

German DP conference debates privacy management

By Judith A Sullivan

FINANCIAL UNCERTAINTY and a complicated and bureaucratic privacy law has created some significant issues for German data protection officers. Judith A Sullivan looks at some of the ongoing initiatives to combat the problems.

Eighteen months after its national data protection law was amended, Germany's Association for Data Protection and Data Security (GDD) held its annual conference for 2002 in Cologne. The three-day event in November was marked by some continued confusion on the ramifications of the amendments. Privacy officers and government officials alike still struggle to find creative ways of coping in a context of economic hardship and a population that is highly sensitised to data protection issues.

But they have come up with some good ideas. These include professional bodies taking the lead by developing codes of conduct, associations alerting their members on solutions to DP-related problems, and a data protection certification seal programme for the public sector. All in all, the picture is a pretty positive one in terms of the respect for privacy as a concept, and privacy protection as a profession.

GERMAN LAW CHANGED IN 2001

The German Bundesrat (parliament) adopted amendments to the existing federal data protection law in May 2001 (see *PL&B Int*, p.3 May 2001). Some of the tougher provisions for businesses include the need to inform consumers of their right to object to use of their personal data (including data kept on smart cards), and tighter controls on the storage of videotape. Also cited in the new amendments are fines on errant companies that can run to the €250,000 range (similar to the €300,000 French ceiling,

but significantly more than the maximum €10,000 fine that can be imposed in the Netherlands). The German fines seem steep, but there has been little enforcement at that level to date.

All data controllers are subject to federal data protection law. But Germany stands out from its European neighbours in that while federal government institutions and telecoms operators are governed by the federal data protection authority, local public authorities and businesses are subject to enforcement from the state authority in which they are based.

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BUSINESSES BEAR BURDENS, REAP REWARDS

A document provided by the GDD indicated that some companies face an estimated €50,000 annual outlay on data protection. But they accept that data protection is an absolute. "It is an economic factor," the paper says.

The author, Henrike Vierge of the German Industry Federation (BDI), relied on responses to an EU consultation to compile her data. Essentially, the

study reveals that virtually all German companies have a DP officer and just over half of large and medium-sized companies rely on outside help, while 63 per cent of smaller firms have relied on some sort of outside consultancy.

The flipside to the diversity of opinion and guidance available to data protection officers is the sense of a complex rule-set which must be monitored closely. Gentle grumbling – official and unofficial – during the conference revealed some battle fatigue linked to the many administrative requests that must be met. Customer notification requirements have proven quite "heavy", a word often mentioned by some of the Cologne conference's 370 participants.

One particularly burdened industry is what the Germans call Allfinanz-konzerns, one-stop-shop financial institutions that span a gamut of services from personal banking to insurance to mortgage lending to stock brokerage. These institutions can save costs through cross-selling and data warehousing, yet their goal often conflicts with customers' right to object to their inclusion on such databases.

College professor Bernd Abel also addressed the audience with tips on how to operate within a convoluted legal framework. Abel urged the data protection community to take a proactive approach, citing the example of the efforts undertaken by the German debt collection association, which adopted its own 'workable' code of conduct which was then given approval by the authorities.

FINANCIAL IMPLICATIONS

The Cologne conference took place when, for the sixth month running, business confidence in the German economy slipped, according to *CNN.com*. Data protection is difficult to define in terms of money. But while many of the conference participants said that an exact benefit/cost ratio is hard to pin down, in Germany it is a *fait accompli* that solid data protection pays dividends.

"We know that DP costs, but what we don't know is what it brings back," were the words of GDD board member Professor Reinhard Vossbein, general manager of UIMCert, a data protection auditing firm.

Vossbein also provided an outline of how to weigh up the costs of data protection (eg. personnel, administration, technology and other factors). In an interview, Vossbein said that most service industries understand the concept of data protection as a tool for adding value. He said that sectors such as the mobile telecoms and financial services industry use data protection as a selling point. The one exception might be heavy industry.

A further compelling case was made by Dr Armgard von Reden, chief privacy officer for IBM Europe, Middle East and Africa. Arguing that customers lend – rather than give – companies their trust, she outlined changes to customer profiles over the past decade. In 1990, she said 20 per cent were not concerned with privacy, a percentage that dropped to 12 in 2000, according to research by US-based Privacy & American Business.

LEGISLATIVE FRAMEWORK AT BEGINNING 2003

One speaker expressed cheer that the new "Superminister" for labour and economy (Wolfgang Clement) had referred to data protection in a recent speech. Indicative of the importance placed on the issue at the highest levels is the Act on legal framework conditions for electronic commerce that defines "data protection as a key competitive factor."

In his presentation, Dr Joachim Jacob, the Federal Data Protection Commissioner, mentioned the conflict

between the goal of having across the board e-government in Germany by 2005 and a 1983 legislative decision that citizens might not have the right to alter government-held data about them themselves.

Jacob sided with business to a large degree, postulating that self-determination among industry is a cornerstone of commercial strategy among businesses keen to attract new clients.

Data protection activity is brisk at the regional level. A new experiment in Schleswig-Holstein provides funds to organisations (many of them social service and healthcare-related) in Germany and elsewhere to provide privacy quality seals. The only requirement is that the organisation have some connection with the Schleswig-Holstein Land (home to Luebeck and Kiel). A recent €50,000 grant from the EU made the seal programme possible.

The Schleswig-Holstein process is under scrutiny for possible adaptation purposes in the private sector and throughout Europe, according to the region's deputy privacy commissioner Thilo Weichert.

DIRECT MARKETING

The amended law has also proved problematic for the direct marketing industry. Key issues include the use of marketing lists for regular commercial contact. Georg Wronka, director general of the German Advertising Federation, addressed the conference citing the dilemma of whether marketers should adopt the highest standard by sending out warnings to every name on the list before each mailshot.

The direct marketing industry has taken steps to collectively answer some of the tough questions. A recently published handbook advises the 1,000 members of the Wiesbaden-based Deutsche DirektMarketing Verband (DDV) on the dos and don'ts in the area of data protection.

The DDV points out that the language of the law appears bureaucratic and, in some cases, unworkable. One major concern is the new information provision requirements of the 2001 law. These cover initial contact with potential customers and processing personal data

without the individual's knowledge. The information that must be conveyed includes the identity of the data controller, the purposes of the processing and various recipient categories.

Rather than dry, academic discourse on the letter of the law, the recipients are treated to anecdotes in the form of a privacy question. In little inset boxes peppered throughout the main text, each question is associated with a formula for wording communication to the data subject. The boxes cover a range of relevant issues such as third-party data, replying to individuals who opt-out from marketing contact, and data transfers outside the EU.

Christoph Klug, managing director of the GDD, commended the association on the specific nature of the suggestions. One of the people who worked on the brochure was DDV lead counsel Hans Juergen Schaefer. He said the point was to make the law easier to understand for the average person. He expressed some regret that his organisation has little control over the degree to which the suggestions are applied or not. "Our job is to inform. Whether they follow [the advice] or not is no longer in our hands."



Websites of interest:

www.gdd.de [Data Protection and Data Security – in German, except for association description – includes abstracts of some of the papers presented at the conference and links to Laender websites, some of which include English text].

www.aktiv.org/DVD [German association for privacy protection – in German].

www.bmwi.de/textonly/Homepage/English%20pages/Publications/Publications.jsp [Information Society report March 2002 from the Super-ministry of Labour and Economy.

www.ddv.de (the Direct Marketing Association, also in German, with some content in English, including different codes of practice).