

# European Data Protection Laws

|                   | Austria | Denmark | France | Germany | Iceland | Israel | Luxembourg | Norway | Sweden | U.K. |
|-------------------|---------|---------|--------|---------|---------|--------|------------|--------|--------|------|
| AUTOMATED         | ✓       | ✓       | ✓      | ✓       | ✓       | ✓      | ✓          | ✓      | ✓      | ✓    |
| MANUAL            |         | ✓       | ✓      | ✓       | ✓       |        |            | ✓      |        |      |
| PHYSICAL          | ✓       | ✓       | ✓      | ✓       | ✓       | ✓      | ✓          | ✓      | ✓      | ✓    |
| LEGAL             | ✓       | ✓       |        |         | ✓       |        | ✓          | ✓      |        |      |
| CORRECTION        | ✓       | ✓       | ✓      | ✓       | ✓       | ✓      | ✓          | ✓      | ✓      | ✓    |
| APPEAL DATA AUTH. | ✓       | ✓       | ✓      | ✓       | ✓       |        |            | ✓      | ✓      | ✓    |
| PENALTIES         | ✓       | ✓       | ✓      | ✓       | ✓       | ✓      | ✓          | ✓      | ✓      | ✓    |
| COURTS            | ✓       | ✓       | ✓      | ✓       |         | ✓      | ✓          | ✓      | ✓      | ✓    |
| EXPORT AUTH.'S'N  | ✓       | ✓       | ✓      |         | ✓       | ✓      | ✓          | ✓      | ✓      | ✓    |

## PRIVACY LAWS AND MANAGEMENT-LABOR RELATIONS

In all European countries with data protection laws, employees have the right of access to automated -- and in some countries, manual -- management files on themselves, and they have the right to correct them, or at least insert a statement of disagreement. As a result, managers are becoming more careful about what they write in reports when evaluating workers' performance. Certainly, managers are taking greater care to ensure that data is accurate.

In some firms, the coming into force of a data protection law has been the stimulus for a radical review of record-collection policy. Several companies have reduced the amount of data they collect to a necessary minimum. IBM, for example, has made the decision to reduce the scope of its employee records in all European countries: the company no longer asks employees their religion; and job applicants are no longer asked their age, marital status or next of kin.

IBM employees have the right of access to management evaluation of work performance, whether processed automatically or manually, as well as the right to add a statement of disagreement should they wish. However, employees are not given access to management assessments of an individual's future career prospects, as this could lead to misleading hopes and impressions.

Undoubtedly, some managers in companies operating in countries with a data protection law covering only automated records are tempted to take advantage of this by storing unfavorable comments and evaluations in a manual system. The company then has the problem of making reference to these comments -- e.g. if the employee record says, "See manual record for performance evaluation," this is certain to attract the interest of the data subject.

The evidence from around Europe is that fewer workers ask for access to their files than might be expected. Some companies charge an access fee while others do not, so cost should not be seen as a barrier to such requests.

In several countries, labor unions are actively intervening in data protection issues. For example, France's Commission Nationale de l'Informatique et des Libertes in its sixth annual report published last year, it lists the following subjects as those most frequently raised by French labor unions:

- + installation of company telephone logging systems;
- + change in purpose and use of management personnel files;
- + use of social security numbers in management files to identify people;

- + implementation of control systems using access badges to allow entry to certain company areas; and
- + entries in management personnel files showing, in particular, salary deductions.

The July issue of Privacy Laws and Business will have an in-depth feature on the impact of data protection laws on management-labor relations.

### IG METALL vs GM'S ADAM OPEL: ROUND ONE TO THE COMPANY

Although there are more court cases over data protection issues in Germany than in the rest of Europe put together, last year's court decision in the IG Metall-Adam Opel case demonstrates the impact of data protection laws on management-labor relations Europe-wide.

The case centers on union opposition to Opel's transferring its data processing to a wholly owned subsidiary, Electronic Data Systems (EDS).

In its written decision, the Hesse state court in Darmstadt explained that it did not find violations of the German Federal Data Protection Law (BDSG) in Opel's turning over the automaker's data processing to a new GM subsidiary, EDS. EDS in Germany is a wholly owned subsidiary of Electronic Data Systems of Dallas, Texas, which was acquired by GM in 1984. EDS handles personnel data for Opel as well as functions such as CAD/CAM. In addition to other laws, Opel based its case on the fact that the company turned to EDS to improve its data processing in order to recover from serious losses in recent years.

The court's judgment covered six main points:

**The works council retains its legal rights.** The court rejected IG Metall's claim that in contracting out its data processing to EDS Opel had deprived its works council of its right to see that employees' personal data was properly protected. The court explained that the company remains answerable to the works council for the data because this responsibility does not end when data processing is turned over to a third party (Article 37, BDSG). When a firm turns over its data to a data processing firm, a contractual relationship exists between the two enterprises, and the company (in this case Opel) remains "responsible for the data." This means that Opel's works council may still exercise its lawful authority over EDS's processing of employees' personal data.

**Individual employees retain their rights.** In addition, each Opel employee retains his or her right of access and explanation concerning his or her personnel file, as provided in the Law on