

Hungarian Data Protection Act amended

Kinga Hetényi and **Henriett Selmeczi** explain how amendments to Hungary's privacy law will strengthen individual's rights, improve enforcement powers, and bring Hungary closer in line with EU legislation.

Hungary's recent amendments of the Data Protection Act clarifies a great number of uncertainties previously faced by data protection lawyers and provides more efficient protection for data subjects' rights.

Hungary previously adopted certain aspects of the Data Protection Directive (the directive) by amending the Data Protection Act in 1999. Although in 2000 the European Commission declared that Hungary adequately protects personal data within the meaning of Article 25(2) of the directive, the Data Protection Act did not yet fully comply with the provisions of the directive.

Certain minor amendments to the Data Protection Act entered into force on June 9th 2003 regarding public data. However, the most important changes will enter into force on January 1st 2004, except for certain provisions that will only enter into force on the date of Hungary's Accession to the EU (see notes). The purpose of the amendments is to bring the Data Protection Act into compliance with the directive. The following describes the amendments and highlights some of the more important changes effective as of January 1st 2004.

UPDATING EXISTING PROVISIONS

The amendments can be divided into three groups. First, some amendments clarify and improve existing terms and definitions and also clarify certain ambiguous provisions. The Data Protection Act now explains its territorial scope. In respect of the forwarding of data to third countries (it is important to note that the term "third countries" mean countries other than the EU member states), the term "adequate protection", which is a pre-condition to the permissibility for forwarding data to third countries, has been clarified.

NEW PROVISIONS

Second, certain amendments introduce new definitions, rights and positions. "Automated data processing" is defined and its rules have been set out. A data subject may now object to the processing of his/her personal data and detailed procedural rules have been introduced in connection with this objection right. If the data subject does not agree with the data controller's decision regarding the objection, the data subject may challenge this decision in court. In addition, there is now a data protection officer position which must be appointed by data controllers and data processors of significance (eg. national databases of authorities and databases containing data of clients of financial institutions, public utilities and telecommunications services providers). The amendments describe data protection officers' qualification requirements and obligations.

IMPROVED ENFORCEMENT POWERS

Third, other amendments increase the Data Protection Commissioner's powers. The Commissioner may take more effective measures against data controllers and data processors in the event of an unlawful processing of personal data. However, data subjects, data controllers and data processors may challenge such measures in court. The Commissioner may carry out preliminary examinations prior to the registration of a data processing activity in the "data protection registry". With respect to controllers of databases of significance (see previous paragraph), the Commissioner may carry out preliminary examinations even before the creation of new databases or the introduction of new data processing technologies. The controllers of such databases must notify the Data Protection Commissioner prior to the creation of new databases or introducing new data processing technologies.



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FURTHER INFORMATION: For a copy of Hungary's data protection law, *Act No LXIII of 1992 on the Protection Of Personal Data And Disclosure Of Data Of Public Interest*, see: www.obh.hu/adatved/indexek/index.htm

The new amendments have been introduced by Act No. XLVIII of 2003 on the amendments to Act No. LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest.

The European Union's Decision (2000/519/EC of July 26th 2000) on the adequacy of personal data protection in Hungary can be found at: http://europa.eu.int/comm/internal_market/privacy/adequacy_en.htm

The Data Protection Commissioner's website can be found at: www.obh.hu/adatved/indexek/index.htm