

## **DATA PROTECTION ROUNDUP**

*Data Protection Roundup is a completely revised and updated version of this annual feature summarising the status of data protection legislation in 33 countries. It is now brought up to date as at mid-October. The index to be published in our next newsletter gives references to reports by country and subject. You will find an updated table summarizing the European Data Protection Laws and Bills at the end of issue no. 20.*

**AUSTRALIA** passed a Commonwealth (federal) Privacy Act in November 1988. The Act applies mainly to the Commonwealth public sector, and not to State government agencies nor as a whole to the private sector. However, the Act controls both the public and private sectors in their use of the Tax File Number, backed by guidelines enforced by the Privacy Commissioner. The Act covers physical persons and both automated and manual records. It came into force on January 1st 1989.

The Privacy Amendment Act was enacted on December 24th 1990, expanding the legislation and the Privacy Commissioner's jurisdiction to credit information. On January 23rd 1991, the Data-matching Program (Assistance and Tax) Act was enacted which provides legal authority for a matching programme to be carried out by the Department of Social Security, other agencies and the Taxation Office under the scrutiny of the Privacy Commissioner.

**AUSTRIA's** Data Protection Act was passed on October 18th 1978 and came into force in stages from January 1st 1980. It was amended in July 1986 with the new provisions, for example, on international transfers of data coming into force on July 1st 1987. The law covers physical and legal persons, and mainly automated data in both public and private sectors. It has a central registration system.

**BELGIUM's** Consultative Commission on the Protection of Private Life is limited by the

royal decree of December 30th 1982 and the law of August 8th 1983 to the National Register of Physical Persons. A new comprehensive Data Protection Bill was agreed by the Cabinet on 8th March 1991. The bill was presented to the lower house of the legislature on May 6th 1991 and it covers both the public and private sectors, automated and manual records and natural persons. The bill was adopted by the lower house in July this year and is expected to be adopted by the upper house in November.

**CANADA** has a Privacy Act passed in 1982. It came into force in 1983 and covers only the federal government and federal agencies. The Privacy Commissioner's jurisdiction has been extended to State owned companies, although Air Canada and Petro Canada are exempt.

Quebec and Ontario have laws which combine both public access to government information and privacy at the provincial level of government. Ontario has passed a Municipal Freedom of Information and Protection of Privacy Act 1989 which extends these principles to this tier of government. Quebec is considering extending privacy principles to provincially regulated companies, such as banks and insurance companies. British Columbia is expected to adopt a similar law to enter into force in October 1993.

**CZECHOSLOVAKIA's** federal government approved the Protection of Personal Data in Information Systems Law on April 29th 1992 and it entered into force on June 1st. The law covers physical persons in the public and private sectors and both automated and manual data. The law establishes a registration system for sensitive data. Enforcement will be the responsibility of separate Czech and Slovak regulatory bodies. The grant of licenses for transborder data flows will be the subject of secondary legislation.

**DENMARK** has separate Public Registers and Private Registers Acts, both passed in June 1978 and which came into force on 1st January 1979. The Private Registers Act covers automated and manual records, physical and legal persons. Three types of organisation are

required to register with the Data Surveillance Authority; credit reference bureaux, data processing service bureaux and blacklist registers, for example concerning bad credit risks.

Amendments were passed in June 1987 strengthening the data subject's right of access, and entered into force in April 1988. In January 1991, the government introduced a bill into the legislature to amend the Public Registers Act to make the control of public files less bureaucratic. The bill was approved by the legislature in late May, published on June 6th and entered into force on September 1st last year.

**FINLAND** passed a Personal Data Files Act on February 4th 1987 which came into force on January 1st 1988. It covers automated and manual records, and physical persons in the public and private sectors and requires companies to notify the Data Protection Ombudsman if they are processing certain types of name-linked data eg. credit information. The Data Protection Board may give permission for the export of "mass delivery" or sensitive data to countries that do not have legislation corresponding with the provisions of Finland's Personal Data Files Act. Finland was the twelfth country to ratify the Council of Europe Convention on December 2nd 1991 and it entered into effect on April 1st 1992.

**FRANCE** has a Data Processing, Data Files and Individual Liberties Act passed on January 6th 1978. It covers both automated and manual records in both public and private sectors and has a central registration system. It entered fully into force on January 1st 1980. France's data protection law's right of access was extended to legal persons on July 3rd 1984 by an administrative decision of CNIL, France's Data Protection Authority.

**THE FEDERAL REPUBLIC OF GERMANY.** The Federal Data Protection Act was passed on January 27th 1977 and came fully into force on January 1st 1979. The law covers physical persons, automated and manual records in both public and private sectors. Public sector name-linked files have to be

registered with the Federal Data Protection Commissioner, while certain private sector files have to be registered with the Lander (state government) data protection supervisory bodies. In addition the Lander have separate data protection laws covering access to name-linked data held by them and institutions owned by them, like banks. The Data Protection Act now applies throughout the Federal Republic of Germany, including the former German Democratic Republic.

The Data Protection Act was amended in late 1990 and the amendments entered into force on June 1st 1991. The scope of the new law has been extended to include audio-visual media, to strengthen provisions on compensation for damages, and to explicitly introduce the principle of purpose limitation.

**GREECE** introduced a data protection bill into the legislature in November 1987 but it was withdrawn by the Justice Minister a few months later for further consideration. The bill covers physical persons, automated and manual data in both the public and private sectors and has a central registration system. A revised bill was due to be introduced into the legislature in 1989, but work slowed due to two successive elections. Now the government intends to propose an amended bill to the legislature.

**GUERNSEY** passed its Data Protection Act on July 30th 1986, which came into force on November 11th 1987. It covers physical persons and automated data in the public and private sectors. Unlike the UK, Guernsey has no Data Protection Registrar. The Advisory and Finance Committee oversees the law with the help of a Data Protection Officer who combines this work with other responsibilities.

**HONG KONG** published Data Protection Principles and Guidelines in March 1988. The government wrote to public and private sector computer users informing them that in principle data protection legislation should be introduced and meanwhile inviting their compliance on a voluntary basis. These Guidelines and wider international developments are being reviewed by a government working group and, separately, by the Privacy sub-committee of the Law Reform Commission. The latter's

recommendations, due to be published for a three month public consultation by the end of 1992, are likely to include the enactment of data protection legislation on the basis of principles of broad general application to include both the public and private sectors, and both automated and structured manual records.

Some secrecy provisions were included in the Census and Statistics (Amendment) Bill enacted on January 12th 1990. In 1991, Hong Kong enacted a Bill of Rights which contains a right of privacy in the terms of the International Covenant on Civil and Political Rights.

**HUNGARY** was the first country in Eastern Europe to prepare a data protection bill, in this case combined with a general right of public access to government information. It was approved by the Council of Ministers in January 1989. The bill covers automated and manual data, natural and legal persons and has a registration system for some types of data. The government's intention is for Hungary, now a member state, to sign and ratify the Council of Europe Convention. Hungary is also currently preparing a new constitution which contains a clause recognizing "every human being's right to the protection of personal data." A bill has now been submitted to the legislature to appoint a Parliamentary Commissioner for Citizens' Rights who will also be responsible for data protection rights. The government intends the bill be passed by the end of 1992.

**ICELAND's** Act Respecting Systematic Recording of Personal Data was passed in 1981 and came into force on January 1st 1982. It covers both automated and manual records, physical and legal persons in both public and private sectors and has a central registration system. Unusually, the law was drafted with a clause that required it to be abrogated after three years. From January 1st 1986 and again from January 1st 1990, a new law with minor amendments came into force. However, this latest law is not limited to a fixed term. Iceland ratified the Council of Europe Convention on March 25th 1991 and it entered into force there on July 1st 1991.

**IRELAND's** Data Protection Act was passed on July 13th 1988. The Act covers physical persons and automated data in both the public and private sectors. The Act requires the registration of certain categories of data, such as sensitive data, all personal data held by public bodies and all personal data held by financial institutions, and agencies for credit reference, debt collecting or direct marketing.

**ISLE OF MAN** passed its Data Protection Act on July 16th 1986. In April 1988, a Data Protection Registrar was appointed and the law fully entered into force on October 17th 1990 on the same date as the Isle of Man's ratification of the Council of Europe Convention. The Act is similar to the UK Data Protection Act, except that the exemptions have been widened to exclude many small businesses. Other differences include registration requirements and costs.

**ISRAEL's** Protection of Privacy Law was passed in February 1981 and came into force on September 11th 1981. It covers physical persons only, and automated records in both public and private sectors and has a central registration system. The law was amended on March 4th 1985 to regulate the transmission of information between public bodies.

Chapter One of the law is exceptional in creating a civil law offence of infringement of privacy which covers 11 categories of behaviour including spying on a person; listening in; photographing a person in the private domain; publishing a person's photograph under such circumstances that the publication is likely to humiliate him or bring him into contempt; using a person's name, appellation, picture or voice for profit; and publishing any matter relating to a person's intimate life, state of health or conduct in the private domain.

**ITALY's** government submitted a new data protection bill to the legislature on September 1st this year. It takes into account the Council of Europe Convention. In late 1989, the legislature passed a law authorizing the government to ratify the Council of Europe Convention. Clearly, as Italy has not deposited its instrument of ratification with the Council

of Europe's Secretariat General in Strasbourg, the legislature's action has no force in international law.

Nevertheless, work continued building on a previous Bill prepared by a committee under the chairmanship of Professor G. Mirabelli and published in late 1989. Several aspects of that bill were novel, such as the concept of granting computer freedom, and the appointment of a Guarantor. In addition, a private member's bill had been introduced into the legislature on November 6th 1991 by Sig. G. Pellicanó, a member of the Republican Party.

**JAPAN** The law on Protection of Computer Processed Personal Data held in Administrative Organs was enacted on December 16th 1988 and came into force in stages starting on October 1st 1989. Chapter 3 of the law covering individual rights, such as access and correction of personal data, came into force on October 1st 1990. The Act covers automated data in national government departments. It covers several data protection principles but is subject to a number of exceptions, for example, civil servants have no right of access to personal data on themselves. The central co-ordinating body for this legislation is the Management and Coordination Agency in the Prime Minister's Office but it does not have the status of an independent Data Protection Authority.

Government departments have strongly encouraged parts of the private sector, such as finance, telecommunications and credit information to establish codes which reflect the OECD Guidelines.

**JERSEY**, a self-governing entity within the UK, passed a Data Protection Law on April 30th 1987. This is similar to the UK's Data Protection Act, covering both public and private sectors and using a central registration system. It came into effect from November 11th 1987, the same date as the UK law became fully operational.

**LUXEMBOURG's** Act regulating the use of name-linked computer data was passed on March 31st 1979 and came into force on October 1st 1979. The law covers the public

and private sectors, automated records and legal persons, and has a central registration system. The law has had a fundamental review by the seven person Data Protection Commission. Publication of the European Community draft directive has meant that its proposals to amend the Luxembourg law have been postponed until the final shape of the EC initiative becomes clearer.

**MALTA's** application for membership of the European Community has helped to move data protection up the list of priorities for legislation. The government had been preparing a data protection and freedom of information bill when the legislature was dissolved in February 1992 for a general election. Now work has begun on a new bill.

**THE NETHERLANDS's** Data Protection Act was adopted by the Upper House of the States General (legislature) on December 27th 1988 and received royal assent the following day. It came fully into force on July 1st 1990, which also served as a deadline for registration. The Act covers physical persons, gives legal persons some rights, both private and public sectors, and automated and manual records. Unusually, the Netherlands' law requires registration of manual personal data. The law works on a system of public declarations of name-linked files which have to be notified to the Registration Chamber.

The Registration Chamber has now approved the first industry codes of conduct for the Recruitment and Staff Selection Agencies' Association, the Information Technology Trade Association, and the Mail Order Association. Each sector is encouraged by the law to develop its own code of conduct which it must discuss with a representative consumer organization before submitting it to the Chamber for approval.

The Registration Chamber has prepared a decree on the protection of sensitive data and awaits the opinion of the Council of State. Once the decree is adopted, the Netherlands will be able to ratify the Council of Europe Convention.

**NEW ZEALAND's** House of Representatives passed a Privacy Commissioner Bill on December 11th 1991 which entered into force on April 1st 1992. The new law, restricted to the public sector, provides for the appointment of a Privacy Commissioner, as a member of the Human Rights Commission, and he began his term of office on April 15th this year. His responsibilities include monitoring the way that designated government agencies comply with the new law and after two years reporting to the government on the working of the Act and other privacy matters. His main focus is on monitoring information matching between eight government departments. He is also assessing the extent to which the law should be amended to cover the private sector.

The new law considerably strengthens the existing law covering access to police data and the Official Information Act which came into force on July 1st 1983. This law groups together in the same law access to a person's government records on himself and access (subject to certain exceptions) to a broad range of government information.

**NORWAY's** Personal Data Registers Act was enacted in June 1978 and came into force on January 1st 1980. It covers both the public and private sectors, manual and automated records, physical and legal persons and there is a central registration system. On October 1st 1987, the Act was strengthened regarding direct mail, telemarketing and consumer credit.

The law's notification system is currently under review. A bill has been prepared on video surveillance in public places which would result in the public being informed that video cameras were being used.

**POLAND's** government intends to submit to the legislature by the end of October a data protection bill to cover public and private sector files and automated and manual data. It is planned that the Data Protection Authority will be elected by and report to the legislature.

**PORTUGAL** The Assembly passed the Protection of Personal Data Act which was published on April 29th 1991 and came into force on May 4th last year. The new law

covers automated data and physical persons and has a Data Protection Authority and registration system similar to the UK and France. Regulations establishing the Authority had not been published by mid-October 1992.

The Data Protection Authority has powers to limit the export of name-linked data, implementing section 35-6 of Portugal's 1989 constitution. Apart from any sanctions in the new law, infringements of the constitution's provisions may lead to the penalty of imprisonment under article 181 of the Penal Code. Ratification of the Council of Europe Convention is expected by the end of 1992.

**SPAIN's** data protection bill was adopted by the legislature on October 8th this year. It covers automated and manual records in the public and private sectors. The law will be regulated by a national Data Protection Authority with several others in the autonomous communities, such as Catalonia, and in the provinces of the Basque country. The lower house also made provision for data protection authorities for specific types of data. The national authority may convene meetings of the other authorities for co-ordination purposes. A consultative council consisting of representatives of the public administration, employers' and consumers' associations, and other experts, will elect the head of the national Data Protection Authority. The new law will enter into force around February 1993, three months after publication of the law in the official gazette. The DPA's head should be appointed shortly after that date.

Once Spain's new law has entered into force, it will no longer be in the anomalous position of having ratified the Council of Europe Convention on Personal Data, in January 1984, without having passed a data protection law. There are provisions on data protection in some sectoral laws, for example, one on statistics, passed in 1989.

**SWEDEN** adopted the world's first national data protection law, passed on May 11th 1973, which has since been amended several times. It covers physical persons, automated records in both the public and private sectors and has a central registration system.

A fundamental review of the working of the Act is now being carried out by The Commission on Data Protection, appointed by the Ministry of Justice in 1989. Its report, published in July 1990, recommends stronger powers of supervision for the Data Inspection Board and less emphasis on the current system of licensing and applications for permission. The Commission's objective has been to ensure that there are more effective safeguards for the individual's right to privacy and is expected to draft the text of a revised law.

In October 1990, the government appointed a Commission to propose a law on personal data in the social services field, and the government is also considering a personal data law for census data.

**SWITZERLAND**'s legislature adopted a Data Protection Act on June 19th this year. The law covers automated and manual records in the public and private sectors, physical and legal persons, and has a registration system for certain categories of name-linked data. The new law will enter into force on 1st July 1993. The new law's provisions on sensitive data are based on the Council of Europe Convention on data protection. Sensitive data may now be collected only for a legitimate and specified purpose when there is an overriding interest of the data processor. Data file transfers from Switzerland must be declared to the Data Protection Commissioner if the communications is not a legal obligation or the data subject has not been informed.

**TURKEY** A study commission has prepared a data protection bill which is being sent to representative bodies in the public and private sectors for their comments. The bill is being studied by the Ministry of Justice.

**THE UK**'s Data Protection Act was passed in 1984 and came fully into force on November 11th 1987. The law covers automated records and physical persons in both public and private sectors and has a central registration system.

Formal enforcement action (Data Protection Tribunal hearings, Transfer Prohibition Notices, and court cases) are now being supplemented where appropriate by formal

undertakings. An undertaking is a formal document agreed between the data user and the Registrar identifying problem issues and the steps the data user agrees to take to comply with the data protection principles.

**THE USA**'s Privacy Act was passed in 1974 covering the federal government only. Each agency has to publish in the *Federal Register* at least annually a notice of the existence and character of its system of records and how data subjects may gain access. Several states, such as New York and California have similar laws covering access to records held by state agencies.

There is also sectoral federal data protection legislation for example, the Federal Fair Credit Reporting Act, The Family Educational Rights and Privacy Act of 1974, and the Video Protection Act passed in 1988. In late 1988, the US Computer Matching and Privacy Protection Act became law. It covers federal agencies and requires them to follow certain standards when carrying out computer matching to ensure that individuals are not harmed by unauthorised use of name-linked information, or refused government benefits because of inaccurate data.

On December 21st 1991, the Automated Telephone Consumer Protection Act was signed by President George Bush to regulate telephone marketing. The new law will enter into force on December 20th this year.

While there is little prospect of the United States following the European lead on adopting comprehensive data protection legislation, the US congress has a few privacy issues on its agenda. On April 2nd this year, the US House of Representatives' Committee on Government Operations published a report - *Designing Genetic Information Policy: The Need for an Independent Policy Review of the Ethical, Legal and Social Implications of the Human Genome Project*. On May 14th this year, a public hearing was conducted on Privacy Implications of US Postal Service Address Correction Services by the Government Information, Justice, and Agriculture SubCommittee.