



le Journal

of the 23rd International conference of Data Protection Commissionners

National Data Processing and Liberties Commission / France

July 2001 / # 3

FOCUS

John Mogg,
Director General of the
European Commission's
"Interior Market" General
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THE STAKES

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conference salutes
the EU Charter of
Fundamental Rights
but is concerned about
cybersurveillance**
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e-government

TOPICALITY Electronic
administration is on the
agenda in all our countries.

Paul THOMAS,

Chairman of the Belgian Privacy Commission talks about the Belgian plan



EDITORIAL

by Michel GENTOT

President of the National Data Processing and Liberties Commission

An opinion democracy

Each of our independent data protection bodies has to report every year to the highest State authorities on its work and activities. Depending on national traditions, such authorities can be the President of the Republic, the Parliament or the Head of Government. But the "annual report" is also a way of being accountable to the public, i.e. our fellow citizens, who are increasingly sensitive to privacy protection issues and naturally demanding, and even critical of us. Meeting the public is decisive. At stake is the idea everyone has of our influence and independence, without which the trust placed in the control system would be undermined. That is why we should be satisfied that the European Charter of Fundamental Rights requires independent control. That is also why we have been prompted to give a lot of place to privacy protection associations, Human Right associations, consumer associations, employee associations and health associations at the 23rd International Convention in Paris. In addition, except for the traditional meeting reserved for data protection authorities, all sessions will be open to the national and international press. It is only legitimate that everyone may judge the way in which our authorities attempt, case after case, to find the right balance between "data processing" and "liberty".

Max Weber mentioned the "belief ethics" and the "liability ethics". The compromise between both ethics is not a matter for specialists. It should be a matter for everyone.



**Yesterday,
you had to
be "in".**

Today, every-
thing is "e". In healthy com-
petition with the countries
which preceded it on the royal
road of the "e", it is now Bel-
gium's turn to propose a novel-
ty, namely, e-government. It is
the intention of the current
real, not virtual, Belgian
government to use this avant-
garde expression to announce
its ambition for administrative
simplification.

A single identifying number

Each individual, each company
or entity will be given an offi-
cial document, the only one to
be used in all contacts with the
administration, listing the
single identification number,
in order to avoid errors, and
readable both by the naked eye
and electronically, thanks to a
micro-chip.

A network of interconnections between different administrations

Belgium is a federal state com-
posed of linguistic communi-
ties, regions, provinces, and
communes. It is, therefore,
appropriate to ensure optimal

use of information by inter-
connecting systems at all these
different levels of the admini-
stration. Belgian citizens
and companies will, thus, be
offered the guarantee that the
public services will no longer
request data already in the
possession of another public
service.

The control

Certainly, the lawfulness of
electronic data exchanges
between public services must
be ensured by controlling that
the principles of privacy pro-
tection are respected. Here,
Belgium has also innovated,
or almost. A committee for the
social security sector has been
in place since 1990, another is
planned for police data banks.
A third will, therefore, be desi-
rable to specify which services
should have access to which
data, and which data may be
exchanged between which
services while respecting the
principles of purpose and pro-
portionality.

Does this mean that the per-
sonal data protection Com-
mission will become a sinecu-
re? Not entirely. It will keep
its competences parallel to
those of the new agencies. Is
it not, rather, a question of

administrative simplification?

Portal web sites at the service of the citizen

The e-government intends
to make available, to duly
identified and authenticated
citizens and companies,
portal web sites whose convi-
vial use will be ensured by
judicious keywords. They will
receive, in an interactive man-
ner, numeric declarations, that
of VAT, those of social risks
(industrial injuries, unem-
ployment, industrial disable-
ment), etc.

Remarks

The project does not provide
for either pilot experience or
evaluation. Its perfection is
such that the citizen will no
longer find it possible to be
satisfied with the more fami-
liar, less electronic, proce-
dures.

The risk of seeing the work
held up by parliamentary
delays is removed, as Parlia-
ment has not been referred to
and is neither concerned nor
involved.

Will e-government be a
modern form of e-paterna-
lism?

Only the future will tell. ■

420

is the number of cell phones sold world-wide in 2000. To date, there are and estimated 650 million users around the world, including 1/3 in Western Europe.

IDC source

INTERVIEW



Dr. Laszlo MAJTENYI,



Parliament
Commissioner for Data
Protection and Freedom
of Information

What are in your view the factors influencing data protection in Hungary?

The old political regime was overthrown in Hungary by a "constitutional revolution". The changes did not occur violently, in the streets, but on the grounds of legality, in the souls and minds of people. Enforcing data protection and privacy, and freedom of information for transparency to government has been synonymous with giving up with the old omnipotent state.

What are the most important results of your action?

Data protection in Hungary today is not confined to mere letters on paper, but it is vital and living law, with a real influence unfolding before our eyes. Despite some attacks from politicians we have the support of the public. And last summer, the EU recognized Hungary as a country offering an adequate level of data protection.

In my mind the most important topic deals with drawing a line of demarcation between the freedom to information and data protection and privacy ie. research archival material and the protection of holocaust victims' personal data, the enforcement of the informational rights of victims of the secret services under the former communist regime, questions on the extent to which politicians can be held accountable and are entitled to their own privacy. In one case in this latter category, I have argued that the salaries of ministers are subject to disclosure as data of public interest.

We are also active on protecting the rights of the most helpless citizens, drug addicts, psychiatry patients, and HIV victims.

See our recommendations in english on www.obh.hu.

Protection of the Individual's Personal Data in the European Union

FOCUS For more than ten years the European institutions have been perfecting the foundations for the right to data protection, of which the directive guaranteeing personal data protection and free circulation on a European level is the central link. During the past year there have been three major developments that I would like to emphasize.



Par John Mogg,

Director General of the European Commission's "Interior Market" General Direction



The Charter of fundamental rights

Among the fundamental rights that the European Union has undertaken to guarantee, proclaimed in the form of a Charter during the summit in Nice on December 8, 2000, the most promising for the future of the information society is certainly the recognition of the specific right to personal data protection.

This right is, particularly, based on that of having an independent control. At the time of an increase in the processing of personal data linked to complex and continuously improved electronic exchanges, it was essential to ensure such a recourse for everyone.

Institutions guaranteeing this recourse already exist in all the Member States. At the European level they meet in the Article 29 Group and offer precious advice to the European Institutions.

Data protection in the community institutions and bodies

A corner stone was missing in

the structure. The regulation of application to community institutions and bodies was adopted on November 30, 2000, and a European data protection controller should be appointed in the near future.

Exchanges with third countries

The Commission has also been very active in the domain where it has the particular responsibility of ensuring a common policy, facilitating both the protection of individuals in respect of data processing and the pursuit of international exchanges. In this framework, the Commission has recognised as appropriate the level of protection offered in Hungary, in Switzerland, and, thanks to the joint efforts by Europe and the American administration, that offered by the American "Safe Harbor" measure.

On June 14, 2001 the Commission further adopted a model for standard contractual clauses aiming at establishing a framework for data flows in all economic sectors and on a world-wide level.

Knowing the spirit of equilibrium and the determination of data protection commissioners, whether from the European Union or not, I wish them complete success for their 23rd International Conference.

More particularly, I wish for their increasing co-operation across frontiers and for a better visibility of their joint reflections, indispensable to all those concerned with the questions essential to the future of our societies, such as, methods of data processing on numeric networks, whether for the purpose of preventing crimes and offences or for the purpose of commercial prospecting, methods of monitoring employees' communications and the use of localisation data, and data processing in the financial services sector and other areas where the transfer of personal data beyond national frontiers is necessary. ■

European personal data commissioners spring conference : Athens, 10-11 may 2001



THE STAKES Retention of traffic data by internet Service Providers for criminal research " : the declaration adopted during the spring conference in Athens.

Konstantinos DAFERMOS,

President of the Hellenic Data Protection Authority



Spring Conference is always something more than an official meeting. It has always been a very important occasion for European Commissioners, Members and Scientific staff of European Commissions, to proceed to scientific approaches on important matters concerning data protection policy and implementation of the relevant legislation, exchanging views and trying to find common solutions on these matters. I would like to thank one more time our European colleagues for their fruitful cooperation that made this Conference possible and successful. The Conference run around seven major topics

Cybercrime and protection of personal data

A general approach of the major problem of the contradiction between facing computer related crime – commonly known as cybercrime – and protection of personal data was given in this first topic. There was underlined the necessity of functioning of the relevant working group. The Commissioners declared their willingness to cooperate in order to support the important task of this working group.

Data protection in telecommunication field and Internet

Recent developments in the telecommunication field were presented, especially under the terms provided in the relevant European Directive 97/66 and its amendment and there was a detailed presentation of this amendment.

In the same topic were presented the Report of the Internet Task Force adopted by Art. 29 Working Group, as well as the Report on the work of Berlin Group.

Protection of workers' data

Data protection in employment area is a very sensible domain with specific needs. The German and the Greek approach to the matter were presented, as well as an analysis of the problem of workers' use of e-mail control.

PETs

Recent developments on Privacy Enhancing Technologies (PET) were presented in this topic. There was a presentation of the PISA project on Private Incorporated Software Agent and an analysis of the role of infomediaries as a privacy-enabling method and technology.

Notion of "consent"

The consent of the data subject is fundamental in the data protection system provided by the Data Protection Directive. The relation between consent and informational self-determination as well as consent as a sufficient guarantee are some problems raised in this session. Finally was presented the case of the Greek Identity Cards, where the conflict between the principle of proportionality and consent was crucial.

Black lists

The problem of black lists is a major one, especially under rapidly developing economies. Belgian, Austrian and French view on the problem were pre-

sented, concerning especially the sectors of credit, telecommunications, insurance and house rentals.

E-commerce

Electronic commerce and related electronic trading of personal data involve some very important aspects of data protection matters. Among them spamming, public files on Internet, massive use of e-mail for political purposes and profiling were some of the items analysed in this topic.

In addition to the above, during the Conference we had the opportunity to hear some very interesting recent developments about the action of the Virtual Privacy Office based in Germany and of the Complaints workshop. New efficient means of cooperation is always welcome.

Two declarations adopted :

a Declaration on Article 8 of the EU Charter of Fundamental Rights and a declaration on Retention of traffic data by Internet Service Providers (ISP's). This late declaration was submitted to the European Commission and the Council of Ministers (Justice and Internal Affairs) of the EU, in order to underline the importance of the matter and the necessity of action.

Next year's Spring Conference is going to be held in Bonn. We would like to wish good luck to our German colleague for a successful and fruitful conference.

Retention of traffic data by Internet Service Providers (ISP's)

The Spring 2001 Conference of European Data Protection Commissioners notes with concern proposals that ISP's should routinely retain traffic data beyond the requirements of billing purposes in order to permit possible access by law enforcement bodies.

The conference emphasizes its view expressed in Stockholm that such retention would be an improper invasion of the fundamental rights guaranteed to individuals by article 8 of the European Convention on Human Rights and in relation to the processing of personal data by the 1981 Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (Convention 108). The Conference points out that such retention would also invade the rights specified by Articles 8 and 7 of the Charter of Fundamental Rights of the European Union. Were traffic data are to be retained in specific cases, there must be a demonstrable need, the period of retention must be as short as possible, and the practice must be clearly regulated by law.

Declaration on Article 8 of the EU Charter of Fundamental Rights

The Spring Conference of European Data Protection Commissioners notes with satisfaction that Article 8 of the Charter of Fundamental Rights of the European Union strengthens the provisions on data protection that have been issued in the past few years so that the right to data protection is finally recognized as a fundamental human right.

A veritable "European model" has been established for data protection. This model is shaping discussions in the international community and should positively influence the diffusion of an approach considering data protection as a fundamental human right and a basic component of e-citizenship.

This personal data protection model should serve as a guideline for all European Union's institutions in revising the existing legislation and developing new rules as well as in shaping their relationships with third countries. The Conference would like to draw the Commission's and Parliament's attention to this important requirement. ■

**Paris Conference
Receptions**

September 23, 2001, 6:30 pm
Greeting at the Eiffel Tower

September 24, 2001, 7 pm
Reception by M. Raymond
Forni, National Assembly
President

September 25, 2001, 7 pm
Gala Evening under the Louvre
Pyramid

**September 26, 2001,
12:30 pm**
Reception by M. Bertrand
Delanoë, Mayor of Paris

Australia

The Federal Privacy Commissioner has launched three public consultations, April 9, on the developments of codes of conduct, May 7, on the National Privacy Principles guide, and May 14, on health services (www.privacy.gov.au).

**Europe - Third
countries**

On May 15, 2001, Microsoft announced its intention to adhere to the principles of "safe harbor" published by the American Department of Commerce and recognised as "adequate" by the European Commission on July 26, 2000.

Moreover, the group of European data protection authorities "the Article 29 Group" adopted a recommendation on minimum requirements for on-line data collection in the European Union on May 17, 2001.

USA

On April 6, 2001, the Washington DC Federal Appeals Court confirmed the FTC decision which prohibited

Trans Union (190 million individual credit liability files, available for consultation particularly by credit organisations) from trading the data extracted from credit files for the purposes of targeted commercial prospection. This interdiction is based on the diversion of the purpose of the data base under the "Fair Credit Act" of 1970, which governs the private information services on individuals' solvency. (<http://laws.findlaw.com/dc/001141a.html>).

On April 19, 2001, the Federal Trade Commission inflicted penalties to a total of \$100 000 on those responsible for three sites, aimed at children under 13, who collected data without the agreement of the parents required by the "Children's online Privacy Protection Act". These companies must also delete from their files all data collected since the law came into force a year ago. (<http://www.ftc.gov/opa/2001/04/gilslife.html>).

**Genetic identification
of criminals**

The May 2 issue of New Scientist published a report by a University of Leicester (UK) research team demonstrating that genetic testing, widely used by police services to identify criminals, is susceptible of proving, in particular, a predisposition to certain diabetes.

Correction: The complete version of the contribution published in Le Journal n° 2, by our colleague Juan Manuel Fernandez Lopez - Director of the Data Protection Agency - Spain - is accessible on-line at www.cnll.fr

le Journal

Le Journal is published by the Commission Nationale de l'Informatique et des Libertés, France.
Director of publication,
Michel Gentot.

Design and conception:

Labrador
01 53 06 30 80

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Hong Kong held its first-ever Privacy Week

PRIVACY WEEK

A one-week event aiming to raise further awareness of personal data privacy protection in Hong Kong was recently organised and held by the Office of the Privacy Commissioner for Personal Data ("PCO"), with a wide range of activities targeted at different sectors of the public.

**M Stephen LAU**

Privacy Commissioner for Personal Data



Privacy Week kicked off on 26 March with a

privacy conference, entitled "E-Privacy in the New Economy". Held at the impressive Hong Kong Convention and Exhibition Centre, the seminar was officiated by the Privacy Commissioner for Personal Data, Mr Stephen Lau, Secretary for Information Technology and Broadcasting of the Hong Kong Government, Mrs Carrie Yau, and the US Federal Trade Commissioner, Mr Mozelle Thompson. 12 renown local and overseas experts discussed privacy issues including Consumer and E-Privacy, transborder data flow, workplace surveillance, legal issues of E-commerce and privacy impact assessment. A full house of 300 attendees listened with great enthusiasm to the speakers and their presentations.

At the conference, the PCO also launched a Management Handbook entitled "A Policy Approach to Building Trust and Confidence in E-Business", describing the policy approach to building customers' trust and confidence in E-commerce. This is the first of a series of PCO handbooks about online business practices that involve personal data collection. The PCO will subsequently publish handbooks on

the implementation aspects of privacy and e-commerce including privacy impact assessment.

The second day of the Privacy Week saw privacy officials from the Asian region gathering in Hong Kong to exchange views and share experiences in respect of privacy protection. The meeting also presented an opportunity for these privacy representatives from 10 Asian cities to discuss the future trend of privacy protection in their jurisdictions.

Two large-scale consumer roadshows, targeted at the general public, took place at two popular malls during Privacy Week. Local popstars were invited to perform and play games with the audience on the spot, attracting great attendance.

On 30 March, Mr Stephen Lau and the Director for Education Mr Matthew Cheung launched the "Privacy Website Design Competition for Youngsters". This exciting competition, jointly organised by the PCO and the Education Department, provided Secondary school students with the chance to demonstrate their technology skills and creativity as well as to win valuable notebook computers, cash

prizes and trophies by submitting their designs for websites highlighting the importance of personal data privacy among their peers.

With the Code of Practice for Human Resource Management coming into effect in Hong Kong from 1 April, the PCO organized two public seminars, providing opportunities for the public to learn more about the new requirements in relation to personal data privacy in every stage of the employment process. Advertisements were broadcast widely on televisions and radios to generate public awareness.

The closing event of the Privacy Week attracted the greatest number of audiences throughout the whole week - a variety entertainment television show broadcasted live on the most popular Hong Kong TV channel. With a total of 1,108,000 audiences, the PCO received a tremendous number of enquiries after the show, further proving the concerns and awareness of the public in regards to personal data privacy.

The PCO is pleased that Privacy Week was well received by the community, and will plan for similar large-scale activities next year. ■