

TRANSLATION FROM THE GERMAN

THE GERMAN BUNDESTAG  
6th ELECTIVE TERM

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Draft of a Law  
on Protection against the Unauthorized Use of  
Personal Data  
(Data Surveillance Law)  
(Legislative Draft of Representatives Hirsch,  
Dichgans, Kirst and Associates)

A. The Problem

As a result of the growing application of modern technical methods of data processing, certain data needed in the economy and in the administration may be more quickly and easily procured. Integrated information systems make it possible to withdraw data which, for instance, with respect to a [particular] person are on hand in different agencies and in such a way to obtain an overall picture which may be prejudicial to privacy. The measures for the protection of privacy are not sufficient in order to forestall, to a far-reaching degree, possible abuse. The legislator ought not to fail to promulgate protective provisions in due course.

B. The Solution

The Draft is intended to regulate the problems concerning personal data insofar as they are recorded by the Federal [Republic] and by the economically utilizable data banks of private persons.



The protection of personal data in the länder and communes is subject to the legislative jurisdiction of the länder. The protection system of the Draft provides that the citizen has, as against the data banks, far-reaching rights to be informed, a right to rectification of erroneous, or to erasure of unauthorizably stored, data, viz., claims for damages. The transmittal of personal data is to be admissible only on the basis of special legal grounds.

#### C. Alternatives

The Legislative Draft is breaking new ground so that, naturally, alternatives to individual proposals are possible. To the extent that they were known, they have been the subject of discussion during the drafting of the Bill and were, in part, mentioned in the appended explanatory preamble [to the Bill].

#### D. Costs

The costs of the supervision depend essentially on the number of data banks subject to registration. For institutions administered by the Federal Republic the costs which will occur will have to be borne, while fees could be levied for private data banks. The [nature of the] changes, viz., improvements of technical equipment which will become necessary, cannot yet be evaluated, and will be different for the different types; however, in view of the importance of the protection of privacy they are expected--according to the available information--to be bearable in any and all respects.

[Legislative] Justification

Preliminary Remark

This Legislative Draft cannot claim to be fully discussed and matured on all points. Bearing in mind the fact that by means of this legislative initiative entirely new ground is being broken, extensive hearings would have been required in order to secure the salient points of the Draft. The originators [of the Draft] considered it possible to dispense with them inasmuch as in their opinion their main concern was to provide an impetus by means of a substantiated basis for discussions. They regard it, however, as a "must" that the competent committees of the Bundestag, among other things, also weigh carefully at a hearing the following points:

- a) Is the regulation of personal data management, as required by the provisions of Sec. 8, par. 1 and par. 2 (compare also the Official Message), mandatory under constitutional law, or would also a concept less burdensome to the administration satisfy the constitutional concept of the rule of law?
- b) How may the Secret Service [Agencies] be made subject to the purposes of the Statute over and above the provisions of Sec. 4, par. 1 and par. 5, as well as Sec. 8, par. 1 and par. 2?

- c) Are the provisions on the applicable scope of the Statute in Sec. 4 and Sec. 12 worded in such a way that they cover only such data banks which provide serious misuse possibilities?

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