

BELGIUM SOON TO ADOPT A DATA PROTECTION LAW

Belgium's Sénat, the legislature's upper house, is expected to follow the lower house and adopt a comprehensive data protection law including manual data in its new session starting this month (PL&B August '92 p.2). The bill was examined in an extraordinary meeting of the legal committee of the Sénat September 7th-11th, should be approved by the committee in late October, and should be adopted by a plenary session in November.

This would mean Belgium leaving behind Spain, Greece and Italy, the last European Community countries to be considered as "data havens." Belgium has no general data protection law granting protection to an individual in the public and the private sectors. At present, legal protection is offered only to certain categories of data: Social Security Administration, public sector employees, consumer credit and the National Register. The Consultative Commission on the Protection of Private Life, in its February 1991 report, concluded that existing narrow law was insufficient and called for the legislature to adopt an effective general personal data law.

The Data Protection Bill

The Cabinet responded by agreeing on a new comprehensive Data Protection Bill on 8th March 1991 after the 1990 version of the bill had been reviewed by the Conseil d'Etat which made recommendations mainly on procedural and drafting matters. The bill (number 1610/1) was officially introduced in the Chambre des Représentants, the lower house of the legislature, on May 6th 1991. It covers both the public and private sectors, automated and manual records and natural persons.

Discussion on the bill began in the legislature in October 1991, was approved by the legal committee of the Chambre in mid-June this year and adopted by a plenary session in early July. This data protection bill (Project de Loi relative à la protection de la vie privée à l'égard des traitements de données à

caractère personnel) 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 and the legislature has approved the Convention but Belgium has not yet ratified it.

Scope and definitions

The bill (dated July 2nd 1992 no. 413/13 - 91/92 S.E.) applies to the processing of personal data as follows (Arts. 1-3):

- *processing is defined* as the automated processing of data or the keeping of a manual file (a manual file is defined as including the compilation, storage, amendment, erasure, accessing or transfer of personal data in a file on a non-automated basis);
- *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 to the extent that it is not possible to make the data relate to an individual);
- 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 *private uses* are excluded from the Bill;
- special rules are defined for data processing by the *National Security Service* and the *Intelligence Service* of the Ministry of Defence;
- the Bill not only applies to processing on Belgian territory, but also to *processing partially or wholly conducted abroad*, if it is directly accessible from Belgium.

The principles

The basic principle of the Draft is contained in Art. 5: 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, political, philosophical opinions and "legal" data). Such data may be processed only by

certain categories of persons or authorities or under certain conditions (Arts. 6,7,8).

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. 9). The Data Protection Commission (Commission de la protection de la vie privée) must be notified in advance of any intention to start automated data processing (Art. 17). The Commission will also keep a Register of all automated processing of personal data, which will be open to public access (Art. 18).

Individuals have rights of access to and correction (free of charge) of data relating to him (Art. 10 and 12) with certain exceptions relating to statistical data and the public sector (Art. 11). In certain cases, these rights are implemented either after a certain delay (Art. 12) or by a special procedure to be determined by a government order on the advice of the Commission (Art. 13). These rights are guaranteed by appeal to the courts (Art. 14).

Data Controllers' Duties

In Art. 16, 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 data controller has responsibilities which include:

- *keeping a register* containing specified information on each automated processing system;
- ensuring that the *programs* for automated data processing *correspond with* the information contained in *the Register* held by the Commission;
- taking 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*;

- ensuring that *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. They include regulation of the *interconnection of databases, the transborder flow of personal data*, (Arts. 21, 22) and for the application of the general principles of the Act to certain categories of data and certain sectors (Art. 44).

The Data Protection Commission

A Data Protection Commission will be established, independent of the Ministry of Justice for a six year term (Arts. 23-36). It will *give advice* on any matter relating to data protection, and will have the competence to *receive complaints* and to *investigate matters*, if necessary on site, with the help of experts. It may attempt *mediation or conciliation* if it deems it a useful approach. When necessary, it will report to the Public Prosecutor infringements of the law. The members must include persons nominated by the Chambre de Représentants and by the Sénat; lawyers, and those with experience of information technology, and managers of personal data in the private and public sectors. All have a duty of confidentiality. The Commission will report to Parliament on an annual basis.

Penal provisions

There are severe penalties for violations of the Draft Bill (Arts. 37-43) from prison terms of 3 months to 1 year and/or fines from BFr 100 - to BFr 100,000.- (multiplied by 60) - £100 to £100,000 - and possibly seizure of the offending organization's data and related equipment, plus the insertion of the *judgement, or extracts, in one or several newspapers* with the guilty party bearing the cost.

Entry into force

The law may enter into force by the end of March 1993 to enable Belgium to comply with the Schengen Agreement (PLB Dec. '91 p.14).