



The German experience of identity cards

Dr Alexander Dix, Berlin's Deputy Data Protection Commissioner, here explains how Germany has developed an identity card policy which balances the protection of its citizens' rights with the needs of the police, the security services and other government services, such as health care. This report is based on a lecture given by Dr Dix, at the UK Data Protection Registrar's Conference in London on 21st June 1995 entitled *Identity Cards: Putting You in the Picture*.

German citizens have been equipped with identity cards in some form or other for more than 56 years. ID cards were first introduced in Germany in 1938. They were paper documents containing photographs and fingerprints. Shortly after the beginning of the War, the German Government introduced an additional duty to carry the ID Card at all times. These regulations remained unaltered under the Allied Military Government after 1945 and were replaced in 1951 by a Federal Act on ID Cards in West Germany. The duty to carry the Card at all times was scrapped by this Act and it has never been reintroduced.

Machine-readable cards - a brief history

In 1978, preparations in West Germany started for the introduction of a new machine-readable ID Card with anti-forgery devices for all citizens of the Federal Republic. The arguments put forward in favour of such a card were similar to those set out in the UK Green Paper of May 1995.

After an extremely lengthy and controversial legislative process and against considerable public opposition, the machine-readable card and, at the same time, machine-readable passports, were finally introduced into West Germany on 1st April 1987.

Criticisms of the machine-readable card

Much of the debate about introducing machine-readable ID Cards centred on the question of whether it would lead, in effect if not expressly, to a national identity number scheme which had been rejected as unconstitutional in 1976 by the Standing Committee on Legal Matters of the Federal Parliament.

The German Data Protection Commissioners at Federal and State level criticised the idea of a national machine-readable ID Card basically on two grounds:

1. The introduction of machine-readable cards would lead to the installation of a nationwide infrastructure of personal databases in addition to the existing population registers. In Germany there is a compulsory decentralised Population Register at local level which stores more data than the Register of Births and Deaths in the United Kingdom. The Data Protection Commissioners argued that building a new technical infrastructure based on ID Cards would increase the risk of a surveillance-state becoming reality, especially if it was seen in the context of the increasing combination, matching and integration of databases containing text, voice and images held by different public authorities for different purposes. The Commissioners strongly opposed the idea that the ID card, and more specifically, the card number, should become a key to all these different databases.
2. The Commissioners, furthermore, took the view that the introduction of a machine-readable ID Card was only acceptable if, at the same time, Parliament would make specific and restrictive provisions as to the subsequent use of the ID Card by public bodies (especially the police) and private companies.

Federal Constitutional Court's census ruling in 1983

The Court, in that judgement for the first time, supported the Commissioners by stating that each individual had a constitutional right to information self-determination. It would be incompatible with this basic human right to set up a unique identity number system which would allow the linking of all existing government databases in order to replace the census.

In addition, the Court stressed the need for specific legislation governing the collection and processing of personal data in all areas of state activity. The existing general data protection legislation was found to be insufficient in this respect. This far-reaching decision had a strong



influence on the final shape of the ID Card legislation which has now been on the Statute book in Germany since 1986.

1986 ID Card Act's five principles

1. **Single-purpose card.** Every German citizen from the age of 16 is obliged to obtain a machine-readable ID Card and show it to any authority that is entitled to ask for identification. The Card does not serve purposes other than identification.
2. **No data unreadable to data subject.** All data contained on the ID Card is clearly shown, and there is nothing that is encoded or fingerprinted. There is no magnetic strip or chip integrated in the card.
3. **There is no central National ID Card Register in Germany.** ID Cards are issued by local authorities which may store that applicants' data not longer than five years after the expiry of the Card. Only the card numbers are stored centrally at the Federal Printing Office which manufactures the cards, in order to allow them to trace which number has been issued to which local authority.
4. **Prevention of card becoming national ID number.** There are detailed provisions in the German ID Card Act designed to prevent the card number becoming, in effect, a national ID number. Two of these are:
 - The ID Card number is a *mere document number* which does not contain in itself any reference to the data subject. It changes whenever it has to be renewed every five or ten years depending on the age of the holder.
 - Card numbers *must not be used to access or link automated databases*. Only the local authority issuing the ID Card may use the number to access its own register and the police may use the card number to find out whether it belongs to an expired or invalidated card.
5. **The ID Card itself may only be used as a key to automated databases by the police and customs officials, for purposes of border control and of investigating or preventing crime.**

Further safeguards

No "movement profiles" created. If the ID Card is read with a card reader on the border, the data contained in it is compared with the central police databases. If the answer is negative (i.e. there is no data concerning the data subject in the police files), the police are not allowed to store any data about the fact that the card holder has been subject to scrutiny. This is vital in order to prevent the creation of "movement profiles" of citizens who are not suspects.

No other lawful card readers. No other public or private body may use the ID Card as a key to their databases or may store the data contained in it by using a card reader. They may, however, use the information on the card shown to them for matching or other purposes. A public authority would need a specific legal basis to carry out this task.

The conditions for collecting information

Only under very restricted circumstances (i.e. if there is a clear indication that certain serious crimes have been committed), may a judge order that all data collected on the border or at a road block by card readers be stored and processed in a database for a limited period of time. In Germany, we call this a computer-based "drag-net search." The data which turns out to be not necessary for the prosecution has to be deleted as soon as possible.

Police and security services

This Act sets out in detail the conditions under which local authorities may disclose personal information from the ID Card Register to other authorities.

In addition, the Federal and State Parliaments, after some delay, met the demands of the Federal Constitutional Court and the Data Protection Commissioners to enact legislation specifically regulating the collection and processing of personal information by the police and security services. This legislation gives the German police the power to require an individual, under certain conditions, (if public safety is being endangered or in places where certain offences are likely to be committed) to identify himself. If necessary, the police may take him to a police station to discover his identity. But it does not stop there. The Police



Acts also circumscribe in some detail the further processing of personal information by the police.

Refusing to obtain an ID Card, or produce it when required, is not a criminal offence in Germany, but it is liable to an administrative fine of up to 1,000 Deutschmarks (£465).

Reading difficulties

Seven years after the Act came into effect, the German authorities finally managed to develop reliable card readers. During that time, numerous tests gave unsatisfactory results due to technical problems, which have apparently been overcome.

Since 1994, card readers have been in operation at most German airports and at border control stations, with the important exceptions of Poland and the Czech Republic. These borders will shortly have card readers installed as neither country belong to the Schengen area, therefore people entering Germany from them have to identify themselves. Within the Schengen area, identity checks are only made in cases where there is a suspicion of illegality.

Inside the country, German police use other technical means than card readers to check identities, for example, mobile computers and radio transmitters.

Smart Cards

There are no plans in Germany, at present, to replace the existing machine-readable ID Card for identification purposes with more sophisticated plastic cards, such as smart cards or multifunction cards.

Smart cards have however been introduced in the health sector for public health insurance purposes. They do not contain any information about the card holder's health data, but will contain the administrative data necessary for paying health insurance benefits.

German Data Protection Commissioners are very critical of attempts to introduce smart cards

which store health data, even on a voluntary basis, because they fear data subjects' loss of control of the use of data. Employers, for example, may attempt to ask job applicants to submit the card. The Data Protection Commissioner of the State of Hesse has described the introduction of voluntary smart cards in addition to compulsory ID cards as a development from coercive to seductive technology. The question is whether informed consent of the data subject is a sufficient legal basis for storing health and other sensitive data on a smart card which may serve, for example, as an electronic payment card at the same time.

Is the German model recommended?

To conclude, may I say that my respect for the legal and political culture of the United Kingdom

is too great to give an unreserved recommendation to follow the German example of compulsory ID Cards. It is, of course, important to keep in mind the different legal frameworks and traditions in the two countries. However it has been pointed out quite rightly in the UK Green Paper that the effectiveness of any new scheme will depend upon individuals having confidence that personal information is properly safeguarded. This is fully

supported by the German experience.

If the UK decides to install an ID Card infrastructure, consideration should be given, at the same time, to introducing specific and restrictive rules on the use of ID Card information to strengthen the citizens' right to privacy.

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