

NEWS FROM AROUND THE WORLD

The Council of Europe

The model contract for transborder data flows (PL&B Oct. '91 p.6) was the subject of a meeting on June 16th, organized by George Papapavlou (DG 13 of the Commission of the European Communities) at the Commission offices in Luxembourg together with the Council of Europe and an International Chamber of Commerce delegation. The Council of Europe's Principal Administrative Officer in the Division of Public Law, Egbert Ausems, is now redrafting the general comments section of the explanatory memorandum. The model clause on arbitration will also be revised to make it a more flexible alternative method of dispute resolution. The ICC wants to encourage the use of model contract clauses but emphasizes that their use should remain voluntary.

The draft recommendation on data protection in the area of telecommunication services, with particular reference to telephone services, was approved by the Project Committee on Data Protection at its meeting in Strasbourg on January 28th-31st and awaits adoption by the Committee of Ministers at its September meeting

The draft recommendation on the protection of medical data was approved by a working party in Strasbourg, June 30th-July 2nd. Its terms of reference were: "To examine the data protection problems created by medical data, including genetic data and data relating to contagious or incurable diseases." The draft updates the Council of Europe's 1981 Recommendation no. (R) 81 1 on medical data.

The next meeting of the Committee of Experts on Data Protection is September 22nd-25th in Strasbourg. Its new President is Kimon Chalazonitis, Vice-President, Council of State, Greece and first Vice-President is Jean-Philippe Walter, Head of the Data Protection Service, Department of Justice, Switzerland.

The European Community's Data Protection Working Party under Portugal's presidency, January-June 1992, covered the following issues, its Chairman, Dr. Joaquim de Seabra Lopes, informed PL&B:

1. Criteria of lawfulness for the processing and communication of personal data
2. Methods of applying the lawfulness criteria; responsibility of the controller of the file; authorization or prior examination by the supervisory authority; codes of ethics etc.
3. Scope of the lawfulness criteria: data contained in data *files* or data being *processed* (should the file concept be retained?)
4. Territorial application of the directive
5. Definition of *sensitive data* and data which puts the data subject *at risk*; lawfulness criteria for sensitive data.

International Chamber of Commerce

Stewart Dresner, PL&B's Publisher, visited Brussels on June 23rd for his first attendance at the International Chamber of Commerce's Working Party on Privacy and Data Protection. He urged that the ICC supports the Council of Europe's draft Recommendation on Telecommunications Data rather than the policy of fighting a retreat seen in its 1991 document resisting the EC Data Protection Draft Directive. The working party agreed to do so and the terms of ICC's letter supporting the Council of Europe's draft recommendation will be discussed at a meeting of the ICC's Working Party on Privacy and Data Protection in London on September 16th.

Belgium: In mid-June, Belgium's data protection bill (the *Projet de loi relatif à la protection de la vie privée à l'égard des traitements de données à caractère personnel*), was approved by the legal committee of the lower house of the legislature (the *Chambre des Représentants de Belgique*). It broadened the scope of the bill by replacing *data file* (*fichier*) with *data*. This change to the definition of automated processing in Belgium follows the

similar amendment of the European Parliament to the EC Data Protection Draft Directive. The bill was then adopted by a plenary session of the lower house of the legislature in early July. The bill now passes to the upper house, the Senate, where it will be examined in the autumn. The text must be the same in both houses for the bill to pass into law.

The bill, when adopted, will mean a much wider protection of privacy than currently offered by Belgium's *Consultative Commission on the Protection of Private Life* which is limited by a royal decree of December 30th 1982 and the law of August 8th 1983 to the National Register of Physical Persons.

The Commission, in its report dated February 1991, expressed itself dissatisfied with its narrow scope and powers. For example, it lacks powers of investigation. Its role was extended by the law of January 15th 1991 to cover supervision of the Social Security Crossroads Database (Banque - carrefour de la Sécurité Sociale) which acts for a broad range of social security data - including sickness and disability insurance, retirement and widows/widowers pensions, annual holidays, accidents at work and unemployment.

The term of the Commission ended on December 31st 1991 and a new one has been appointed with a new chairman, M. Paul Thomas, formerly General Prosecutor at the Appeal Court at Mons and a new Secretary. These posts are now full-time.

The Commission concluded that existing law left an "enormous legal vacuum which results from the absence of general legislation on the protection of personal data." It therefore stated that "it is necessary for the legislator to examine the draft law as soon as possible so that there may enter into force an effective law on personal data in every sector."

Canada: On May 22nd, the New Democrat Government of British Columbia introduced a bill on Freedom of Information and Privacy. Only one of three Canadian provinces to be without such legislation, this bill has been long-awaited. Consistent with the models at the federal level and in Ontario it

combines access and privacy provisions in one statute. This bill covers the provincial ministries, boards, agencies, commissions and crown corporations. A second legislative phase will encompass municipalities, schools, colleges, universities and hospitals. The private sector is completely excluded for the moment.

The privacy provisions are modelled closely on the Ontario legislation and contain all the data protection principles familiar in European schemes: collection limitations, purpose specification, security against unauthorised use, disclosure limitations and subject access and correction. The combination of access and privacy obviously necessitates a clear definition of those categories of personal information that are exempt from subject access on the grounds that they constitute an "unreasonable invasion of a third party's personal privacy." These categories have been closely defined.

The bill also provides for the appointment of an Information and Privacy Commissioner whose powers are somewhat stronger than those of similar officials elsewhere in Canada. The Commissioner is appointed by, and responsible to, the legislature (not the government.) In addition to reviewing access requests and receiving complaints, he/she may also order the head of an agency to grant access for a data subject to personal information, specify how incorrect personal information is to be corrected, require a public body to desist from collecting, using or disclosing personal data, and require the head of an agency to destroy personal information collected in contravention of the law. The Commissioner also has powers to monitor computer matching and to prohibit the use of government information for mailing lists or solicitations.

The Attorney General has claimed that this is "the most open legislation in Canada." The bill is expected to have a quick and smooth legislative passage, and to come into full effect in October 1993.

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