

elsewhere, Spanish service providers expressed concern about the possible cost of storing and processing such data. The Spanish report also noted that an overly costly obligation could constitute a barrier for smaller service providers to enter the market.

INCREASED SURVEILLANCE OF COMMUNICATIONS

At the same time as the EU survey was being completed, US-based Electronic Privacy Information Center (EPIC) and UK-based Privacy International released their 2002 edition of *Privacy and Human Rights*. This year's report documents increased communications surveillance in the wake of the terrorist attacks in the US. It expresses concern over the number of countries enacting laws requiring Internet service providers and other telecommunications operators to retain the traffic and location data of all people using mobile phones, text messaging, land-line telephones, faxes, e-mails, chat rooms, the Internet, or any other electronic communication devices.

Commenting on the *2002 Privacy and Human Rights Report* to UK broadcaster the BBC, Simon Davies, Director of Privacy International, warned that the Internet is being turned into a surveillance device and that surveillance will eventually be a core design component of computers.



Further information on the EU report and data retention issues:

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For a copy of the "2002 Privacy and Human Rights Report," see the Privacy International website:
www.privacyinternational.org

EU pushes ahead with directive on workers' data

By Alan Pedersen

On October 31st, the European Commission launched the second stage of its consultation into a proposal for a directive on the protection of workers' personal data. The six-week consultation period with the social partners (including representatives from trade unions and the business community) will seek comments on areas relating to sensitive data, drugs and genetics testing, and workplace monitoring.

According to Anna Diamantopoulou, Commissioner for Employment and Social Affairs, the "EU needs clearer, simpler rules on protection of workers' personal data, which take better account of the employer/worker relationship." The Commission notes that workplace privacy across the EU is addressed through a varied and complex mix of data protection legislation, codes of practice and labour laws. This, it says, could create barriers to the internal market and affect the free movement of workers within the EU.

The social partners, understandably, are split in their opinions of the directive. The European Trade Union Confederation (ETUC) supports a harmonised data protection law specifically addressed to workers. However, the business community has stated that workers' data is sufficiently protected by existing data protection and labour laws. The Union of National Industrial and Employers' Confederation of Europe (UNICE) wants the Commission to wait until the results of the current EU Data Protection Directive (95/46/EC) review are published before deciding whether to embark on a new directive. A Commission-funded study into workplace privacy, published in July this year, has backed some of the business community's claims, indicating that there is a lack of evidence to suggest the need for an additional directive (see *PL&B Int*, Sept 2002, p.5).

The comments and proposals contained in the Commission's consultation paper are based on analysis from the first consultation stage. They include:

Consent – Due to the subordinate relationship between workers' and their employers, it is difficult for workers to refuse, withdraw or modify consent for processing data, especially in the case of sensitive personal data.

Health data – Health data should be processed only where necessary (ie. to meet occupational health and safety guidelines, or to assess ability to carry out duties), any examinations should be performed by healthcare professionals only, and only relevant information should be disclosed to employers.

Drug and genetics testing – According to the Commission, the use of drug testing is becoming a commonplace practice in some member states. There are also fears that employers may increasingly look towards the use of genetics testing when deciding whether to employ or promote staff. The Commission, therefore, intends to place limitations on the amount of information employers are allowed to collect, and the circumstances in which they can collect data.

Monitoring and surveillance – The Commission proposes that trade unions be consulted before monitoring and surveillance systems are implemented. Monitoring of individuals should be carried out only where there are reasonable grounds for suspicion of criminal activity or misconduct. Blanket monitoring of all staff should be prohibited, and employers should not be allowed to look at private e-mails.

The full text of the Commission's consultation can be found at:
www.europe.eu.int/comm/employment_social/news/2002/oct/data_prot_en.html