

DATA PROTECTION NEWS FROM AROUND THE WORLD

1. International organizations

European Community: The Luxembourg Presidency is giving the data protection draft directive (PL&B August '90 p.11, October '90 p.5) high priority during its term, January to June 1991, Chairman of the Council of Ministers' Working Group of Officials (COREPER), René Faber tells PL&B. It has the difficult task of attempting to reconcile the comments and suggestions from the national data protection authorities and the official consultative bodies. Representatives of the former group met with COREPER in the first week of February.

The Economic and Social Committee (ECOSOC) has set up a Study Group on Privacy which had its first discussions in late 1990, and was due to report to the Industry Section in February with the aim of having its Opinion approved by the plenary meeting of the ECOSOC in March.

The European Parliament has five separate committees studying the draft directive and the rest of the package of which it forms a part. They are: Legal affairs and Citizens' Rights; Economic and Monetary Affairs and Industrial Policy; Budgets; the Environment, Public Health, and Consumer Protection; Energy, Research and Technology. They are still working out their timetables for giving their Opinions. A final Opinion may have to await a plenary session of the European Parliament, possibly in October 1991.

In addition to these official consultations, many sectoral groups, such as the American Chamber of Commerce, and the European Advertising Tripartite have been preparing their submissions. It will be impossible to satisfy everyone and so COREPER will need to decide between a host of conflicting demands. Some industry groups at the Commission's Brussels meeting on November 29th pressed for an abandonment of the draft directive in favour of the Council of Ministers again recommending that the member states sign and ratify the Council of Europe Convention (see p. 24). On the other side, civil liberties organizations are pressing for a strengthening of the draft directive arguing that privacy is a fundamental right which needs protection throughout the European Community (see p. 25).

2. Countries with data protection laws

Australia: Privacy Commissioner, Kevin O'Connor, has published his First Annual Report on the Operation of the Privacy Act for the period January 1st 1989 to June 30th 1989, the first six months in which the Privacy Act was in force. In 35 pages it covers: An overview; Why privacy?, The Privacy Act; Compliance - tax file number; Compliance - information privacy principles; Complaints; Policy; Promotion, education and training; The way ahead; and Appendices on budget and staffing, and a list of the Commissioner's speeches.

Compliance problems have included the faxing of criminal and parole records, medical information, passport information, and Tax file Numbers to a private firm rather than the Department of Social Security, Brisbane. Another issue was the corrupt disclosure of personal information by public servants in Western Australia and New South Wales from the Tax Office, the

Department of Social Security, police and private investigators.

From the first day the Privacy Commissioner was appointed, he established a toll-free privacy hotline to take telephone calls from members of the public.

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In October 1990, the Privacy Commissioner published a discussion paper and draft guidelines, Data-Matching in Commonwealth Administration.

The Netherlands: The Registratiekamer, the Registration Chamber (Data Protection Authority) has announced the first Declarations of Conformity that industry codes of conduct satisfy the requirements of the Data Protection Act (PL&B April '90 p.5, September '89 p.8, November '88 p.11). The Act has been fully in force since July 1st 1990 and gives industry associations an opportunity to negotiate codes of conduct with relevant consumer organizations. The Registratiekamer has a supervisory role checking:

- * whether the organizations submitting the code are sufficiently representative for the sector to which the code applies
- * that the code has been drawn up with due care and with adequate consultation with other interested organizations
- * that the code is in conformity with the Data Protection Act, and fulfills reasonable requirements for the protection of the privacy of data subjects.

A code of conduct approved by the Registration Chamber is not legally binding but in practice it has considerable authority.

For most of the codes, the consumer organization negotiator is the Stichting Waakzaamheid Persoonsregistratie (SWP) which has been established for some 20 years as a privacy advocacy group giving advice to the government and political parties, public and private sector organizations.

The first code to be announced was that of the Recruitment and Staff Selection Agencies' Association (OAWS) on November 28th 1990. The code of conduct and the regulations for OAWS members consist of a number of binding rules for consultants and companies who specialise in the field of recruitment and selection of senior management. For example:

- * personal details can be taken down by consultants and companies only with the permission of those on the file;
- * details cannot be passed on to third parties without the permission of those on the file;
- * details must be removed after a period of five years;
- * breaches of the regulations can be brought either before a Judge, or the Registratiekamer (which will act as a mediator), and/or the Supervisory Commission of the OAWS.

The OAWS, established in 1983, has 83 member companies employing 230 consultants. In 1989, OAWS members had revenues of 110 million Guilders.

On January 17th, 1991, the Information Technology Trade Association (COSSO) was the second organization to receive a Declaration of Conformity for its code of conduct. A feature of this code is that members' declarations stating that they meet COSSO security requirements need to be validated by an auditor, an independent external check on their compliance. COSSO, founded in 1971, has 60 member companies which account for 70% of the sales of information technology products and services in the Netherlands.

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The United Kingdom: The Home Office wrote to interested organizations in early December with a report on the Inter Departmental Review of the Data Protection Act; an analysis of the European Community's draft directive and the main points of difference from the UK's Data Protection Act; and a request for organizations to submit their views to the Home Office by the end of January, later extended to the end of February, if possible.

The House of Commons' Home Affairs Committee published in December a report on its examination of the Data Protection Registrar's Annual Report (PL&B August '90 p.27).

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The Data Protection Tribunal has ordered CCN Systems and CCN Credit Systems to stop by January 1st 1993 its general policy of using address information as a factor in assessing individuals' creditworthiness (PL&B August '90 p.25). However, CCN will still be able to extract from its records information about members of a family currently living with the credit applicant in the same household.

The Tribunal's hearing, chaired by Deputy Chairman, Professor Aubrey Diamond, took place in London February 14-18 and issued its decision in late February. Either party can appeal to the High Court on points of law. A fuller report, based on PL&B's attendance at the hearing and the text of the Tribunal's decision, will appear in our next issue. The next appeal against a Registrar's Enforcement Notice by a credit information company, Infolink, is due to be heard on April 15th.

The United States of America: Representative Bob Wise, Chairman of the House Government Information Subcommittee, introduced a Data Protection Bill 1991 (HR 685) into the US Congress on January 29th. In his floor statement, Wise explained that the bill would establish a federal Data Protection Board as a "permanent, independent, and non-regulatory federal agency." The bill is "virtually identical" to the bill he introduced in the previous session (PL&B December '89 p.6).

The European Community draft directive was clearly an incentive for Congress to act. He said: "Adoption of this directive could make it expensive or impossible for American companies that need to transfer personal data to and from Europe to do business. The result could be a loss of jobs, profits, and business opportunities for America."