

DATA PROTECTION ROUNDUP

Data Protection Roundup is a completely revised and updated version of this feature which we published in *Privacy Laws & Business* in February 1989. The index published in our December 1989 issue gives references to each country in previous issues. You will find a table summarizing the European Data Protection Laws and Bills at the end of this issue.

AUSTRALIA passed a Commonwealth (federal) Privacy Act in November 1988. The Act applies mainly to the Commonwealth public sector, and not to State government agencies nor as a whole to the private sector. However, the Act controls both the public and private sectors in their use of the Tax File Number, backed by guidelines enforced by the Privacy Commissioner. The Act covers physical persons and both automated and manual records. It came into force on January 1st 1989.

AUSTRIA's Data Protection Act was passed on October 18th 1978 and came into force in stages from January 1st 1980 to January 1st 1982. It was amended in July 1986 with the new provisions, for example, on international transfers of data coming into force on July 1st 1987. The law covers physical and legal persons, and mainly automated data in both public and private sectors. It has a central registration system.

BELGIUM's Consultative Commission on the Protection of Private Life is limited by the royal decree of December 30th 1982 and the law of August 8th 1983 to the National Register of Physical Persons. A new comprehensive Data Protection Bill was agreed by the Cabinet on 19th January this year and is currently being reviewed by the Conseil d'Etat before passing to the legislature. The bill covers both the public and private sectors, automated and manual records and natural persons. It has a central registration system.

CANADA has a Privacy Act passed in 1982. It came into force in 1983 and covers only the federal government and federal agencies. The Privacy Commissioner's jurisdiction has been extended to State owned companies, although Air Canada and Petro Canada are exempt. Québec and Ontario have laws which combine both public access to government information and privacy at the provincial level of government. Ontario has passed a Municipal Freedom of Information and Protection of Privacy Act 1989 which extends these principles to this tier of government. Québec is considering extending privacy principles to provincially regulated companies, such as banks and insurance companies. Other provinces also have, or are planning, privacy laws.

DENMARK has separate Public Registers and Private Registers Acts, both passed in June 1978 and which came into force on 1st January 1979. The Private Registers Act covers automated and manual records, physical and legal persons. Three types of organisation are required to register with the Data Surveillance Authority; credit reference bureaux, data processing service bureaux and blacklist registers, for example concerning bad credit risks. Amendments were passed in June 1987 strengthening the data subject's right of

access, and came into force in April 1988.

FINLAND passed a Personal Data Files Act on February 4th 1987 which came into force on January 1st 1988. It covers automated and manual records, and physical persons in the public and private sectors and requires companies to notify the Data Protection Ombudsman if they are processing certain types of name-linked data eg. credit information. The Data Protection Board may give permission for the export of "mass delivery" or sensitive data to countries that do not have legislation that corresponds to the provisions of Finland's Personal Data Files Act.

FRANCE has a Data Processing, Data Files and Individual Liberties Act passed on January 6th 1978. It covers both automated and manual records in both public and private sectors and has a central registration system. It came fully into force on January 1st 1980. France's data protection law's right of access was extended to legal persons on July 3rd 1984 by an administrative decision of CNIL, France's Data Protection Authority.

THE FEDERAL REPUBLIC OF GERMANY. The Federal Data Protection Act was passed on January 27th 1977 and came fully into force on January 1st 1979. The law covers physical persons, automated and manual records in both public and private sectors. Public sector name-linked files have to be registered with the Federal Data Protection Commissioner, while certain private sector files have to be registered with the Lander (state government) data protection supervisory bodies. In addition the Lander have separate data protection acts covering access to name-linked data held by their tier of government and institutions owned by them, like banks.

GREECE introduced a data protection bill into the legislature in November 1987 but it was withdrawn by the Justice Minister a few months later for further consideration. The bill covers physical persons, automated and manual data in both the public and private sectors and has a central registration system. A revised bill was due to be introduced into the legislature in 1989, but two general elections in recent months has meant that it has so far made little progress.

GUERNSEY passed its Data Protection Act on July 30th 1986, which came into force on November 11th 1987. It covers physical persons, automated data in the public and private sectors. Unlike the UK, Guernsey has no Registrar. The Advisory and Finance Committee oversees the law with the help of a Data Protection Officer who combines this work with other responsibilities.

HONG KONG published Data Protection Principles and Guidelines in March 1988. The government wrote to public and private sector computer users informing them that in principle data protection legislation should be introduced and meanwhile inviting their compliance on a voluntary basis. These Guidelines have been reviewed over the last year but the conclusions of the review have not yet been published. Some secrecy provisions were included in the Census and Statistics (Amendment) Bill enacted on January 12th this year.

HUNGARY leads Eastern Europe as the first country in the region to prepare a data protection bill, in this case combined with a general right of public access to government information. It was approved by the Council of Ministers in January 1989. The bill covers automated and manual data, natural and legal persons and has a registration system for some types of data. The government is submitting the bill to international scrutiny at a conference in late April in Budapest. The intention is for Hungary to join the Council of Europe and sign and ratify the Council of Europe Convention on Personal Data. Hungary is also currently preparing a new constitution which contains a clause recognizing "every human being's right to the protection of personal data."

ICELAND's Act Respecting Systematic Recording of Personal Data was passed in 1981 and came into force on January 1st 1982. It covers both automated and manual records, physical and legal persons in both public and private sectors and has a central registration system. Unusually, the law was drafted with a clause that required it to be abrogated after three years. From January 1st 1986 and again from January 1st 1990, new law with minor amendments came into force. However, the latest law is not limited to a fixed term.

IRELAND's Data Protection Act was passed on July 13th 1988. The Act covers physical persons and automated data in both the public and private sectors. The Act requires the registration of certain categories of data, such as sensitive data, all personal data held by public bodies and all personal data held by financial institutions, credit reference agencies, debt collecting agencies or direct marketing agencies.

ISLE OF MAN passed its Data Protection Act on July 16th 1986. In April 1988, a Data Protection Registrar was appointed and on October 17th 1988 a six month registration period began. The Act will come fully into force on October 17th 1990 at the same date as the Isle of Man's ratification of the Council of Europe Convention. The Act is similar to the UK Data Protection Act except that the exemptions have been widened to exclude many small businesses. Other differences include registration requirements and costs.

ISRAEL's Protection of Privacy Law was passed in February 1981 and came into force on September 11th 1981. It covers physical persons only, and automated records in both public and private sectors and has a central registration system. The law was amended on 4th March 1985.

ITALY's latest Data Protection Bill was prepared by a committee under the chairmanship of Professor Mirabelli and is a thorough revision of the previous bill which was presented to the legislature in 1984 and withdrawn in 1985. The new bill was published late last year. After public hearings the bill was redrafted and is currently being considered by the Ministry of Justice. Several aspects are still unclear.

The bill introduces a novel concept of "computer freedom" and is intended to "increase personal data freedom." The bill has categories of sensitive information which should receive a higher level of protection. The communication and dissemination of information both within Italy and abroad

are protected by the provisions of the Council of Europe Convention. The system of control is headed by a Guarantor who must be informed of the existence of databases. However, the Guarantor has no powers of coercion. He can merely denounce infringements of the law. The bill gives rights of access and correction, covers the public and private sectors, and both natural and legal persons.

In late 1989, the legislature passed a law authorizing the government to ratify the Council of Europe Convention on personal data. The legislature, by incorporating the Convention into domestic law, raises the question of whether the Convention is therefore binding in Italy. Clearly, as Italy has not deposited its instrument of ratification in Strasbourg, the legislature's action has no force in international law.

JAPAN A Bill to Protect Computer Processed Personal Data held in Administrative Organs was enacted on December 16th 1988 and came into force on October 1st 1989. The Act covers automated data in national government departments. It covers several data protection principles but is subject to a number of exceptions. A central co-ordinating body has been established as part of the Prime Minister's Office but it does not have independent status.

JERSEY, a self-governing entity within the UK, passed a Data Protection Law on April 30th 1987. This is similar to the UK's Data Protection Act, covering both public and private sectors and using a central registration system. It came into effect from November 11th 1987, the same date as the UK law became fully operational.

LUXEMBOURG's Act regulating the use of name-linked computer data was passed on March 31st 1979 and came into force on October 1st 1979. The law covers the public and private sectors and has a central registration system. The law is currently undergoing a fundamental review by the 7 person Data Protection Commission, which has recently been reappointed for a five year term. Justice Minister, Marc Fischbach, has stated that he would like the new bill to be passed by the legislature by the end of 1991.

The proposals to amend the law include: the Data Protection Commission reporting to the legislature rather than the Minister of Justice; including manual records within the scope of the law; abolishing the licensing system for the private sector's operations within Luxembourg and replacing it with sectoral guidance and declarations on the French model; introducing a licensing system for transborder data flows on the Austrian model; and strengthening the enforcement powers of the Data Protection Commission.

THE NETHERLANDS's Data Protection Act was adopted by the Upper House of the States General (legislature) on December 27th 1988 and received royal assent the following day. It will come fully into force on July 1st 1990, by which date all organizations required to register must do so. The Act covers physical persons, gives legal persons some rights, both private and public sectors, automated and manual records. It will work on a system of public declaration of name-linked files which will have to be notified to the

Registration Chamber. The Chamber has already started receiving complaints, approaching 200 in the July to December 1989 period. The Registration Chamber has had informal contacts with the finance and direct marketing industry associations. They are developing their own codes of practice which they must discuss with consumer organizations before submitting them to the Chamber for approval.

NEW ZEALAND has an Official Information Act which came into force on July 1st 1983. It groups together in the same law access to a person's government records on himself and access (subject to certain exceptions) to a broad range of government information. The government is considering extending data protection legislation to the private sector but a system of mass registration for companies is unlikely. The Justice Ministry is currently reviewing comments on a new data protection bill which was circulated to interested parties early this year. The government is committed to introducing a data protection bill into the legislature before the general election due in October this year.

NORWAY has a Personal Data Registers Act, passed in June 1978 which came into force on January 1st 1980. It covers both the public and private sectors, manual and automated records, and there is a central registration system. The Act was amended on October 1st 1987 and was strengthened regarding direct mail, telemarketing and consumer credit. The Data Inspectorate is currently reviewing international provisions for data protection security.

PORTUGAL's government tabled a data protection bill in the legislature in early 1984. The bill which had not been debated before the election in July 1987 covers both the public and private sectors, automated and manual records and has a central registration system. In 1988, Parliament revised the Constitution of the Portuguese Republic. Article 35 of the Constitution covers the use of data processing, and includes provisions on data protection. Infringement of its provisions incurs a penalty of imprisonment under article 181 of the Penal Code.

SPAIN's data protection bill was first published in June 1984 but has made little progress since. It covers automated records in the public and private sectors and has a central registration system. In summer 1988, the Izquierda Unida, the leftist grouping in the Cortes (legislature), put a motion to request that the government move forward on its data protection proposals. But so far, the government has not responded. Spain is in the unique position of having ratified the Council of Europe Convention on Personal Data without having first passed a data protection law.

SWEDEN enjoys the distinction of the world's first national data protection law, passed on May 11th 1973, which has since been amended several times. It covers physical persons, automated records in both the public and private sectors and has a central registration system. As the country with the most experience of data protection legislation it has provided a model for several other countries eg. France and the UK. A fundamental review of the working of the Act is now taking place.

SWITZERLAND's Minister of Justice submitted to the legislature a revised and simpler Federal Bill on the Protection of Personal Data on March 23rd 1988. The bill covers automated and manual records in the public and private sectors and has a registration system for certain categories of name-linked data. The bill is currently being reviewed by a legislative committee of the Conseil d'Etats which will be followed by some two years of discussions in the directly elected Conseil National. So far, the trend in the parliamentary discussions is towards a weakening of legal requirements for data protection in the private sector. The bill will be adopted by 1992 at the earliest.

Last year, the discovery of extensive file keeping by the Swiss police on hundreds of thousands of Swiss citizens led to a major scandal. The Federal Justice Ministry's Data Protection Office was then flooded with requests for access to individuals' records. The consequences have included a much greater public awareness of the importance of safeguarding data protection principles; and demands for the separation of the Ministry of Justice from the police so that there can be more effective accountability of the police to the Ministry in the future.

THE UK's Data Protection Act was passed in 1984 and came fully into force on November 11th 1987. The law covers automated records and physical persons in both public and private sectors and has a central registration system. This system has been reviewed by the Data Protection Registrar who has suggested major changes in the direction of reducing the burden of registration. An Interdepartmental Committee chaired by the Home Office is conducting its own review to consider changing aspects of the Act.

THE USA's Privacy Act was passed in 1974 and covers the federal government only. Each agency has to publish in the Federal Register at least annually a notice of the existence and character of its system of records. Individuals are given a right of access to these records. Several states, such as New York and California have similar laws covering access to records held by state agencies.

There is also sectoral federal data protection legislation for example, the Federal Fair Credit Reporting Act, The Family Educational Rights and Privacy Act of 1974, and the Video Protection Act passed in 1988. In late 1988, the US Computer Matching and Privacy Protection Act became law. It covers federal agencies and requires them to follow certain standards when carrying out computer matching to ensure that individuals are not harmed by unauthorised use of name-linked information or refused government benefits because of inaccurate data.

In addition to privacy legislation as such, in the absence of a data protection authority on European lines, government policy is also influenced by litigation. However, there is currently a bill before the Congress to introduce a Data Protection Board to act as an institutional representative for privacy issues relating to the use and abuse of personal information. The House of Representatives' Government Information Subcommittee plans to hold a hearing on data protection on May 16th this year.