

UNICE attacks EU over plans for a directive on employees' personal data

By Alan Pedersen

THE UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATION OF EUROPE (UNICE) has branded the European Commission's attitude towards the protection of workers' personal data as unnecessary, unworkable, and obstructive towards business.

In a report published on October 30th 2001, UNICE has voiced concern over attempts by the European Commission to extend legislation covering the protection of employees' personal information. It argues that the current data protection directive is a sufficient safeguard, and that any further legislation will obstruct business practice and be of no additional benefit to employees.

The report was based upon the first stage of a consultation launched by the Commission in August 2001, drawing opinion from the Social Partners – an advisory body made up of representatives from business and trade unions – on whether or not there was a need for further action.

Workers' data protection rights may already be covered under the 95/46/EC Directive, but the Commission feels it is too general in its scope and cannot adequately address the specific nature of employment relationships. Because of this imbalance, the Commission believes there "may be a need for detailing out the application of the principles in the employment context."

LEGISLATION IS NOT THE ANSWER
UNICE concedes there is a definite need for clarity, saying that the "submission and processing of workers' personal data

is an important issue that deserves full attention." Its Social Affairs Director, Theresa de Lledekerke told PL&B that "there can always be merits for debating and discussing issues, for codes of conduct, or simply for developing instruments which explain to people what the existing legal framework is."

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However, UNICE argues that implementing further legislation is not the right approach. "As a general principle," it says, "regulation should only be used if there is no alternative."

De Lledekerke says it is far too early to start discussing measures for additional legislation. Considering the implementation of the Data Protection Directive across Member States is still in its infancy, she believes that the Commission should

issue a report assessing the directive "before drawing conclusions on whether or not the text is insufficient." Furthermore, de Lledekerke says that the Commission has provided no anecdotal evidence to suggest the need for a new directive. "They are claiming that there are shortcomings in the current directive," she says, "but there is no evidence to substantiate that view; or at least they don't provide any evidence."

UNICE argues that the existing directive is already sufficient enough to safeguard the privacy of workers and has called for an emphasis to be placed on creating minimum standards that ease the flow of data whilst maintaining the protection of sensitive information. It recommends the adoption of alternative solutions that complement the existing directives – such as self-regulation and voluntary codes of practice – as a more efficient solution to the problem. It adds that legislation is too slow to keep up with the fast-paced developments in employment culture and that changes to codes of practice are more efficient as they can be implemented much faster.

Legislation, according to UNICE, would place significant financial and administrative burdens on business and argues that the Commission is failing to take into consideration the

needs of business. "European employers," it states, "are concerned that the Commission focuses only on workers' needs and does not take any notice, either of benefits for workers from employers' processing of personal data, or of the supplementary burden that new regulation could put on companies."

Accusations that the Commission is adopting a one-sided, worker-biased approach could be considered harsh considering the conciliatory comments made by some of its supposed opponents. The EU's Data Protection Working Party, understands that the "legitimate" interests of the employer can "justify certain limitations to the privacy of individuals at the workplace." Even some trade unions realise the need for balance. Nicola Reed, Head of Employee Rights at the UK's Trade Union Congress told PL&B that there "obviously has to be a balance between the interests of employers and the rights of employees."

Unsurprisingly, not all of the Social Partners consulted by the Commission share the view that additional legislation is unnecessary. The European Trade Union Confederation's (ETUC) Confederal Secretary, Willy Buschak, firmly believes that legislation is imperative as "industry cannot self-regulate". The ETUC strongly supports the creation of a new directive, saying that a "European regulation concerning data protection of employees is an indispensable element of modern employment relations."

COLLECTION OF PERSONAL DATA

The Commission's Communication to the Social Partners identified a number of methods for collecting and processing data that require further clarification. UNICE has taken issue with several of these points, including:

- access to workers' medical data
- drugs and genetics testing
- monitoring of employee behaviour (ie. through the surveillance of e-mail and telephone correspondence
- use of consent as a means to legitimise

the process of certain information

Again, UNICE believes that the current directive is sufficient in ensuring personal information is used only for legitimate purposes and that confidentiality is maintained. It also states that the use of personal data should not just be regarded as a threat to workers' privacy. Whilst it under-

stands that there is scope for abuse, UNICE says that some of the methods used to obtain sensitive data – viewed by the Commission as potentially excessive – could act in employees' best interests. In some cases, it argues, a failure to collect certain information could even com

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Article 29 Working Party opinion on worker's data

In November 2001, the Article 29 Working Party published an extensive document on the protection of workers' personal data. The document was drawn up by a sub-group – consisting of representatives from European Data Protection Authorities, including France, Germany, the UK, and the Netherlands – as part of a contribution to the Commission's consultation on employee data protection. The document details a number of points, also raised in the Commission's Communication, which are summarised below:

Finality: Data must be collected for a specified, explicit and legitimate purpose, and not further processed in a way incompatible with those purposes.

Transparency: Workers should be informed of any personal information held on them. As data subjects, they should be given the right to request access to that information.

Legitimacy: The processing of personal data must be for legitimate reasons, as covered by Article 7 of the Data Protection Directive.

Proportionality: Collection or processing of data should be adequate, relevant and not excessive in relation to the purposes for which it is collected.

Accuracy: Employers have a responsibility to ensure all records, within reason, are up to date and accurate.

Security and awareness: Workers' personal data must be made secure and those responsible for handling the information should be provided with adequate training.

Consent: In cases where the processing of certain data is unavoidable, the use of consent could be considered misleading, as the worker might not have free choice and the subsequent right to withdraw their consent. In these cases, the Working Party believes, that where possible, additional safeguards should be taken.

Interaction between labour law and data protection law: According to the Working Party, interaction between the two laws is "necessary and valuable and should assist the development of solutions that adequately protect workers' interests."

Surveillance and monitoring: Any surveillance by an employer must be justified by the risks it faces, and take into account the legitimate privacy and other interests of workers.

Transfer of workers' data to third countries: Data should be transferred only to countries which ensure an adequate level of protection.

*The Working Party's document can be found at:
www.europa.eu.int/comm/internal_market/en/dataprot/wpdocs/index.htm*
