

BERLIN RESOLUTION OF THE INTERNATIONAL CONFERENCE OF DATA
PROTECTION COMMISSIONERS OF 30 AUGUST 1989

World-wide telecommunications are evolving rapidly. International data networks are increasingly used for transfers of personal data, for instance in the use of credit cards, for the purposes of travel booking systems and within multinational enterprises. The use of this new technology can bring significant benefits. But it also increases the problem of safeguarding the position of those individuals whose details are transmitted around the world.

The Council of Europe, the OECD, the United Nations and other international organisations have adopted recommendations and guidelines on data protection. A common feature is a set of principles of good practice such as those in the Council of Europe Convention (Treaty 108) and in the OECD guidelines. These good practices are designed to safeguard the privacy of individuals.

So far, eight states have acceded to the Council of Europe Convention and so committed themselves internationally to legally established data protection standards. Data protection authorities in those countries have some authority to control the transborder flow of personal data when this is necessary to protect individuals. However, controlling transborder data flows in this way presents severe practical problems. In most cases, therefore, data transmission across national borders implies that the individual can no longer ensure that the principles laid down by national laws and the various international agreements will be applied to his or her data.

For example there can be no guarantee that the data are up to date, accurate, and used only for proper purposes; and the individual loses the opportunity to appeal to any data protection commissioner.

The solution to giving effective international protection to personal data lies in equivalent legal safeguards in the transmitting and receiving countries. This solution is consistent with the international recommendations and guidelines referred to above.

The Data Protection Commissioners believe that data protection should be given the same priority as the promotion of data processing and telecommunications in the development and use of international data services. They therefore recommend that:

- Governments should move rapidly both individually and through international bodies towards establishing equivalent legal safeguards as soon as possible.
- Those transmitting personal data across national boundaries should check and monitor the protection given to such data by those receiving them, with a view to ensuring that proper regard will be given to the position of individuals.

The objective of these actions should be to ensure that:

- The Basic Principles for Data Protection contained in Treaty 108 and in the OECD guidelines are guaranteed to an individual notwithstanding the transfer of his data across national boundaries;

- Internationally operated data processing systems are structured in such a way that the individual can safeguard his data protection rights without undue difficulty;
- Any correction, up-dating and erasure applied to data which have previously been transmitted abroad will also be applied to the transferred data in any foreign country concerned;
- The greater risks, entailed by international exchanges of data, to the rights of individuals to decide on the use to be made of their data are counterbalanced by international co-operation among data protection commissioners.

ADDITIONAL STATEMENT
BY THE DATA PROTECTION COMMISSIONERS OF
THE EUROPEAN COMMUNITY (EC) NATIONS

The Data Protection Commissioners of the European Community Nations believe that the existence and the activities of the Community give rise both to particular requirements for data protection and to increased opportunities for making data protection effective across national boundaries.

- The EC internal market to be achieved by the end of 1992 is oriented towards the free exchange of information, including personal information, for instance in the fields of direct marketing/address trading and credit reporting.
- European Community decisions increasingly call for the collection and processing of personal data to be carried out by member nations, for instance in the field of agricultural statistics. They also call for transborder data transmission, for instance in the environmental, health-care and social fields.
- Some Community nations are already working on a pilot project to establish common police "wanted persons" files (the Schengen Information System) to provide a substitute, as it were, where controls at internal frontiers are to be abolished.

- On a growing scale, personal information data bases are maintained by the European Community institutions themselves. However, these institutions are not subject to data protection legislation and hence to any requirement to meet the Basic Principles for Data Protection.

The European Community and its member nations are therefore urged to take full account, in their planning for "Europe 1992", of the need for a complete and consistent approach to implementation of the Basic Principles for Data Protection across Community nations and within community activities.

The detailed proposals put forward by the European Community Commissioners are as follows:

- Appropriate legal instruments should ensure that the Basic Principles of Data Protection contained in the Council of Europe Convention (Treaty 108) will be binding on all member nations and on the EC institutions themselves;
- An independent data protection authority should be established to advise the EC institutions on all data protection issues and to supervise the processing of personal data within these institutions. It should consider complaints from individual data subjects and co-operate with the national data protection bodies.

The Commission Nationale de l' Informatique et des Libertés (the French Data Protection Commission) is invited to submit these proposals to the Presidents of the Council of Ministers, of the European Parliament and of the EC Commission as soon as possible and to try to gain their support.