services companies. The purpose of the survey was to look at how companies view data protection laws and how they are adapting their internal procedures as a result.

In three out of these four countries, the data protection laws' most direct impact on the companies' operations is the registration process. In all countries with requirements for companies to register with national data protection authorities, companies considered the forms too complicated.

In Austria, companies considered the registration process too bureaucratic and costly. The defining of the purpose of a personal data file caused some confusion and companies considered the registration forms too complex. (Since the survey both the Austrian law and the registration forms have been simplified - see PL&B May '87 p. 10 and the order form if you would like to see the new amendments to the law).

In France, company complaints mainly concerned the ordinary forms which are much more detailed than the simplified forms used for over 20 categories of records and which are considered to pose relatively little threat to privacy. The most regularly used by the private sector cover payroll records, customer records, suppliers, direct marketing, mail order, banks and insurance companies. The problems most commonly cited in France were companies' awareness that they amended their registration forms too infrequently when circumstances change. Even when registrations are first made, they are often incomplete and inaccurate.

In the UK, the main problems are that companies interpret differently the registration form's categories of purposes, types of data subjects, sources of information and to whom it is disclosed. Some companies tend to find it difficult to think in terms of purposes and instead think in terms of software packages. On disclosures, a common problem was whether to register only everyday disclosures or whether to include all possible cases. The consensus was to go for safety and register everything possible which means that the form bears little resemblance to normal practice in the

organization.

In the Federal Republic of Germany, where companies are not required to register with the federal data protection authority, they have the discipline of self-regulation. Companies are motivated to keep within the law by the authority given to the company data protection controller who has the duty of acting independently in balancing the interests of operational and data protection control, and must report to top management. Here, compliance with the data protection law is encouraged by data protection audits from time to time.

Companies were much less concerned about restrictions on international flows of name-linked data. Those involved in transferring name-linked data between countries considered that they followed more stringent internal rules than national laws required. A few companies faced problems in Germany, but unfortunately, the survey gives no further details. No problems were reported from Austria or France and this part of the UK's Registrar's powers had not yet come into force when the survey was conducted. The banks in the survey were particularly concerned about restrictions on the free flow of international data but had suffered no problems so far. Such data usually consists of: name, account number, correspondent bank's name and his account number, details of the transaction and how it is being paid.

Data security was often seen as an important issue but not one on which the companies considered the laws affected their policies. This was the consensus in Austria and France. In Germany, data security was seen as the most pressing issue in the next five years. In the UK, only 7% of firms had revised their security standards as a result of the data protection act.

On organizing for data protection, the survey suggests that multinational companies have generally created independent data protection systems within each country with a national data protection law. There has been little central coordination between their national data protection units (see PL&B May '87 p.7 for a checklist for the international data protection manager).

Recommendations made by companies on how to amend data protection laws included:

1. Introduce a system of data protection audits as a method of ensuring compliance with the law.
2. Remove the requirement to register.
3. Further study needed on how the laws should cover microcomputers and word processing
4. Laws should cover all name-linked aspects of credit checking, not only the individual's record, for example, credit was refused on a certain date, but also any relevant additional information, like the reasons why credit was refused in the past.

Ian Walden is a Research Fellow specializing in the legal aspects of business information systems in the legal studies department of Trent Polytechnic,