



Data Protection Roundup

Data Protection Roundup is a completely revised and updated Newsletter feature summarising the status of data protection legislation in 35 countries. It is up-to-date as at end-December 1995. The 1987-1995 index gives references to reports by country and subject.

AUSTRALIA passed the Federal Privacy Act in November 1988 which came into force on January 1st 1989. The Act applies mainly to the federal public sector, and not to State Governments, 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.

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 Programme (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.

In December 1994, the President of the New South Wales Court of Appeal launched the Australian Privacy Charter, a voluntary code for business and government which sets out principles covering all aspects of privacy.

In the past twelve months, there has been substantial support for an extension to the current Act. Three major reports recommended that the Federal Privacy Act should be extended to cover the activities of State Governments and the private sector. In December 1995, the Prime Minister announced his commitment to extend privacy protection to the private sector following wide-ranging consultations.

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 new provisions 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.

The need for further amendment of the Act has been recognised, but action was postponed until final adoption of the EU Data Protection Directive. As an EU Member State, Austria will have to implement the Directive in its national law by October 1998.

The Telecommunications Act, containing specific provisions on data protection entered into force on April 1st 1994. Also, the Genetic Engineering Act, with a very strict data protection regime, was passed in June 1994 and came into force on January 1st 1995.

BELGIUM adopted the Act on the Protection of Personal Privacy in the Area of Personal Data Processing on December 8th 1992. Royal Decrees, containing details about the entering into force of different sections of the Act, interpret the text of the new law. The final date for all provisions of the Act to enter into force was June 1st 1995. Belgium ratified the Council of Europe Convention 108 on May 28th 1993.

The new law contains uniform rules for the public and private sectors and covers both automated and manual data. It is based on a system of registration and the Commission for the Protection of Personal Privacy has been appointed to monitor and control compliance with and application of the Belgian Act.

In February and March 1995, several Royal Decrees, including decrees on sensitive data, notification to individuals and registration fees, were passed. The Decrees came into force on March 1st, 1995. This date was also set as a deadline for organisations in Belgium to declare any new processing to the Commission. Existing processing had to be declared by the end of November 1995.

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.

On the provincial level, most Canadian provinces have passed privacy legislation. However, except for Quebec, these laws apply only to public sector activities. Most provincial legislation combines both public access to



government information and privacy at the provincial and local level of government. Quebec is the first and only province where privacy principles have been extended to private sector organisations. Quebec's Protection of Personal Information Act was passed in June 1993 and entered into force on January 1st 1994.

The Canadian Standards Association has developed a Model Code for the Protection of Personal Information (see p.9 this issue). The Code is based on the OECD Guidelines and sets minimum standards and requirements for the protection of personal information formulated through 10 interrelated principles. The Model Code's approval is expected in early 1996.

The Federal and Provincial Privacy Commissioners, together with some industry associations, have recently intensified their efforts in advocating the extension of privacy legislation to cover the private sector.

CZECH and SLOVAK REPUBLICS The Protection of Personal Data in Information Systems Law was approved by the former federal government of Czechoslovakia on April 29th 1992 and the law entered into force on June 1st 1992.

The law applies to physical persons in the public and private sectors and covers automated data only. The registration system is envisaged for sensitive data only. The grant of licenses for transborder data flows will be the subject of secondary legislation. A special regulatory body in each of the two new states will be responsible for enforcement. However, the regulatory bodies have still not been appointed in either state. In Slovakia, the Department of Informatics of the Statistical Office of Slovakia is currently carrying out preparatory work for establishing itself as the supervisory authority.

DENMARK has separate Public Registers and Private Registers Acts, both passed in June 1978 and which came into force on January 1st 1979.

The Private Registers Act covers automated and manual records and applies to both physical and legal persons. Three types of organisation are required to register with the Data Protection Agency: credit reference bureaux, data processing service bureaux and blacklist registers. In June 1987, amendments were passed strengthening the data subject's right of access, and entered into force in April 1988.

In January 1991, the government introduced amendments to the Public Registers Act to make the control of public files less bureaucratic. They were approved by the legislature in late May and entered into force on September 1st 1991.

In December 1994, further amendments to the Public Register Act were made, making it possible for public authorities to report public debts to private credit reference agencies. The amendments were introduced to combat the huge debts to public authorities. A sectoral Act on Media Information Databases was adopted on May 26th 1994 and entered into force on October 1st.

FINLAND passed a Personal Data Files Act on February 4th 1987 which came into force on January 1st 1988. The Act has been amended with effect from July 1st 1994 to give some exemptions to specific databases, for example, holding editorial and genealogical data.

The Act covers automated and manual records of physical persons and applies to both public and private sectors. It also requires companies to notify the Data Protection Ombudsman if they are processing certain types of name-linked data, for example, credit information. The Data Protection Board may give permission for the export of "mass delivery" of sensitive data to countries that do not have legislation corresponding with the provisions of Finland's Personal Data Files Act.

Finland's Act should be read together with the Personal Data Files Decree which entered into force on January 1st 1988, as the latter makes specific references to the Personal Data Files Act. Finland ratified the Council of Europe Convention on December 2nd 1991.

FRANCE has a Data Processing, Data Files and Individual Liberties Act passed on January 6th 1978 and which entered fully into force on January 1st 1980.

The Act covers automated and manual records in both public and private sectors and provides for a central registration system. France's data protection law's right of access was extended to legal persons on July 3rd 1984 by an administrative decision of the CNIL, France's Data Protection Authority.

The direct marketing industry, after negotiations with the CNIL, published a Code of Conduct in December 1993. This is the first case of voluntary self-regulation through a code of



practice by a particular sector since the enactment of the law in 1978.

The Act has been strengthened by amendments to the Labour Code which came into force in 1993, incorporating several provisions which refer not only to the data protection principles in the Act, but also to CNIL's recommendations in the area of personal data processing on employees.

A stricter regime has, also, been introduced for processing of health data for research purposes by a law adopted on July 1st 1994, providing strict conditions for carrying out and functioning of medical research. The powers of the CNIL have been increased as it now has the power to approve or refuse the use of personal data for research purposes in both the public and private sectors.

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 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.

The specific Act on the Central Register of Foreigners, regulating the storage and transfers of personal data on foreigners living in Germany, asylum seekers and certain other categories, entered into force on October 1st 1994.

The Lander Data Protection Authorities have published Guidelines for managing transborder data flows to countries without an adequate level of protection, aimed at improving the protection of data subjects. The Guidelines provide the private sector with an instrument for evaluating data transfers, and are seen as an interim measure outlining the authorities' recommended interpretation of the Act's requirements for trans-

border data flows, until national implementation of the EU Data Protection Directive.

The Office of the Federal Data Protection Commissioner has recently made a review of sectoral regulatory activities which should be implemented in the next few years. The most important ones are in the areas of criminal justice, tax, customs, telecommunications and labour law.

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 covered physical persons, automated and manual data in both the public and private sectors and has a central registration system.

Progress on a proposed bill had slowed down awaiting final adoption of the EU Data Protection Directive. The bill is now expected to be adopted in the first half of 1996.

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 passed the Personal Data (Privacy) Ordinance in August 1995. The Ordinance is expected to come into force in early 1996 after the appointment of a Privacy Commissioner.

The Ordinance covers both automated and manual data and applies to both private and public sectors. It sets out data protection principles and contains provisions on data matching and codes of practice. Supervisory powers are given to the Privacy Commissioner.

HUNGARY was the first country in Eastern Europe to pass data protection legislation. The law was enacted on October 27th 1992, and was combined with freedom of information legislation giving a general right of public access to government information. The Act on the Protection of Personal Data and Disclosure of Data of Public Interest entered into force on May 1st 1993.



The Act covers automated and manual data of physical persons and has a limited registration system for some types of data. It provides for the establishment of a Data Protection Commissioner who was finally appointed in July 1995.

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. From January 1st 1986, and again from January 1st 1990, a new law with minor amendments came into force. Iceland ratified the Council of Europe Convention on March 25th 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. 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 entered into force on September 11th 1981. It covers physical persons 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.

In August 1994, Israel's Supreme Court made a decision supporting a ruling of the Registrar of Data Bases. The Registrar had refused to register a blacklist of people who had written cheques, not supported by adequate funds, when the data had not been collected for that purpose.

A Parliamentary Committee is currently examining a proposal to amend the law which would: restrict registration to a narrower group of data users; introduce a chapter on direct marketing; and define the responsibilities of a data processing bureau. Industry representatives have argued in favour of giving less emphasis to registration and more to the Registrar's supervisory activities. The new amendments are expected to be adopted later this year.

Meanwhile, a Computers Act was adopted on October 25th 1995 covering misuse of computer data, viruses, negligence, tort and evidence.

ITALY After an earlier bill was dropped, a new Data Protection Bill was submitted to the Parliament in September 1992 and updated and amended in March 1993. The Bill was further revised by the Government and presented to the legislature in January 1995. With slight modifications, the Bill was approved by the Chamber of Deputies and is currently before the Senate, the upper house of the Parliament. The Italian Bill is, in many respects, similar to and follows the solutions adopted by the European Union's Data Protection Directive.

Final adoption of the bill is expected in the first few months of 1996, unless there are new elections resulting in a new government and a new bill.

JAPAN The Act on Protection of Computer Processed Personal Data held by 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 is based on 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 Co-ordination Agency in the Prime Minister's Office which 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. Recently, several reports have been published by relevant ministries advocating the adoption of data protection measures for the private sector. Some of these include proposals for such measures.

Together with other ministries and agencies, the Management and Co-ordination Agency has conducted a special survey on the current state of data protection, including the measures taken in the private sector. A review based on the survey was made in May 1995 which concluded that no amendment of the Act would be necessary at present.

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 entered 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. Amendments of September/October 1992 concerned police files and medical data. The law has had a fundamental review by the seven person Data Protection Commission. Their proposals to amend the Luxembourg law were postponed until final adoption of the EU Data Protection Directive.

MALTA's application for membership of the European Union 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. A Draft Information Practices Bill is being studied by the *ad hoc* Cabinet Committee set up for the purpose.

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 entered fully into force on July 1st 1990, which also served as a deadline for registration.

The Act covers physical persons and gives legal persons some rights. It applies to 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 law encourages sectors to develop their own code of conduct which they must discuss with a representative consumer organisation before submitting it to the Registration Chamber for approval. The first industry codes of conduct approved by the Registration Chamber were from the Recruitment and Staff Selection Agencies' Association, the Information Technology Trade Association, and the Mail Order Association.

Comprehensive rules on the processing of sensitive data are contained in the Royal Decree on sensitive data which was signed in February 1993 and entered into force on June 1st of the same year. In August 1993, the Netherlands ratified the Council of Europe Convention 108.

NEW ZEALAND's Privacy Act was assented to on May 17th 1993 and entered into force on July 1st of the same year. The Act repealed and consolidated the Privacy Commissioner Act of 1991 and included comprehensive new provisions.

The Act applies to both public and private sector agencies. The jurisdiction and powers of the Privacy Commissioner, originally appointed under the Privacy Commissioner Act, have been extended to cover both sectors and include complaints handling.

A particular feature of the Privacy Act is that it contains comprehensive rules on data matching between public sector agencies.

Also, the Act provides for sectoral codes of practice. These codes, which are formulated through a process of public notification and consultation and issued by the Privacy Commissioner, may set up either a more or a less strict regime than the one envisaged by the Act. Codes of practice are binding and enforceable.



The first code issued under the Act was the Health Information Privacy Code of June 28th 1994 containing 12 health information privacy rules which substituted the 12 information privacy principles of the Act. Work is under way on several other codes of practice in the following areas: superannuation schemes, motor vehicle registry, Police and Justice Department information. Also, private sector organisations have commenced work on sectoral codes of practice, such as one for credit reporting.

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

A law on video surveillance in public places was passed on June 24th 1994. The law aims at regulating, *inter alia*, the protection of personal data obtained from video images.

A Government Committee has been appointed to study changes to the present Act. The work is still going on and the Committee is expected to produce a report by 1997.

POLAND A draft Data Protection Act is being currently examined by the Council of Ministers.

There are some data protection provisions in other legislation, such as the Civil Code. In April 1993, a new order of the Ministry of Health on the storage of medical information, including provisions on the protection of medical data, became effective.

PORTUGAL The Assembly passed the Protection of Personal Data Act which was published on April 29th 1991 and entered into force on May 4th of the same year. There were further amendments to the Act in August 1994 regarding the conditions of processing sensitive data and the rules on transborder data flows.

The Act covers automated data of physical persons and has a registration system similar to the UK. Supervisory powers are given to a seven-member National Commission for the Protection of Automated Personal Data which was established in January 1994.

The National Commission has powers to limit the export of name-linked data, implementing section 35-6 of Portugal's 1989 constitution. In addition to the 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.

The Council of Europe Convention 108 was ratified on September 2nd 1993.

SLOVENIA's first Personal Data Protection Act was passed in March 1990. This law has been substantially revised and on the recommendation of expert opinion of the Council of Europe given in April 1994, a new proposal has been prepared. The new Bill, covering both public and private sectors, is still in the parliamentary procedure. The second reading of the Bill took place at the end of December 1995.

The Legal Informatics department of the Ministry of Science and Technology, the initiator of the data protection legislation, has been reorganised and now forms a part of the Ministry of Justice.

Slovenia ratified the Council of Europe Convention 108 on May 27th 1994.

SPAIN's Data Protection Act entered into force in February 1993, after being adopted by the legislature on October 8th 1992 and being signed by the King on October 29th 1992. The Act covers automated records in the public and private sectors. Although manual files are not included within the scope of the Act, it authorises the Government to extend its provisions to manual files, after consultation with the Data Protection Agency.

The Data Protection Agency is an independent public authority with control and enforcement powers. The Data Protection Agency was established and became operational in July 1994.

In June 1994, a Royal Decree was adopted providing more detailed rules on transborder data flows, registration procedure, data subjects' rights of individuals and containing definitions interpreting terms used in Spain's Act.

In 1995, the Data Protection Agency published its first Annual Report consisting of wide-ranging and detailed summaries of the Agency's activities, specific interpretation problems with the Act and a comparison between the European Union's Data



Protection Draft Directive and Spain's Data Protection Act.

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 supervised by the Data Inspection Board.

Discussions about major changes of the law have been going on for some time without a decision. Pending new legislation, the Government has proposed empowering the Data Inspection Board to issue general rules of conduct for individual sectors. Those complying with the rules will be exempted from applying for a licence from the Data Inspection Board. A final decision on the proposed system has been delayed following Sweden joining the European Union and thus having to implement the EU Data Protection Directive.

SWITZERLAND adopted a Data Protection Act on June 19th 1992 and it entered into force on July 1st 1993.

The Swiss law contains uniform rules for public and private sectors and covers both automated and manual data. The Act is not restricted to protection of personal information of individuals, but covers legal persons also. The Act has introduced a registration system for certain categories of name-linked data.

A Federal Data Protection Commissioner monitors and controls implementation of the Act. The Commissioner has published three guidelines explaining the rights and duties envisaged by the Swiss Act and is preparing a fourth one on data security.

Switzerland has neither signed nor ratified the Council of Europe Convention 108. Ratification is expected at the earliest in 1996.

TURKEY A Data Protection Bill has been prepared and is still being considered by the legislature.

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

In the Innovations decision of 1993, the Data Protection Tribunal upheld the Data Protection Registrar's interpretation of the fair obtaining principle. The Tribunal concluded that individuals should be informed, at the time of collection, of the non-obvious purposes for which data will be used,

As a result of an amendment to the Act by means of the Criminal Justice and Public Order Act 1994, it is now a data protection offence to procure the disclosure of information, knowing that the disclosure is not covered by the data user's register entry, or to sell information procured in this manner.

The latest guidance to be published by the Registrar's Office concerns document image processing, direct marketing and credit referencing.

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, the Video Privacy Protection Act (1988), the US Computer Matching and Privacy Protection Act (1988) and the Automated Telephone Consumer Protection Act (1991).

While there is little prospect of the United States following the European lead in adopting comprehensive data protection legislation, the US Senate and House of Representatives have held hearings on privacy related issues, such as genetics, address correction services and fair health information practices. The Executive Branch's current main interest in privacy issues is expressed in the context of the National Information Infrastructure (see p.14).

This report has been updated by Bojana Bellamy, a *Privacy Laws & Business* consultant.