

AN OVERVIEW OF PORTUGAL'S DATA PROTECTION BILL

Timetable

Portugal may pass a data protection law in 1987. The government tabled a data protection bill in the Portuguese legislative assembly in early 1984. On May 23, 1984, the parliament approved ratification of the Council of Europe Convention and aimed to pass the law by July. But debate on the bill was delayed. However, the data protection bill is again ready to be debated in the current legislative session.

Scope

The bill covers the public and private sectors, natural persons and automated records. The Justice Minister, Mario Raposo, sees the bill as part of Portugal's strengthening of democratic rights at a time when the police, public administration and major companies are increasingly computerizing their name-linked records.

The bill has been drafted to conform with the Council of Europe Convention, which will be ratified by the time the law is passed. The government expects that the assembly will pass the bill to the Council of Ministers for final approval, which will be followed by the President's ratification.

As this process could take several months, companies and trade associations wishing to influence the debate should contact friendly members of the legislature without delay. When the bill is passed, it is likely that there will be an interval of at least six months before it comes into force. Companies will need this period to prepare themselves for implementing the law.

The main provisions

The data protection law will require all organizations with automated name-linked files to register them and their purpose with a newly established National Commission for Data Protection -- NCDP -- (Comissao Nacional de Proteccao de Dados). Several organizations have been given a voice on the NCDP. The head of the NCDP will be elected by a two-thirds majority in the assembly, and the other six members will be nominated by the President (two), the Ministry of Justice (two), the superior council of magistrates (one) and the public council of attorneys (one).

As the law's provisions may well require companies to change their current record-keeping practices, they should note the following provisions:

Data collection

There will be a ban on the collection or storing of name-linked data on individuals' political or philosophical views, par-

ty, labor union or religious affiliations. But this data may be collected for research or statistics where individuals are not identified, and organizations may keep automated records on their own members.

There will be a ban on the collection or storage of other sensitive data such as an individual's race, sexual habits, criminal records, financial situation, except for public services and with the authorization of the NCDP. Again, this data may be collected and processed on an anonymous basis for research and statistical purposes.

Right of access

Data subjects, people on whom automated data is being collected, will have a right to know whether a file exists on them, the purpose of the file before they are registered on it and the name and address of the data file owner. They will also have the right to gain access to a data file on payment of a fee, a right of correction and a right to have their complaints resolved within 30 days by the organization holding the data. If data subjects have difficulty obtaining these rights, they may take their complaints to the NCDP.

Role of company data protection controller

Companies have a responsibility under this bill to appoint a data protection controller who will take legal responsibility for his company's complying with the law. He will implement company policy on:

- + data collection, purpose, storage time, keeping files up to date,
- + ensuring that they are used only for the purposes registered by the company with the NCDP,
- + informing data subjects of the existence of a file on them, their rights of access and correction.

Role of the NCDP

The NCDP will oversee the law, handle complaints, give advice, prepare a code of conduct for data processing and publish an annual report. Specifically, the NCDP will authorize the registration of automated name-linked data files in the form of a decree for public sector files, and in the official gazette for private sector files. This will mean publication of:

- + the name of the organization's data controller,
- + the way in which the data will be collected,

- + its purpose,
- + its intended storage time,
- + the means by which a data subject may know about and gain access to a file, and
- + how errors may be corrected.

The NCDP will give advice about creating, changing or storing public sector files. In exceptional cases, the NCDP will authorize the linking of separate automated name-linked data files. But public information may be shared among entities with the same purpose, although the term, "public information," is limited to the data on a birth certificate.

Sanctions

In cases where organizations are found to be breaking the law, the NCDP must make the facts public, and may close down data processing operations. Furthermore, the NCDP must report infringements of the law to the Public Attorney Ministry and the courts.

The courts remain an ultimate recourse when problems cannot be resolved by the NCDP. Sanctions under the law for improper use of name-linked automated data files range from 30 days to two years in prison and/or fines.

Name-linked data exports

Transborder data flows are covered by this bill. The Ministry of Justice says it will follow common norms established by the countries ratifying the Council of Europe Convention. Detailed Portuguese procedures have not yet been worked out.

Implementing the data protection law

Once the data protection bill has passed into law, companies should inform the NCDP of new and existing automated name-linked data files within 90 days of the law's official publication. The government has set itself the task of drawing up detailed implementing regulations within six months of the law being passed.