

GERMANY STRENGTHENS DATA PROTECTION ACT

Last month, Germany's legislature, approved several amendments to the Data Protection Act, which strengthens the law in several important respects. The following report is based on one prepared by Germany's Federal Data Protection Authority for September's International Data Protection Commissioners' Conference in Paris.

The amended Federal data protection law was passed on September 19th after negotiations between the Upper and Lower Houses of the legislature. The resulting law represents a great step forward. The new law gives effect to principles expressed in the Federal Constitutional Court decision in the 1983 census case. The new amendment also more closely follows the principles of the 1981 Council of Europe Data Protection Convention than the original law which was passed in 1979. As the European Community's data protection draft directive was published in all Community languages in the same month as the amendment was passed, it was not possible to take it into account in this amendment to the German law.

Data Protection Act extended to the former German Democratic Republic

German unification has far-reaching consequences for data protection. Five new Lander (states) have been reconstituted in the territory of the former German Democratic Republic - Mecklenburg-Vorpommern, Brandenburg, Saxony-Anhalt, Thuringia, and Saxony. They will establish their own Data Protection Authorities next year, following the standards of the Lander data protection laws in the Federal Republic. Until this time, the Federal Data Protection Authority - in accordance with the unification treaty - will supervise data protection.

The data protection issues that need tackling in the territories of the former German Democratic Republic include the solving of various problems caused by the communist government's policies for managing society. For example:

- * the social insurance identity card which formerly included data on an individual's medical treatment and was presented to an employer
- * the Central Population data base
- * the procedures for dealing with files and information resources in the State Security Services, such as the STASI, the secret police

Extending the scope of the law

The law also includes for the first time the processing of name-linked data in traditional files in the public sector. The scope of the law

and the definition of name-linked data has now been extended to include audio-visual media. The decisive factor now for deciding whether data comes within the law is that it may be retrieved by any specific criteria.

Further new regulations include:

- * the admissability of data collection and the regulation of on-line access techniques
- * compensation for damages caused, for example, by inaccurate data
- * in the private sector, the burden is now on the data controller to prove that there is no causality between an action and resulting damages
- * in the public sector, strict liability has been introduced

The principle of purpose limitation has now been explicitly introduced into the German Data Protection Act. Permission to process name-linked data will now be determined by the purpose for which the data has been collected. Also, the recipient of data must respect the purpose for which the transmission has been made.

Individuals given the right to oppose a Data Protection Commission Enquiry

After some questions in the past, the Data Protection Authority's supervisory powers now extend to data which is subject to professional or a special official secrecy regulation, such as postal and telecommunications services, medical secrecy, personnel files and security vetting. But individuals are now given the right to oppose a Data Protection Authority enquiry regarding their data, if it is covered by any of the above regulations. Individuals have to be informed in a general sense of their new right to not have their cases investigated by the Data Protection Authority!

Nevertheless, the Data Protection Authority still retains its powers to conduct an investigation of these organizations' information management and procedures for handling name-linked data, even if it cannot investigate a specific case.

The Federal Data Protection Authority will undertake an investigation concerning data which is exclusively held in paper files, only if there are indications of a violation of the law.

Appointment and Organization of The Federal Data Protection Commission

From now on, the Data Protection Commissioner (the head of the Data Protection Authority) will be elected by an absolute majority of the Lower House after the government has submitted a candidate for its approval. Until now, the federal government has appointed the Commissioner.

In future, the Federal Data Protection Commissioner will present a progress report to the legislature every two years, rather than the annual report which has been presented until now. However, the Commissioner will still be able to make interim reports to the legislature on specific issues, if he wishes.

The staffing of the Federal Data Protection Commission will be increased in order to meet its extended functions.

It is expected that the new law will be published in November or December this year. The new law will enter into force and the current law will cease to be in force six months after that date.

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