



## Germany lags behind with implementation of the EU Data Protection Directive

**The German Data Protection Authorities have expressed concern about the slow process of implementation of the EU Data Protection Directive in Germany (PL&B October '97 p.18). The Commissioners think it is highly unlikely that the Directive will be transposed into domestic law before the deadline for implementation, October 24th 1998.**

Doubts on the implementation timetable were expressed in a resolution adopted at the meeting of the Permanent Conference of the German Data Protection Commissioners in October 1997. This was the Commissioners' second resolution since the adoption of the Directive in 1995.

In their first resolution of March 1996, the Commissioners welcomed the Directive as an important step in the direction of effective data protection, even at the international level. The Commissioners called upon the legislative bodies at the federal and regional level not only to regard the implementation of the Directive as a contribution to European integration, but also as an opportunity to develop data protection further. They expressed their preference for a comprehensive modernisation of the German data protection law so that individuals themselves can, in the rapidly changing world of data processing, media and telecommunications, determine the communication and use of their personal data to the greatest extent possible.

In their resolution adopted at the October meeting of the Permanent Conference, the Data Protection Commissioners urged the Federal Government to ensure the timely amendment of the Federal Data Protection Act and various sectoral regulations.

### Germany risks breaching European legislation

The Federal Government has not yet presented a co-ordinated draft for the amendments. The Commissioners think that the Federal Government thus jeopardises the timely implementation of the Directive, and risks Germany being brought before the European Court of Justice for failure to

legislate by the October 24th 1998 deadline. This situation also has a negative effect on the development of data protection in Germany. The Commissioners claim that improvements in data protection for citizens, such as being informed about the processing of their data in more detail, will be delayed.

Data protection law is now in danger of fragmenting and disuniting because the Länder (states) lack orientation for the amendment of their data protection laws. The Commissioners urged the Government to ensure that the Directive is implemented before the deadline. They stressed that the Länder are also under a legal duty to adapt their data protection laws to the EU Directive within the given deadline.

The Commissioners hold the view that apart from implementing the Directive by the given deadline, it is equally important to adapt the legal provisions, which were tailored to the mainframe computer technology of the 1970's, to today's information technology and to the requirements of a modern information society. This includes the following issues:

- binding principles for data-protection-friendly design of information systems and technologies, such as the data economy and society, anonymisation, pseudonyms, encryption, and risk analysis
- more transparency for users and more independence for providers by the introduction of data protection audits
- extending the scope of data protection to image and sound recordings, and regulating video surveillance
- special regulations for particularly sensitive areas such as the handling of workers' data, health data and information from court proceedings
- introducing pre-controls for particularly risky types of data processing, namely the processing of sensitive data
- regulations governing chip card applications
- stepping up the data protection law provisions on buying and selling lists of addresses and direct marketing; at least laying down the obligation to inform the persons concerned that they may object to their data being used



(a regulation governing consent is to be preferred in any case)

- stepping up the data protection law provisions on disclosure of information before the closing of vital contracts governing, for instance, the relationships between landlord and tenant or relating to employment or other equally important fields
- replacing, as far as possible, the registration of data files with the supervisory body by the appointment of independent data protection officials
- strengthening the control powers of the Federal and of the Länder (state) Data Protection Commissioners.

### **Commissioners want extended powers**

The Commissioners recommend that the Federal Government and the legislator should, to the greatest extent possible, treat the public and private sectors in the same way. For example, it should be possible to appoint independent data protection officials within public bodies, as well as within private companies. It is also suggested that the text should explicitly recognise the independence of supervisory authorities, and extend their powers to enable checks for compliance to be carried out, regardless of

whether any data protection provisions have been violated.

With regard to the citizen-friendliness of the legislation, the Commissioners demand that the wording of the Act should be clear and intelligible. The Commissioners furthermore point out that the Government and the legislature need to ensure a high standard of data protection by preventing any deterioration of data protection in areas that do not fall under the Directive.

On the question of press exemptions, the Commissioners are willing to allow the press and broadcasters special exemptions only when they are necessary to safeguard freedom of expression.

The Federal Government was still drafting the amendments to the Data Protection Act at the end of February. Delay is partly due to the fact that there are also other Acts that have to be amended because of new data protection provisions.

**This is an edited version of a report on the German Data Protection Commissioners' 54th Conference by Helmut Heil, Regierungsdirektor at the Office of the Federal Data Protection Commissioner, Postfach 200112, 53131 Bonn, Germany.**

**Tel: + (49) 228 819 95 10**

**Fax: + (49) 228 819 95 50**

### **1998 CONFERENCE CALENDAR**

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|------------------------|---|
| <b>May 5</b>           | <b>Privacy Laws &amp; Business 3rd Money Laundering Regulations Roundtable</b><br>Host: Financial Options, Manchester, UK. Attn: Gill Ehrlich, Coordinator,<br>Privacy Laws & Business, Roxeth House, Shaftesbury Avenue,<br>Harrow, Middx, HA2 0PZ, UK Tel: + (44) 181 423 1300 Fax: + (44) 181 423 4536<br>Email: info@privacylaws.co.uk Website: www.privacylaws.co.uk |
| <b>July 13-15</b>      | <b>Privacy Laws &amp; Business 11th Annual International Conference</b><br>St. John's College, Cambridge, UK.<br>Attn: Ms Gill Ehrlich, Coordinator, <i>Privacy Laws &amp; Business</i> see above   |
| <b>September 9</b>     | <b>Privacy Laws &amp; Business 4th Money Laundering Regulations Roundtable</b><br>Host: Royal Sun Alliance, Bristol, UK<br>Attn: Ms Gill Ehrlich, Coordinator, <i>Privacy Laws &amp; Business</i> see above   |
| <b>September 15</b>    | <b>Privacy Laws &amp; Business 9th Data Protection and Privacy Commissioners' Workshop</b><br>Santiago de Compostela, A Coruña, Spain. Subject to be announced<br>Attn: Ms Gill Ehrlich, Coordinator, <i>Privacy Laws &amp; Business</i> see above  |
| <b>September 16-18</b> | <b>20th International Conference of Data Protection &amp; Privacy Commissioners</b><br>Santiago de Compostela, A Coruña, Spain.<br>Tel: + (34) 1 308 4831/4702 Fax: + (34) 1 308 4790/4692  |