



2nd Floor, Monument House, 215 Marsh Road, Pinner, Middlesex HA5 5NE, United Kingdom
Tel: +44 (0)20 8868 9200 Fax: +44 (0)20 8868 5215 e-mail: info@privacylaws.com www.privacylaws.com

Tuesday 12th May

Data breach notification laws in Europe are on their way

Last week, the European Commission and the European Parliament both supported EU and national legislation to require telecommunications companies and Internet Service Providers to inform the affected individuals and the regulatory authorities when they lose personal data or have it stolen. The European Parliament advocates going further and imposing this duty on all sectors. This week, a new survey, by *Privacy Laws & Business*, reveals that out of a sample of 21 national Data Protection Authorities (DPAs), many support strengthening their national data protection legislation to tackle lost and stolen personal data, often known as data breaches.

All those DPAs which support either introducing new data breach legislation or amending their current laws accordingly, support the view of the European Parliament that any data breach law should should cover all sectors and not be restricted to telecommunications providers and ISPs.

An increase in data breaches has led to legislation in 44 states in the USA, Privacy Commissioner recommendations in not only the United Kingdom (where the Information Commissioner has now logged 471 data breaches since the HMRC disaster in late 2007) but also in Canada, Australia, New Zealand, and last month, Ireland. Privacy Laws & Business's survey, the first ever conducted to gather the views of DPAs, assessed the need for data breach laws across Europe. While some DPAs considered that they have sufficient powers, others wanted the European Union to take a lead so that rules would be consistent.

Key findings

- There is no specific stand-alone piece of legislation covering data breaches in the 21 jurisdictions surveyed, although Spain has the most detailed regulations in place
- Despite some high profile data breaches, there was more pressure for legislation in some countries, as in the Netherlands, than in others, such as France.
- Amendments to existing legislation would be adequate in several countries

- There was general agreement that some form of data breach regulation would be useful and the survey responses indicate the specific legal provisions and practical steps which should be included in any such law.

PL&B Chief Executive, Stewart Dresner said: "There are three potential regulatory options available: to continue to insert new provisions in to existing legislation; amend the EU's E-Communications directive; and / or for the EU's Article 29 DP Working Party (the group of national DPAs) to publish practical guidelines."

The survey was launched at a conference attended by European Data Protection Commissioners together with telecommunications and Internet Service Provider companies, the sectors most likely to be affected by such legislation in the short term.

Rosa Barcelo, Legal Advisor to the EU's Data Protection Supervisor, explained the struggle between different EU institutions on how the planned E-Privacy directive should deal with losses and thefts of personal data. Key issues are: who should notify? who should be notified? what constitutes a "data breach? what action would be an appropriate response? in what circumstances is this a subject for the criminal law and when would compensation under civil law be more appropriate? how much flexibility should there be for national implementation?

The conference agreed on the need to encourage organisations to become more proactive in preventing losses and thefts of personal data. Tackling data breaches in a comprehensive manner requires top managers to take seriously the notion that this is not only a legal compliance issue but also demands attention as a matter of risk management on which their reputations hang.

Ends

Information on ordering the report in pdf format is at
http://www.privacylaws.com/Documents/data_breach_conference.pdf

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Further information, and for a media copy of the report, please contact Janet Rafferty on + 44 [0] 7912 295282 or email janet@themessageconsultancy.com

* Twenty-one Data Protection Authorities participated in the survey. They are: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Guernsey, Hungary, Iceland, Ireland, Italy, Jersey, Luxembourg, the Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden and the UK. The contribution from Switzerland was given by David Rosenthal, a Special Counsel at the Homburger law firm in Zurich.

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