

## SWITZERLAND'S DATA PROTECTION BILL STRENGTHENS WORKERS' RIGHTS

Switzerland is staying firmly on course for a comprehensive data protection act by 1991 covering physical and legal persons, manual and automated data. The new bill, published in March by Justice Minister Elisabeth Kopp, strengthens workers' rights to data on themselves and limits employers' freedom to collect and process certain name-linked data.

The Justice Minister rejected the previous version on the grounds that it was too long and complex. The bill's timetable will be decided by the Swiss parliament this summer and there may be some initial discussions at that time. But detailed discussions will probably begin this autumn.

Debate in the legislature is likely to take some time as small businesses have been vigorous in their opposition to a bill, saying that it will be too burdensome. Large companies and affected sectors, like the direct marketing industry, are not enthusiastic but do not oppose the bill in principle. Just as they have had to adapt their operations in other countries with data protection laws, so will they manage to cope with similar changes in Switzerland. The strongest forces in favour of a data protection law are the labour unions.

The government is committed to passing a law and has signed the OECD Guidelines but not the Council of Europe Convention. As a result it is likely that a law will not be passed until 1991.

### Changes in the bill

The new bill is shorter and clearer than the December 1983 text and has the following changes:

1. There is now a clearer distinction between the rules for the public and private sectors.
2. The new bill does not impose data protection rules on the cantons. (The previous bill stated that cantons should respect the federal data protection law when acting as an agent of the federal government, for example on social security payments).
3. The revised bill gives privileges to the news media as it presumes that they have a dominant public interest in collecting and processing a wide range of information. If the bill had not given the news media a privileged position, the media would have had to obey the general principles. These state that no more data may be collected and processed than is strictly necessary; and data may not be collected or processed against the wishes of the data subject.

### Impact on Company Operations

The Swiss bill has a limited registration system, like the Finnish law and the Netherlands' and Irish bills. Private sector name-linked data systems in Switzerland will need to be registered only in certain cases, for example, for files:

- \* created without the data subjects' knowledge;
- \* containing particularly sensitive data, or;
- \* used to create a profile of individuals from separate sources of information.

**Management-labour relations:** There could be management-labour conflicts over the data owner's right to refuse or delay a data subject's access to a record on himself. The previous bill gave the data owner a right to refuse or delay access where "the request may seriously endanger the objective of the data processing and the person concerned has truly no dominant interest." Such conflicts could occur over access rights to personnel evaluations and career planning records and data on the toxic effects of chemicals on workers resulting from production processes and accidents.

The revised bill strengthens worker rights by giving an employee a general right of access to a record on himself. The labour law will be amended to forbid employers to collect and process data that is not linked to the worker's ability to do his job or is not necessary to implement his contract. In addition, an employer will be allowed to communicate information concerning a worker to a third party only if the worker agrees to the communication or a legal provision gives the employer a right to do so.

**Data exports:** Any person or organization exporting name-linked data will have to report this to the Data Protection Commissioner when data is transferred abroad:

- \* regularly (not defined), or;
- \* in a considerable quantity and without legal obligation, or;
- \* without knowledge of the data subjects.

The revised bill prohibits any data export affecting seriously the privacy of the persons concerned, for example, when transferred abroad for data processing to a country which does not have an equivalent data protection law. Whether a law is equivalent will depend on the type of data. All countries with a data protection law cover physical persons but only Austria, Denmark, Iceland, Luxembourg and Norway also cover legal persons.

**Direct marketing:** There is no specific section in the new bill on direct marketing but clearly the rules in the bill apply to this sector. For example, an organisation cannot sell a list of names and addresses without the data subject's permission. However, it now seems that the bill does not ban asking people for names and addresses of potential buyers of goods and services.

**Credit information:** Credit information may only be transferred when there is no sensitive data and it is needed for the purposes of a contract. There is no further specific reference to credit information in the bill. But people seeking access to their credit information records have a general right of access and correction like any other data subject.

## Legal persons

The Swiss data protection bill's rights of access and correction for legal persons (for example, companies, labour unions, and trade associations) is likely to create much concern for companies which have not operated in a country with this type of legislation before.

Both the Swiss constitution and the Swiss Civil Code of 1907 state that legal persons should wherever possible be treated like physical persons. As a result, in the bill both physical and legal persons are treated equally in the private sector. This means that:

\* if a company is not your competitor, then you must give it access to your records on it.

\* if a company is your competitor, then you may refuse it access to your records on it.

## Enforcement

There will be a three tier system of enforcement:

1. A Data Protection Commissioner will be the first level of authority for making recommendations on data protection issues.

2. A Data Protection Commission with seven members will take major policy decisions and will have judicial powers in both the public and private sectors. For example, it will be able to rule that data processing can or cannot be carried out in a certain way or for a particular purpose. Complaints against the public sector must first be addressed to the Commission.

The Federal Supreme Court will hear all appeals against decisions of the Commission.

3. If a person has a complaint against the private sector he may pursue his case before an ordinary judiciary court. Only a court has the power to impose fines and award damages against companies.

There will be an opportunity to learn more about how the Swiss data protection legislation will work at a seminar in London this autumn.