

BELGIAN GOVERNMENT APPROVES NEW DATA PROTECTION BILL

On 19 January, the Belgian Cabinet finally agreed on the text of a Draft Government Bill on Data Protection (Avant-Projet de Loi relative a la protection de la vie privée a l'égard des traitements de données a caractère personnel), prepared by the Minister of Justice, M. Wathélet and the Minister of Internal Affairs, L. Tobback. At present, the Bill is being reviewed by the Conseil d'Etat, after which it will pass to the legislature around the middle of the year. In principle, the Bill should be debated in the autumn session this year. Joke de Hower reports.

Belgium is, together with Spain, Portugal, Greece and Italy, one of the last European Community countries to be considered as a "data haven." There is no general data protection act granting protection to an individual in the course of the processing of personal data in the public and the private sectors. At present, legal protection is offered only to certain categories of data, including social security data collection by the Social Security Administration, data relating to public sector employees, data relating to consumer credit and certain personal data collected in a National Register.

Major differences from the 1985 bill

The Draft is based on the text of a Government Bill of 17 July 1985 (PL&B Feb '87 p.15 and Sep '89 p.3) and follows the same basic principles as those of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 28 January 1981. Belgium has signed the Convention but has not yet ratified it. Amendments have been made both to the scope of the Bill and to the competence of the Advisory Data Protection Commission. The 1985 Bill applied only to automated data, which at the time included data processed on a personal computer for personal use.

Scope and definitions

The provisions of the Draft Bill apply to the processing of personal data (Art. 1):

- * processing is defined as the automated processing of data in a database ("sous forme de fichier") or the keeping of a manual database;
- * personal data is defined as data relating to an identified or identifiable natural person (data relating to legal persons or groups of persons are excluded);
- * processing by the private and the public sectors are treated equally (although some exceptions are made for certain public databases);
- * data processed by an individual for his own personal uses (on a personal computer) are excluded from the scope of the Bill;

- * special rules are defined for data processing by the National Security Service and the Intelligence Service of the Ministry of Defence;
- * the Draft Bill not only applies to processing on Belgian territory, but also to processing partially conducted abroad, if such processing is directly accessible from Belgium.

The principles

The basic principle of the Draft is contained in Art. 6: personal data may be processed only for well defined legitimate purposes, they have to be relevant and may not exceed those purposes. Additional protection is offered to certain sensitive data (racial, sexual, medical and "legal" data). Such data may be processed only by certain categories of persons or authorities or under certain conditions (Art. 7,8,9).

There is a duty of information regarding the collection and processing of personal data: the individual concerned has to be informed of his rights at the time of collection of the data (Art. 4) and when data relating to him is registered for the first time (Art. 10). The Advisory Commission on Data Protection must be notified in advance of any intention to start automated data processing (Art. 16). The Commission will also keep a Register of all automated processing of personal data, which will be open to public access (Art. 17).

The individual has a right of access to and correction of data relating to him (Art. 10 to 12). In certain cases, these rights are implemented indirectly through the Advisory Commission. These rights are guaranteed by appeal to the courts (Art. 13).

Companies' duties

In Art. 15, the specific obligations of the keeper of a database are specified. The purpose of this Article is to establish a regime of internal control over personal data processing. Besides the duties already described, (such as notification of the setting up of an automated data processing system, information to the data subject on collection, and registration of personal data, granting of access and right of correction), the keeper of the database must:

- * keep a register containing specified information on every automated processing system;
- * ensure that the programs for automated data processing correspond with the information contained in the Register held by the Commission;
- * take care that data is up-to-date; that incorrect, incomplete or irrelevant data is corrected or destroyed, and that the processing is restricted to data which serves a well defined legitimate purpose;

- * ensure that the necessary security measures are taken to prevent access by unauthorised persons and that the data is disseminated only to those categories of persons who have a right to receive the data.

Subordinate regulations

The King will be given specific powers and tasks in enforcing the principles of the Act. These powers include the regulation of the interconnection of databases, the transborder flow of personal data, and for the application of the general principles of the Act to certain categories of data.

The Advisory Commission for Data Protection

An Advisory Commission for Data Protection will be established, independent of the Ministry of Justice. It will give advice on any matter relating to data protection, and will have the competence to receive complaints and to investigate matters with the help of experts. It will report to Parliament on an annual basis.

Penal provisions

The last Chapter of the Draft contains severe penalties for violations of the provisions of the Draft Bill. These range from prison sentences of 3 months to 2 years and/or fines from BFr 100.- to BFr 100,000.- (to be multiplied by 60) - £107 to £107,143 - to which may be added the seizure of the offending organization's data processing equipment.

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