

A DATA PROTECTION CREDIT INFORMATION SCENARIO FOR 1992

Companies operating in Europe are asking themselves what 1992 will mean to them from the data protection viewpoint. Dr. Malcolm Norris, Data Protection Registrar for the Isle of Man, explains the context and draws a scenario for the credit information industry.

It is becoming ever more common for businesses to buy and sell goods or services outside their own national boundaries. To do this effectively companies use computers to do the many housekeeping tasks involved in the receiving and processing of orders, and in arranging payment. Data is flowing across national borders between company units to an ever increasing extent and Data Protection legislation within each country has to be able to cope, preferably with harmonized Data Protection law.

Three European economic groupings delay single market for data protection

There are currently three major economic groupings of countries in Europe: the EC, EFTA and Comecon. For the moment, the Comecon countries are not members of the Council of Europe and do not have any Data Protection laws. However, this situation may well change in the next few years. Hungary, for instance, has already applied to join the Council of Europe and has a draft Data Protection Bill.

The most significant changes in Europe at this time are the coming of the single market in the EEC countries in 1992, and the political - and consequent economic - changes in Eastern Europe.

The Single European Market means that the 12 separate nations currently forming the community, together with the nations which are associate members, are having to look at the means by which they will harmonise a great range of their activities, including Data Protection and credit information laws.

A significant part of Western Europe currently enjoys Data Protection legislation, but there are several countries which still lag behind. Currently, the EC consists of seven countries which have Data Protection Acts and five which do not (Belgium, Greece, Italy, Portugal and Spain). Directorate-General XIII of the EC plans to introduce a directive this year. One may therefore see developing a Single European Market which from the data protection viewpoint is uncertain. Of the 6 EFTA countries, Austria, Finland, Iceland, Norway and Sweden, and Switzerland, only one, Switzerland, does not yet have a Data Protection Act, although it has a bill passing through the Federal Parliament.

How will the European credit information industry operate?

Scenario - How will 1992 work?

A family living in Copenhagen decides to buy a new motor car. Taking full advantage of the Single European Market, they decide to buy it from a

dealer in Milan. To finance the deal, they borrow the money from a US-based bank. The family approaches the London subsidiary of the US bank and the manager decides to use a credit information agency to assist him in making his decision.

Now the interesting questions arise:

- * **Which credit reference agency will the bank use?**

Today, the family is likely to appear only on the files of a Danish Credit Information agency. Is the agency planning a pan-European service?

- * **Under which consumer credit law will that agency be operating?**

Legal constraints on the information which the Danish agency can hold regulate the maximum period for which bad debt information may be kept. The absence of any "white" information (a record showing an individual's repayment history) may fail to satisfy the requirements of the London branch of the US bank. It has been used to a longer life for the information and the ability to check the repayment record of its customers. The US bank may therefore try to get the information elsewhere.

- * **Under which Data Protection Act will personal data be controlled?**

If the credit information agency operates only in Denmark, then it will come under Denmark's Private Registers Act. The bank in London will set up its records to comply with the UK Data Protection Act. Unless there are changes in the next two years, the dealer in Milan will set up his records without the burden of any Data Protection legislation.

- * **What if there is an intermediate stage?**

If the car dealer in Milan has an arrangement for introducing business to a London bank (after all it is a single market and such arrangements will become increasingly likely), then the London bank may simply record the transaction as being one with its customer (the car dealer in Italy), and the name of the Copenhagen family may never appear in the bank's records. In that case, the motor agent would have to do his own checking of prospective borrowers. He would, presumably, use a Danish credit information agency.

The situation is a bit of a jungle, with no obvious answers to these questions. The solutions will need considerable co-operation between the Data Protection Authorities in the various countries.

It is clear that the existing credit information agencies can promote their present operations only within each country separately because of the differing legal constraints.

Different legal rules to be harmonized?

With less than two years to go before the Single European Market comes into being, is there a Europe-wide international organisation for the credit information industry? If so, has it begun to formulate plans on how its members will co-operate, for example, on the question of exchanging or selling information on bad credit risks or renting information on good credit risks? With markedly different systems in different countries how will the companies learn to cope?

Such differences of national law covering the credit information industry include:

1. personal identification numbers in most European countries, but not in the UK, Ireland or the British off-shore islands;
2. the availability of detailed income information in Sweden, but nowhere else;
3. the availability of "white" information in the UK but nowhere else; and
4. the use of a name-based system in all countries except the UK.

If there is to be a single market for credit information, which of the above ground rules will the industry be expected to follow, or will the rules be harmonized?

Dr Malcolm Norris is the Isle of Man's Data Protection Registrar. He was a participant in Privacy Laws and Business's closed meeting for Data Protection Authorities in September last year which discussed their differing national approaches to regulating the credit information industry. This report is an edited version of the presentation by Dr. Norris at the Privacy Laws & Business October 1989 conference at Windsor. The conference papers are available.