

Report to the European Commission

**An evaluation of the financial
impact of the proposed
European Data Protection
Directive**

Final report

Contents

	Page No.
Preface	(v)
Chapter One: Introduction	1
Chapter Two: Overview of the proposed Directive	3
Chapter Three: Methodology	7
Chapter Four: Legal analysis	10
Chapter Five: Impacts on UK case study organizations	30
Chapter Six: Impacts on Dutch case study organizations	54
Chapter Seven: Wider economic impacts	70
Chapter Eight: Summary of findings and conclusions	73

Preface

This report sets out the full results of an evaluation of the potential financial impacts of the proposed European Data Protection Directive in the UK and the Netherlands. A separate document summarizing the findings of the study has also been prepared for the Commission, together with a volume of appendices comprising the working documents of the study.

The research was undertaken over a four month period beginning in July 1994 by a team comprising staff from Aston Business School and the Universities of Leiden and Tilburg. The research team was:

Principal researchers:

David Bainbridge	— Aston Business School
Tony Bovaird	— Aston Business School
Colin Gilmore	— Aston Business School
Corien Prins	— Tilburg University
Jules Theeuwes	— Leiden University

Secretaries:

Jean Elkington
Toni Steane

Apart from the principal researchers the study was only made possible with the co-operation and assistance of individuals in a great many organizations, most of whom, in this case, must remain anonymous. These include representatives from our fifteen case study organizations, the UK Data Protection Registrar, the Dutch Registration Chamber, the Dutch Ministry of Justice and Touche Ross. We also acknowledge the valuable help given by staff from DG XV in providing the necessary background to the research. Nonetheless, the sole responsibility of the analysis, evaluation and findings must rest with the study team.

Graham Pearce
Aston Business School
November 1994

Chapter One: Introduction

1.1 Aims

The overall purpose of this study has been to undertake an in-depth evaluation of the potential financial impacts of the proposed European Data Protection Directive in the UK and the Netherlands.

The specific aims of the study were to:

- Provide an assessment of the impact of the proposed Directive on public and private sector organizations and to identify those elements of the proposed Directive which may have particular consequences for their performance.
- Assess the direct financial costs and benefits and the likely secondary effects of the proposed Directive, for data controllers and their organizations, and for data subjects.

For the purpose of this study, attention has been focussed upon the provisions of the text of the proposed Directive resulting from discussion in Council up to the end of June 1994.

1.2. Approach

The primary focus of the study was upon the evaluation of financial impacts on organizations. This has involved a detailed assessment of a representative sample of case study organizations in both Member States. The main provisions of the proposed Directive have been evaluated against a range of criteria including their impacts upon existing operations, potential costs and benefits and wider economic effects.

The findings of the case studies, coupled with other data, has also enabled estimates to be made of the economic impact of the proposed Directive upon representative economic sectors in both Member States. In addition, an assessment has been undertaken of the wider and longer term benefits which may arise from the proposed Directive.

The approach to the study has had to accommodate the quite distinct legal provisions underpinning the protection of personal data in the UK and the Netherlands. Differences in the structure of the economies of the two countries also required that the task of evaluation be tailored to local circumstances. Nonetheless, in order to ensure consistency and to enable comparisons to be drawn, the approaches adopted have been complementary.

1.3 Legal analysis

A prerequisite to the evaluation was to determine how the provisions of the proposed Directive, once adopted by the Council, will be translated into national legislation and applied by the supervisory authority in each Member State. The evaluation of impacts is therefore dependent upon examining the differences that may arise between existing data protection law and the provisions of the proposed Directive. The analysis has assumed that Member States will transpose the proposed Directive in a reasonable manner and will make appropriate use of the derogations available. The Dutch Ministry of Justice has provided its view on the implementation of the proposed Directive into Dutch law. In the UK informal discussions were carried out with the Data Protection Registrar and other bodies, enabling the study team to come to an informed opinion about the implementation of the proposed Directive into UK law.

1.4 Impacts on organizations

The evaluation of impacts upon public and private sector organizations provided the essential building blocks for the overall impact assessment. It has enabled those provisions in the proposed Directive which are likely to trigger particular costs and benefits to be identified. The approach has involved the use of detailed questionnaires in a series of interviews with staff in each case study organization.

The study team adopted procedures which would test and verify the responses received. Thus, in those areas where substantial costs were anticipated, organizations were invited to provide a detailed justification of how the values had been derived. The case studies also provided an opportunity to investigate impacts upon the strategic disposition of the organization, including turnover and employment, and to assess whether similar organizations might be expected to experience a similar pattern of impacts.

1.5 Structure of the report

In Chapter Two the context for the proposed Directive and its objectives are outlined, together with an assessment of recent studies in the UK and the Netherlands into its potential impacts. This is followed in Chapter Three by a discussion about the methodology employed in the evaluation. Chapter Four comprises a comprehensive assessment of the legal implications of the proposed Directive in the UK and

the Netherlands. Chapters Five and Six are concerned with the evaluation of potential impacts at the level of individual case study organizations whilst Chapter Seven examines the wider impacts of the proposed Directive. Chapter Eight comprises a summary of the study findings.

Chapter Two: Overview of the proposed Directive

2.1 Introduction

This chapter sets the proposed Directive on data protection in context. It outlines the origins of the proposed Directive, its underlying objectives and highlights those provisions which have raised particular concerns in the UK and the Netherlands.

2.2 Origins

Action at the European level to establish agreed standards in the treatment of personal data in different countries can be traced to the activities of the Council of Europe. Indeed, concern for the protection of human rights was the touchstone for a number of initiatives in several European States aimed at securing the privacy of individual citizens. In some, the principle of affording individual privacy was enshrined in written constitutions.

Developments in the field of computer technology during the 1970s were accompanied by a growing concern about the adequacy of existing measures to secure the protection of personal data. In 1981 the Council of Europe responded by establishing a Convention for the protection of individuals with regard to the automatic processing of personal data; which was subsequently ratified by a number of EC Member States. The Convention aimed to achieve a degree of harmonization in the treatment of data protection legislation in each signatory state, enhance personal freedoms and enable the free movement of personal data between countries. In the early 1980s, the European Parliament resolved that all Member States should ratify the Council of Europe Convention, but some did not. The Commission, therefore, found it appropriate to consider more effective measures since it was becoming increasingly apparent that the approaches adopted were quite diverse and that equivalent principles and standards of data protection were not being achieved.

Given the steps being taken in the late 1980s, to create a Single European Market, the need to establish a single regime for data protection legislation acceptable to all Member States was increasingly perceived as both desirable and, indeed, unavoidable if cross-border information flows were not to be impeded. Thus, in 1990, the Commission brought forward a proposal aimed at securing a Community wide approach to data protection legislation. Following a period of consultation, a revised proposal for a Directive was

published in 1992 which restated the arguments in favour of a common approach and its twin objectives:

- to harmonize, at a high level, the data protection laws in the Member States;
- to establish an area within which personal data can be transferred without restriction.

This revised proposal has since been the subject of further negotiation and revision.

2.3 Scope of the proposed Directive

The proposed Directive seeks to achieve a balance between the protection of the rights of individuals, whose personal data is to be processed, and the users of personal information. In pursuit of this objective, the proposed Directive sets out a number of principles governing the obligations of those responsible for processing.

The manual or automatic processing of data will be permitted when one or more of a list of alternative criteria are satisfied, one of which is that the data subject has consented, unambiguously. In the case of 'sensitive' personal data; racial origin; political opinion etc., express and written consent is required, although there are a number of exemptions to this rule. Data subjects must also be given information about the purposes for which data are to be used when data are collected and informed of any intention to pass data to third parties. Individuals will also have the right not to be subject to a decision based purely upon automatic personality profiling and will have the right to object at any time, on legitimate grounds, to the processing of data relating to them. Data subjects are given rights of access to personal data concerning them, although there are exemptions on grounds of national security, defence and criminal proceedings. Where individuals have experienced 'damage as a result of unlawful processing' they will have the right to compensation.

Data users will be obliged to register their activities in respect of personal data with a National Data Protection Supervisory Authority, but Member States will have discretion to determine the scope of the registration requirements. The register will be a public document, but information regarding matters of national security, criminal proceedings or public safety may be restricted. Similarly, information about security procedures maintained by individual organizations will not be open to public scrutiny.

The proposed Directive is regarded as a prerequisite to the harmonization of data protection procedures in the Member States and, to promote this, the proposed Directive contains proposals for a working party to be established with responsibility to compare the application of the proposed Directive in the Member States. Moreover, whilst the proposed Directive focuses upon the need to provide for the free-movement of information within the Community, it also sets out those circumstances in which personal data can be transferred to third countries.

The proposed Directive also contains a number of derogations so that individual Member States will be able to determine the precise conditions governing the lawfulness of data processing.

2.4 Responses to the proposed Directive

In both the UK and the Netherlands reactions to the proposed Directive have been mixed. Some organizations have welcomed its emphasis on enhancing individual rights, whilst others have expressed hostility on the grounds that it is too restrictive with respect to data users and will give rise to substantial additional costs, with few benefits to data users. Indeed the publication of the proposed Directive in 1992 sparked a debate in both Member States resulting in intense lobbying of the Commission and the undertaking of several investigations into the implications of the proposed Directive.

2.5 Responses to the proposed Directive in the United Kingdom

A number of reports and studies highlight the different reactions to the proposed Directive in the UK. The 1993 report of the Data Protection Registrar gave a cautious welcome, on the grounds that action is required to achieve equivalence within the Community and that a reasonable balance had been achieved in the proposed Directive between the competing interests. Nonetheless, the Registrar has noted the concern about the inclusion of 'manual' records which are not currently within the scope of UK data protection legislation. The Registrar questioned whether these posed the same threat to individual rights as the processing of automated data. By contrast, an investigation into the proposed Directive by a sub-committee of the House of Lords concluded that, in principle at least, there was no difference between the processing of manual and automatic records (House of Lords 1993).

The UK Government, bolstered by studies undertaken by the Home Office (1994) and the Department of Health, (1994), has consistently argued against the

inclusion of manual records because of the potential disproportionate costs involved. For example the Home Office study, which covered about 625 public, private and charitable organizations, concluded that the costs of meeting the requirements of the proposed Directive would be over £2bn of which 70% was connected with the treatment of manual records. This issue has also become a matter of concern elsewhere in the Community and, in response, the Commission has offered a number of alternative solutions, including an extension of the 'transitional' period for dealing with manual data for up to eight years after the proposed Directive is adopted.

Other issues raised by the UK Registrar reflect wider concerns amongst both public and private sector organizations. One of these relates to the potential complexities surrounding the gaining of consent from individuals to the processing of data and the disclosure of information to third parties. Organizations, particularly in the financial service sector, have become exercised at the prospect of having to inform all their data subjects that information is being processed about them and the amount of information which they may need to provide. This issue is seen as having particular relevance for certain types of activities, for example UK Insurance Companies which hold about 180 million personal files, most of which are manual. The UK Department of Health has also undertaken research which suggested that the potential costs of having to inform each member of the UK population that their data is being processed and obtaining written consent could be over £1bn.

Concerns have also focused upon the regulation of the holding of information relating to criminal convictions. Insurance companies, banks and other institutions have indicated that the proposed Directive may restrict their ability to retain information about County Court Judgements etc. and, thereby, increase the opportunities for fraud. Some organizations have expressed concern about the opportunity available to data subjects to require organizations to cease processing their data, again extending the scope for fraud. Furthermore, the release of information about security practices, even if restricted to the Data Protection Registrar, has been criticised.

Some other aspects of the proposed Directive have also been subject to detailed criticism. These include the need to ensure that information is both up to date and accurate, which some regard as too onerous. It has also been suggested that the need to balance the consent of the data subject with other criteria relating to the lawfulness of processing could become confusing. Furthermore, there is concern that the 'legitimate' grounds for ceasing processing remain unclear, whilst the proposed limitations on automatic profiling to

determine credit worthiness are regarded as unreasonable.

In addition to these widely canvassed concerns it has been suggested that, despite the derogations available to Member States, the proposed Directive is too prescriptive and bureaucratic. However, the proposed Directive has also been criticised for not being sufficiently specific in its guidance and, despite action by the Commission to clarify aspects of the text both formally, through amendments to the draft text, and informal advice, there remains uncertainty about how the proposed Directive may be interpreted by individual Member States. In part this reflects concern about the language used in the text and the precise meanings of terms such as 'consent' (as applied to data subjects), the definition of a 'personal data file' and what, in practice, may constitute 'disproportionate effort'.

2.6 Responses to the proposed Directive in the Netherlands

In the Netherlands too, reactions to the 1992 draft of the proposed Directive have ranged from hostility to cautious enthusiasm. The Registration Chamber takes the view that whilst existing data protection legislation will require modification, the implications for the bulk of organizations is likely to be limited. In general the Chamber considers that the proposed Directive meets its objectives. Moreover, it maintains that whilst some organizations are likely to experience additional costs, these are not expected to be as significant as those sometimes claimed in the Netherlands. For example, those financial institutions which deal with large quantities of personal data will respond to the proposed Directive as part of the wider process of change and modification to their existing procedures. Moreover, the Chamber considers that the proposed Directive will encourage greater transparency in the relationships between organizations and their clients.

The position of the Dutch Ministry of Justice has generally accorded with the Chamber, although the Ministry has adopted a more liberal approach to the interpretation and, therefore, the impacts of certain provisions. The Minister has expressed concern about the potential of the proposed Directive to generate additional bureaucracy and costs, which will inevitably fall upon those responsible for the processing of personal data, as well as customers and clients. Moreover, the Minister has also stressed the need for clarity in the text of the proposed Directive and subsequent legislation.

As in the UK, a number of studies have been undertaken in the Netherlands which have focused upon the anticipated costs arising from the implementation of the 1992 proposal. In 1993, the Dutch Ministry of

Economic Affairs undertook a survey of a variety of organizations in the private sector, the results of which were not dissimilar to those reached in the Home Office study in the UK. The response of the Bureau Krediet Registratie, which is responsible for handling personal data relating to all loans and credits, is indicative of some of the responses. It estimated that the number of people employed to deal with privacy would need to be doubled and that there would be additional costs arising from modifications to existing administrative and technical practices.

The Dutch Ministry of Economic Affairs has also commissioned consultants (Economisch Instituut voor het Midden - en Kleinbedrijf 1994) to undertake an assessment of the financial impact of the proposed Directive; the results were published in May 1994. The consultants assessed the anticipated costs of the proposed Directive in three broad economic sectors; banking, direct marketing and insurance. The study distinguished between non-recurring and recurring costs and derived estimates including a variety of assumptions based upon 'moderate' and 'extreme' interpretations of the proposed Directive, provided by the Ministry of Justice and representatives of the three sectors. The anticipated 'set-up' costs varied widely from f285m, on the basis of the assumptions offered by the Ministry of Justice, to more than f1.3bn on the judgements of the three private sector groups. The principle reason for the difference lay in the expectation of costs associated with informing and gaining consent from data subjects. This was perceived as of particular importance in the direct mailing sector.

The conclusions of the study were, therefore, highly critical of the proposed Directive. Whilst it was acknowledged that it would confer greater rights upon data subjects, there were loopholes which could lead to increased fraud, generating significant additional costs for some types of organization. Banks and insurance companies were highly critical of the proposed Directive and its potential impacts. The Registration Chamber was, in turn, highly critical of these conclusions, claiming that the impacts had been exaggerated. Nonetheless the consequence of this, and other studies, was to raise awareness of the potential implications of the proposed Directive, both within Dutch industry and commerce, and in government.

2.7 Summary

It is clear from this short review that efforts to strengthen the laws relating to data protection in Europe have been pursued by some Member States far more intensely than others. Both the UK and Dutch governments have established a comprehensive system

of data protection. But the law in each Member State has emerged largely independently and there is growing recognition that, given the shift towards greater economic integration within Europe, there is a need to achieve greater harmonization in data protection law across the Community. However, whilst this principle is widely accepted; it is apparent that some Member States have misgivings, both about the form of such a Community-wide initiative and its implications for their national economies. In many respects, the debate therefore echoes the concerns expressed prior to the introduction of data protection laws in both the UK and the Netherlands.

References

Council of Europe (1981), 'Convention for the protection of individuals with regard to automatic processing of personal data', Council of Europe.

Data Protection Registrar (1993), 'Eighth Report of the Data Protection Registrar', HMSO, London.

Department of Health (UK) (1994) 'Draft EC proposed Directive on Data Protection: Analysis of costs', Department of Health.

Economisch Instituut voor het Midden- en Kleinbedrijf (1994), 'De EC richtlijn Bescherming Persoonsgegevens: Knelpunten en kosten voor het bedrijfsleven', Zoetermeer.

Home Office (UK) (1994), 'Costs of implementing the Data Protection proposed Directive: Paper by the United Kingdom', Home Office

House of Lords Select Committee on the European Community (1993), 'Protection of Personal Data: Session 1992/93', 20th Report, HMSO, London.

Chapter Three: Methodology

3.1 Introduction

Estimating the costs and benefits arising from the implementation of the proposed Directive poses a number of complex problems. For example, there remains uncertainty about how Member States will elect to transpose the proposed Directive into their national laws and how the respective supervisory authorities will apply such legislation in practice. Moreover, whilst some organizations may, in the short term, be faced with the need to absorb costs, in the long term meeting the requirements of the proposed Directive may provide the opportunity to increase internal efficiency and increase market share within the Community. It may also be anticipated that costs and benefits will be distributed unevenly and, as a consequence, there will be 'winners' and 'losers'. For example, the financial service sector and those parts of the public sector which rely heavily on the use of personal data may be disadvantaged compared with some other sectors. Nonetheless, it can be assumed that all organizations will seek to mitigate the costs arising from meeting the requirements of the proposed Directive.

The attribution of costs and benefits to individual organizations is not without its difficulties but the estimation of secondary or third order effects, and placing these in the context of impacts at a broader scale clearly presents a major challenge. Moreover, as is the case in many cost-benefit studies, short-term, measurable costs and benefits need to be set alongside much less tangible criteria, for example the increased public confidence engendered by the proposed Directive in the processing of its personal data within a society increasingly dependent upon information technology. For each of these reasons there is a need for caution at each stage of the evaluation.

3.2 Key tasks

In order to meet the objectives of the study and, at the same time, respond to the complex issues identified above a number of tasks have been undertaken;

- A legal analysis of the proposed Directive to determine how it may be transposed into the national laws of the UK and the Netherlands.
- An evaluation of the potential impacts of the proposed Directive upon the operations and activities of a selected group of organizations in both Member States.

- An estimate of the financial costs and benefits arising from meeting the provisions of the proposed Directive for individual organizations.
- An assessment of the wider costs and benefits arising.

3.3 Legal analysis

The scale and nature of the potential impacts will depend fundamentally upon how the provisions of the proposed Directive, once adopted by the Council, are translated into national legislation and are interpreted by the supervisory authorities in each Member State. The aim of the legal analysis is therefore to determine how the proposed Directive may be transposed into the law of the UK and the Netherlands, and how it will work in practice, paying particular attention to the derogations which are available to Member States. A central feature of the analysis was to determine the extent to which the provisions of the proposed Directive may depart from existing data protection legislation.

3.4 Estimating impacts upon organizations

The impacts of the proposed Directive will be variable, depending upon the activities and processes undertaken by individual organizations. Similarly, different aspects of the proposed Directive may have greater significance for some organizations than others.

Choice of case studies

In order to adopt a rigorous approach to the identification and measurement of potential impacts, fifteen detailed case studies, involving public and private sector organizations in both the UK and the Netherlands were undertaken. Each case study organization was selected on the basis of:

- type of organization;
- anticipated scale and nature of impact;
- current awareness and compliance with national data protection legislation;
- willingness and ability to co-operate.

The choice of organizations was made following discussions with staff from the Data Protection Registrars in the UK and the Netherlands and DG XV. The categories of organizations were as follows:

- mail order company;
- credit reference agency;
- major bank;
- small/medium sized enterprise;
- major manufacturing company;
- hospital;
- local authority.

In the UK, an additional case study was undertaken with a major business service company, specializing in accountancy and management consultancy.

Questionnaire

A two-part questionnaire was designed to elicit responses from representatives in each organization (see Appendix). The first was based upon the identification of a number of key issues derived from the legal analysis, as follows:

- notification of processing operations;
- informing data subjects of the collection, recording or disclosure of data relating to them;
- data subjects' rights of access;
- occasions when data subjects' consent to processing may be required, including the right to have data blocked or to object to processing;
- the processing of personal data, in particular with respect to sensitive data;
- transfer of personal data to third countries;
- security of personal data;
- automated individual decisions defining a personality profile.

In practice these issues may be aggregated so as to relate more realistically to the day to day data protection activities of individual organizations as follows:

- contacts with the supervisory authorities;
- systematic and pro-active contact with data subjects;
- responses to inquiries/requests from individuals;
- internal measures necessary to ensure that practice and procedure are in order.

For each issue, organizations were requested to indicate the potential costs and benefits associated with different forms of data processing activity, for example, personnel, marketing, financial and payroll data, and

estimate the total number of automated and manual files in each category. These included:

- set up and recurring costs;
- dealing with manual and automated records;
- staff costs/benefits;
- total costs/benefits.

In preparing their estimates, respondents were reminded of the need to conduct an overall assessment for their organizations, in which the cost - benefit balance sheet relating to individual operations would be aggregated to take account the sharing of costs, the co-ordination of activities and data management, etc. and to take into account the transitional period available under the proposed Directive.

It was anticipated that staff from each case study organizations would be familiar with the draft proposed Directive published in 1992. Indeed, some had carried out or participated in initial impact studies. Undertaking the evaluation based upon the June 1994 text provided an opportunity for these organizations to reassess the implications of the proposed Directive. In this respect it was critically important that the methodology should incorporate procedures which would fully test and verify the responses received. Staff from each case study organization were, therefore, invited to provide a detailed justification of how their estimates of costs and benefits had been derived.

Each case study involved two interviews with representatives from each organization. The first provided the opportunity to map out the activities of the organization and identify those aspects of its current processing activities which are most likely to be affected by the implementation of the proposed Directive. A second, 'debriefing' session focused upon two main issues:

- verification of responses in the completed questionnaires;
- exploring anticipated wider costs and benefits for each organization.

In several cases, subsequent discussions also took place between organizations and the study team in both the UK and the Netherlands.

Verification

In highlighting the main areas where costs may be anticipated, respondents were requested to provide, where appropriate, detailed breakdowns of how these measures had been derived and what might be done to reduce them. In some cases respondents were given

additional guidance on the implications of the proposed Directive and how they might respond most effectively.

Wider organizational impacts

Each case study organization was requested to estimate the wider consequences of implementing the proposed Directive. This provided the opportunity, *inter alia*, to establish impacts upon the strategic function of the organization, including the activities in which they engage, the levels of business turnover, employment and profit and to assess whether similar organizations in the same economic sector would experience the same scale of impacts.

3.5 Estimating wider impacts

The objective of this final stage of the evaluation was to provide estimates of the overall impact of implementing the proposed Directive in each national economic sector represented by the case studies. It drew upon the results of the case study evaluations and other information sources. The extrapolation of case study impacts to sectoral levels required the adoption of a number of assumptions and caution needs to be employed in interpreting the results of the grossing up procedures.

The following stages were adopted:

- Each case study provided information about the costs of implementing the proposed Directive, employment, turnover and (apart from public agencies) profits. It is assumed that the organizations are representative of their sector, although this needs to be qualified on the basis of how they may be affected by the proposed Directive.
- Estimates of the changes in costs in each economic sector may be derived, using costs per employee as a surrogate measure. It is assumed that cost changes will have a linear relationship to the number of employees and may, therefore, be employed to establish separate grossing up estimates for each of the sectors represented.

In addition to these sector based estimates an initial assessment has been made of the potential longer term and wider benefits of the proposed Directive, particularly with respect to those economic sectors involved in, or significantly affected by, the development of information technologies.

Chapter Four: Legal analysis

4.1 Introduction

The purpose of this chapter is to provide a detailed assessment of the proposed Directive with the aim of determining how its provisions are most likely to be implemented in the UK and the Netherlands. Specifically it:

- assesses the scope of existing data protection and related legislation in the UK and the Netherlands;
- analyzes the scope and content of the proposed Directive;
- identifies how its provisions may be translated into the law of the UK and the Netherlands and the changes required to existing legislation;
- compares and contrasts these projected changes in the UK and the Netherlands.

4.2 Present United Kingdom data protection law

4.2.1 Background

The history leading up to the United Kingdom Data Protection Act 1984 is relatively long and, since 1961, there have been several Parliamentary Bills, Reports and White Papers concerning privacy and data protection. In the 1970s data protection laws were introduced in several countries, including France, Sweden and West Germany. In the United Kingdom, the Lindop Report (1978) was a watershed in terms of the movement towards data protection legislation but the final impetus was provided by the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (opened for signature on 28th January 1981) and which was signed by the United Kingdom in 1981. The Convention included a set of principles for data protection and proposals for a common set of standards to be adopted. In 1982, a White Paper was published, outlining the Government's intentions and following this a Bill was introduced in the House of Lords. Because of a general election in 1983, this failed to become law but a new Bill was introduced soon after, eventually receiving the Royal Assent in July 1984. The Data Protection Act 1984 was implemented in a number of stages, the last of which came into effect on November 11, 1987. The whole Act has been in force from that date. The development of the law of data protection since that time has been largely the result of a number of cases before the Data Protection Tribunal

and the courts. Other development has been the result of statutory instruments passed in pursuance of the Act.

Other measures have been applied to specific sectors by legislation both before and after the coming into force of the Data Protection Act 1984. They are:

- the Consumer Credit Act 1974, section 158 of which gives subject access to personal data files held by credit reference agencies;
- the Access to Personal Files Act 1987 gives subject access to personal data files held by local authority housing and social services departments;
- the Access to Medical Reports Act 1988 gives access to medical reports made for the purposes of employment or insurance by medical practitioners;
- the Access to Health Records Act 1990 gives a right of subject access to information concerning physical or mental health in connection with the care of individuals kept by health professionals including registered medical practitioners, registered dentists, registered opticians, registered pharmaceutical chemists, registered nurses, clinical psychologists, etc.

The Data Protection Act 1984 only applies to personal data that are processed by equipment operating automatically (typically computer equipment) whereas the other provisions mentioned above apply to personal data processed manually.

The Data Protection Act 1984 has been seen as being defective in a number of ways and the Registrar, appointed under the Act, has frequently commented on some of the perceived deficiencies of the present regime in the United Kingdom and has generally welcomed the work of the European Commission in developing a fairer and more effective framework for data protection.

4.2.2 The Data Protection Act 1984

The purpose of the Data Protection Act 1984, according to the long title is to:

"regulate the use of automatically processed information relating to individuals and the provision of services in respect of such information."

The Act applies, generally, to the automatic processing of personal data which comprise information relating to

a living individual (data subject) who can be identified from that information (or from that and other information in the possession of the data user). Personal data includes an expression of opinion about the individual but not an indication of intention of the data user in respect of the data subject.

Regulation is carried out by placing obligations on those who record and use personal data (data users) and computer bureaux providing services to data users. Data users and computer bureaux must register under the Act. By the end of 1991 some 164,500 organizations and persons had registered under the Act. Data users are required, by section 4(3), to give a description of the personal data, its sources, the persons to whom it will be disclosed and countries to which it will be transferred, directly or indirectly. The data user must also give his full name and address and an address for the receipt of requests from data subjects for access to the data. For computer bureaux, the details to be given are name and address only. This information is held on a register maintained by the Data Protection Registrar and copies of individual registrations are available to any person on payment of a fee of £2. A list of names of data users and computer bureaux and their registration numbers is available. Some data users have several registrations.

The Act contains eight Data Protection Principles (based upon the Council of Europe's Convention on Data Protection) all of which must be observed by data users although, as far as computer bureaux are concerned, only one is relevant; that is the taking of adequate security measures. In many ways, the principles are the central plank of data protection law, the first principle being particularly important; that is, that information to be contained in personal data shall be obtained, and personal data shall be processed, fairly

and lawfully (Schedule 1, Part I contains the Principles and Part II contains an interpretation of them). Some of the Principles have been subject to judicial consideration and rulings.

The Data Protection Registrar can enforce the principles by way of enforcement notices, de-registration notices and transfer prohibition notices. The Registrar also produces guidelines (second series, February 1989, revised March 1992) which are written in a practical manner describing and explaining the provisions of the Act and compliance with it and how it affects data users, computer bureaux and individuals. The Registrar may prosecute for offences under the Act.

Rights are given to data subjects - under section 21 there is a right of subject access; this is a right to be informed by a data user whether he holds personal data which relate to the data subject and a right to be supplied with a copy of such data. Data subjects also have a right to have inaccurate data rectified or erased (by court order, section 24) and a right to compensation for damage and distress caused by inaccurate data (section 22) or unauthorized disclosure of data (section 23).

In practice, often the most effective route for a data subject aggrieved at the holding of inaccurate data is to complain to the Data Protection Registrar who has investigative and supervisory powers. However, the data subject cannot obtain compensation by this route.

The various relationships, constraints and links between the various persons affected by the Data Protection Act 1984 are indicated in Figure 4.1. In the figure, subject access includes the other rights such as rectification and compensation.

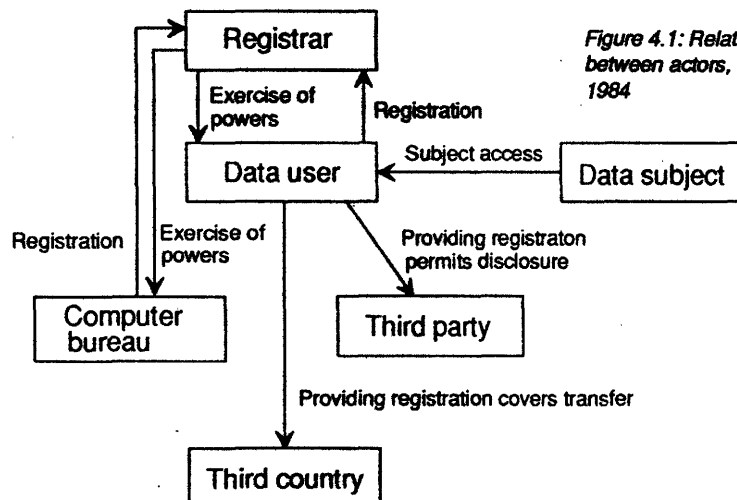


Figure 4.1: Relationships and other links between actors, UK Data Protection Act 1984

4.3 Present Dutch data protection law

4.3.1 Notification

The Dutch Data Protection Act makes a distinction between controllers in the public sector and those in the private sector. Article 24 of the Dutch Data Protection Act requires that files in the area of the private sector must be registered with the Registration Chamber, through the submission of the relevant form. Article 19 of the Dutch Data Protection Act provides that files in the area of the public sector are subject to an internal regulation (statement) that includes a description of the way in which the data file is operated. Article 20 stipulates what information must be contained and includes the purpose of the data file, the categories of data subjects, the types of information, etc.

Exemptions from registration are contained in Article 2, for example, in respect of personal data held by an individual for personal, family, household or recreational purposes. Further, with respect to the public sector, Article 22 states that notification does not apply in a number of cases where the data relates to accounting and financial management systems, staffing and payroll systems, other systems which form part of the internal management of organizations, subscription records, records of members and supporters or, in the case of other personal data files, names, addresses, post codes and other such information needed for communication purposes.

The Dutch Decree "Besluit Genormeerde Vrijstelling" (January 2, 1990, Stb. 16) is based on Article 22 and applies to Article 25 covering exemptions from notification in the private sector. This covers, *inter alia*, student files, pensions data, debit and credit administrations (except for banking and insurance), payroll and accounts, data required to be kept by law for a period not extending five years, data files kept for research and statistical purposes, unincorporated members clubs and files with data for communication purposes.

4.3.2 Informing data subjects

The Dutch provisions on informing the data subject must be seen in the light of the information that is accessible to a data subject through either: notification forms, internal regulations under Article 19 and the above Decree.

By Article 28, the Dutch Data Protection Act requires that the controller of a personal data file must provide information where personal data have been recorded for the first time unless the data subject concerned is aware of or can reasonably be expected to be aware of the recording. Further exceptions are available based on the interests of the data subject, State security, criminal

investigations, economic and financial interests (Article 30).

Within one month of receiving a request, the controller must inform the data subject in writing whether he holds personal data concerning him and, if so, the source of the data, Article 29. On request, the data subject must also be informed of any disclosures of his personal data to third parties in the preceding year.

There are several exceptions to the data subject's right to such information laid down in Article 30. These broadly mirror the exemptions from registration but a particular exemption is where it is necessary to safeguard the vital interests of other persons.

4.3.3 Data subjects' right of access

Article 29 of the Dutch Data Protection Act requires that, on request, the controller must supply the data subject with a full statement of the data concerning him that are contained in a file together with information as to their source. There are a number of exceptions along similar lines to those above.

If the data subject requests that his personal data are corrected, the controller shall notify any person to whom he has, to his knowledge, issued the data in question during the year preceding the request. The Dutch Act provides that the right of access to medical records lies with the controller (Nouwt, 1994).

4.3.4 Data subjects' consent

The Dutch Data Protection Act does not contain an equivalent provision to Article 7 of the proposed Directive in terms of the data subject's consent. However, consent may be required because of other provisions of the Dutch Data Protection Act and rules relating to medical confidentiality.

Articles 11 and 12 of the Dutch Data Protection Act mention the data subject's consent as one of the conditions under which the disclosure to a third party may take place. Such consent must be in writing and may relate only to a single case or to a limited category of cases and must be precisely defined. The consent may be withdrawn in writing at any time.

Article 14 provides a right to object to processing, that is, a right to block the use of personal data. There is also an implicit right to object while balancing the rights of the controller and the data subject. From this perspective, the Registration Chamber bases its decision on a comparison of the data subject's interests with those of the controller. The criterion that is used in this respect is whether the personal data file is 'reasonably relevant' to the interests of the controller (Article 4). Additionally, under the general principles

of civil law, the data subject may object to the illegitimate use of data.

4.3.5 Lawful processing

The principles relating to data quality, stating the grounds for data processing as well as the manner in which data may be used under the Dutch Data Protection Act, are contained in a number of provisions. The precise rules depend on whether the processing is carried out in the public sector or the private sector. In respect of the private sector, personal data must be collected for specific purposes reasonably relevant to the interests of the controller, the data may only be used in a way compatible with those purposes, the data must not be excessive and must be accurate and complete. As regards the public sector, personal data files may be created where necessary for the effective execution of the functions of the controller, Article 18(1).

The Dutch legislature has made use of Article 9(2) of Convention No. 108 of the Council of Europe to derogate from the general principles laid down in Article 5 of the Convention. Thus, under the Dutch law there is an exception relating to the disclosure of data, in the public sector, to public bodies in the execution of their functions and, in the private sector, for research or statistical purposes or on the grounds of urgent and important considerations. In both cases, an overriding proviso is that disclosure must not have a disproportionate, adverse effect on the privacy of the data subject.

Dutch law also makes a distinction between the public and private sector in respect of the grounds for processing. In the public sector it is based on specific purposes relevant to the interests of the controller whilst, in the private sector, it is based on the effective execution of the functions of the controller.

The Dutch Data Protection Act does not extend to the collection of data from public sources such as telephone books, television news, public registers, etc. However, this merely means that such data are considered to be obtained lawfully and this does not exempt files containing such data from the remainder of the Act's provisions.

As regards the processing of sensitive data, Article 7 of the Act requires that specific rules are laid down concerning the inclusion in a personal data file of information on any individual's religious beliefs or philosophy of life, race, political persuasion, sexuality or intimate private life and of personal information of a medical, psychological, criminal or disciplinary nature. Such rules have been subsequently laid down in a General Administrative Order of February 19, 1993. As

a general principle such inclusion is permitted provided that certain conditions are satisfied.

4.3.6 Transfer of data to third countries

Jurisdiction and control of transborder data flows is determined by Articles 47, 48 and 49. The Dutch Act applies to personal data files located in another country if the controller is established in the Netherlands and if those files contain information about residents of the Netherlands except where the other country has an equivalent level of protection.

Concerning transfer to third countries, the Dutch system is based on the principle of considering the prevailing situation relating to the protection of personal data in the receiving country. There must be adequate safeguards for the protection of the privacy of the data subject. There is provision for transfer of personal data to and from certain countries to be prohibited by General Administrative Order if such transfers would have a serious, adverse effect on the privacy of the persons concerned.

4.3.7 Security and confidentiality

As a general rule, by Article 8 (which also applies to manual files), both the controller and the processor shall take the necessary technical and organizational measures to render secure any data file against loss of or interference with the data contained therein and against unauthorized access to or amendment of or disclosure of such data. Liability for resulting damage is strict by Article 9.

4.3.8 Automated individual decisions

There is some doubt as to the legality of data matching and data profiling. However, it would appear that data matching will usually be lawful although the Minister of Justice has voiced his concern over this practice. In terms of profiling, a report published in 1992 by the Dutch Ombudsman on the use of profiling techniques by the Dutch Ministry of VROM in order to detect fraud with housing benefits concluded that this was not in accordance with Dutch law.

It could be argued that some control presently exists on the basis of the principles of the present law, particularly the provision to the effect that personal data files may only be used in accordance with the purpose of such use.

4.3.9 Supervisory Authority

Article 8 of the Dutch Data Protection Act deals with the status and tasks of the supervisory authority, known in the Netherlands as the Registration Chamber. Its tasks include:

- the supervision of the operation of personal data files in accordance with the law and for the purpose of the protection of privacy in general;
- advising the Minister(s) concerned, both on request and on its own initiative, regarding the implementation of the law and other associated topics;
- the submission of annual reports on its work and findings.

Figure 4.2 indicates the various relationships, constraints and links between the various persons affected by the Dutch Act.

4.4 Analysis of the scope and content of the proposed Directive

This analysis is based on the text of the proposed Directive dated June 20, 1994

4.4.1 Introduction

Article 1 of the proposed Directive provides an immediate taste of its underlying rationale. It is to protect fundamental rights and freedoms of natural persons, in particular their right to privacy in the processing of personal data whilst requiring no restrictions or prohibitions on the free flow of personal data between Member States.

The proposed Directive posits what appears to be a more complex arrangement of relationships, constraints and links to those under existing United Kingdom in particular. Figure 4.3 gives an indication of this increased complexity and should be compared with the previous two figures. However, it should be noted that there is, by necessity, some duplication of obligations. For example, the controller has an obligation to notify

the data subject prior to disclosure to a third party for the purposes of marketing by mail. This is shown twice, once in the relationship between the controller and the data subject and, again as between the controller and third party, as a precondition to a disclosure to a third party for such purposes.

Table 4.1 which follows the figure provides more information on the relationships, constraints and links indicated.

4.4.2 Scope of proposed Directive

The proposed Directive applies to the processing of personal data wholly or partly by automatic means and to manual processing of personal data forming part of a file or intended to form part of a file, Article 3(1). It does not apply to processing in the course of an activity outside the scope of Community law (for example, concerning national security) nor to processing by a natural person in the course of a purely personal or household activity, Article 3(2).

4.4.3 Overview

At the heart of the proposed Directive are a set of Data Protection Principles which are expressed in Article 6. Perhaps the most important principle is the first one which states that personal data must be processed fairly and lawfully.

The proposed Directive posits a framework of data protection not unlike that currently in place in the UK and the Netherlands. Fundamental tenets are:

- transparency - through notification of processing activities and information to data subjects;
- rights of data subjects to obtain access, rectification, etc.;

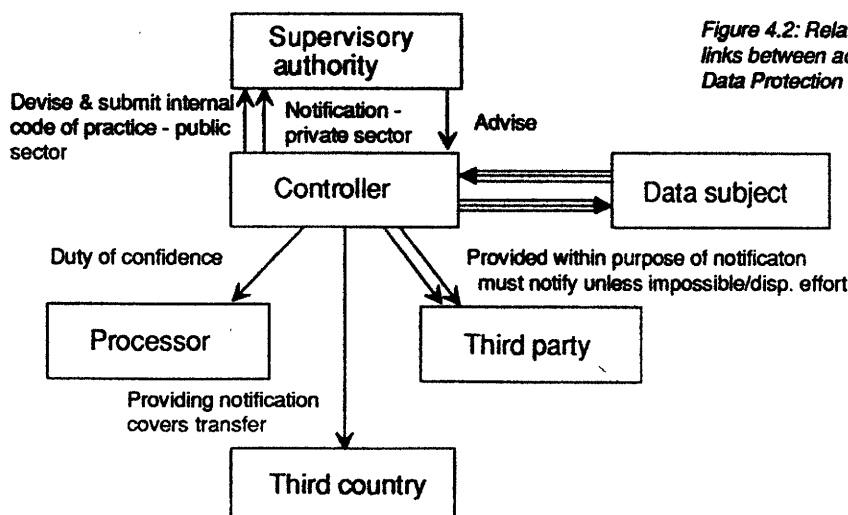


Figure 4.2: Relationships and other links between actors, Dutch Data Protection Act 1988

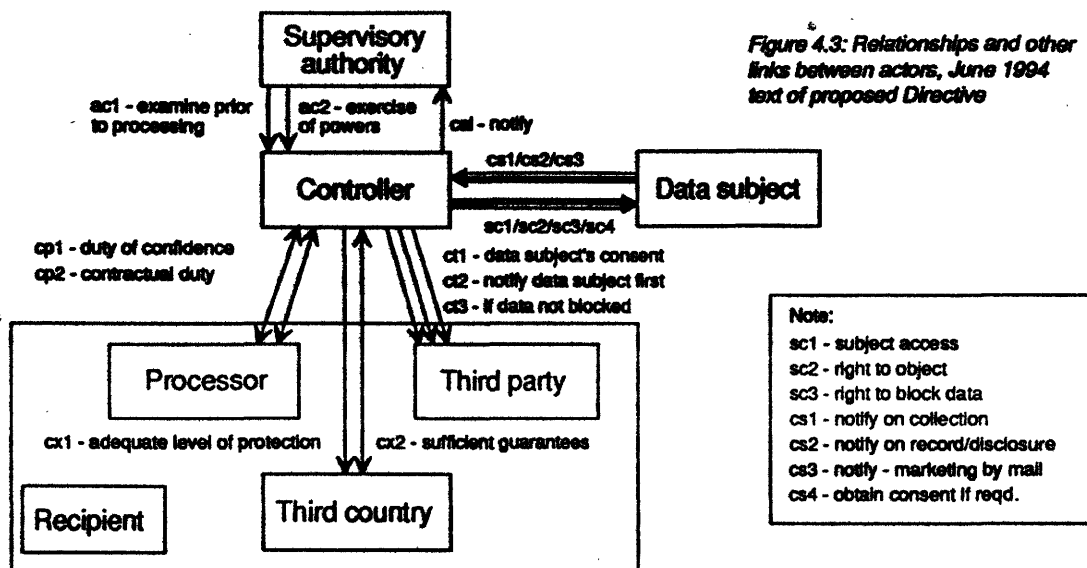


Table 4.1: Key to relationships in Figure 4.3 (references are to the coding used in the figure)

Ref.	Description
data subject - controller	
sc1	data subjects' right of access, Article 13, subject to exemptions in Article 14. Includes right of rectification, erasure or blocking of data
sc2	data subjects' right to object to processing, Article 15(a) (where processing is performed under Article 7(e) or (f))
sc3	data subjects' right to have data used or disclosed for marketing by mail blocked, Article 15(b)
controller - data subject	
cs1	obligation to notify data subject on collection of data, Article 11
cs2	obligation to notify data subject on recording or disclosure of data, Article 12 (but not if impossible or requires disproportionate effort)
cs3	obligation to inform before disclosure for purposes of marketing by mail and to give data subjects right to have data blocked, Article 15(b)
cs4	obligation to obtain data subjects' consent to processing unless covered by Article 7(b) to (f)
controller - supervisory authority	
ca1	notify of processing operations unless exempt, Article 18
supervisory authority - controller	
ac1	examine processing sensitive data prior to processing, Article 19(3)
ac2	powers of investigation, supervision, intervention and prosecution, Article 30
controller - third party	
ct1	obligation to obtain consent prior to disclosure of sensitive data by foundation, charity, trade union, Article 8(2)(b)
ct2	obligation to notify data subject before disclosure to third party unless impossible or disproportionate effort, Article 12(2)
ct3	obligation to inform and give data subject right to block data before disclosure, Article 15(b)
controller - processor	
cp1	obligation of confidence imposed on processor, Article 17
cp2	obligation to provide for processing by processor only under written contract imposing obligations on processor, Article 17a
controller - third country	
cx1	transfer to country providing adequate level of security, Article 26
cx2	transfer to country not providing adequate level of security under certain conditions and subject to sufficient guarantees, Article 27

- obligations on data controllers to ensure data quality.

In addition, more explicit control over processing of sensitive data is proposed. Data subjects are also given a right to object to processing on legitimate grounds and, in some cases, to have personal data relating to them blocked.

Some particular concerns are dealt with in the proposed Directive especially in connection with the freedom of the press and creative expression, security of processing, marketing by mail and transfer to third countries not having adequate levels of protection for personal data.

The proposals contain a number of derogations and options that Member States may take advantage of. For example, exemption from notifying the supervisory authority of processing operations may be allowed in some cases, or a simplified notification procedure may be adopted for some forms of processing. Whilst offering the possibility of relieving the bureaucracy of data protection, controllers (those who decide the purposes of processing personal data) must be able to provide any person on request with equivalent information.

There is no requirement under the proposed Directive for processors, acting on behalf of data controllers, to submit a notification to the supervisory authority.

The extension of data protection legislation to manual processing has not been without controversy but remains a key point in the proposed Directive. In principle, there is no reason why the data protection principles, which are of themselves uncontroversial and generally accepted as setting desirable standards of data processing, should not be applied to manual processing. However, and bearing in mind the vast amount of personal data held in manual files, a period of grace of up to eight years (five years for sensitive data) is provided for by the proposed Directive unless and until the data are further processed.

4.4.4 Key definitions

A number of important definitions are contained in the proposed Directive in Article 2. They are not exactly equivalent to definitions in the existing UK and Dutch law. In some cases, the definitions in the proposed Directive are considerably wider (for example "processing").

"Personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an

identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

"Processing of personal data" means any operation or set of operations performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

"Personal data file" means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographic basis [this definition is important in determining the scope of the proposed Directive in terms of manual processing].

"Controller" means any natural or legal person, public authority, agency or other body which determines the purposes of processing of personal data [there is provision for the naming of controllers in respect of processing the purposes of which is determined by national or Community law].

"Processor" means any natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

"Third party" means any natural or legal person, public authority, agency or other body other than the data subject, the controller, the processor and the person who, under the direct authority of the controller or processor, is authorized to process the data.

"Recipient" means any natural or legal person, public authority, agency or other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a one-off inquiry shall not be regarded as recipients [Note: "recipient" includes third parties and processors].

"The data subject's consent" means any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed; withdrawal of consent by the data subject shall be without retroactive effect

4.4.5 Description of provisions

One way of viewing the proposed Directive is in terms of the activities that it affects. Those activities will be considered *seriatim* below and are:

- notification of processing operations;

- processing of personal data, including the disclosure of data to third parties;
- transfers of personal data to third countries

Of course, where the controller has been required to notify his processing operations, that processing, disclosures to third parties, transfers to third countries, etc. must all be in accordance with his notification.

Notification of Processing Operations

Article 18 places an obligation on controllers to notify the supervisory authority before carrying out any wholly or partly automatic processing operation. However, Member States may exempt from notification categories of processing operations that are not likely to affect adversely the rights and freedoms of data subjects. (Simplification of notification is another option.) If exempt (or if simplified notification applies), Member States may lay down conditions. In the case of exemption, Member States may require the appointment of a data protection official responsible, *inter alia*, for holding a register of processing operations.

By Article 8(3), exemption in relation to processing of "sensitive data" (defined in Article 8(1)) is possible in terms of processing for the legitimate activities of a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade union aim within Article 8(2)(b).

Member States may require that some or all non-automatic processing operations involving personal data be notified or subject to a simplified notification, Article 18(4).

The information to be given in the notification, by Article 19(1), shall include:

- the name and address of controller and representative, if any;
- the purpose or purposes of the processing;
- a description of the category or categories of data subject and of the data or categories of data relating to them;
- the recipients or categories of recipients to whom the data might be disclosed;
- a description of proposed transfers of data to and from third countries;
- a description allowing an assessment to be made of the appropriateness of the measures taken pursuant to Article 17 to ensure security of processing

The supervisory authority is, by virtue of Article 19(3), given a power to examine notified operations which pose risks, prior to the commencement of processing, particularly in relation to the processing of sensitive data. There is a two month time limit for such examinations.

Processing of Personal Data, including Disclosure to Third Parties

Article 6 contains a set of principles relating to data quality. The principles in the proposed Directive are concerned with:

- processing fairly and lawfully;
- collection for specified, explicit and legitimate purposes;
- adequacy, relevancy and non-excessiveness;
- accuracy and contemporaneity;
- identification of the data subject for no longer than is necessary

Member States may restrict the obligations and rights contained in the principles by extending the Article 14 exemptions to them (national security, defence, public security, crime, etc.).

Article 7 lays down principles relating to the grounds for processing and states that personal data may only be processed if one of the following apply:

- the data subject has given his unambiguous consent;
- processing is necessary for the performance of a contract to which the data subject is a party (or preliminary to such a contract at the request of the data subject);
- processing is necessary in order to comply with a legal obligation imposed on the controller;
- processing is necessary in order to protect the vital interest of the data subject;
- processing is necessary for the performance of a task carried out in the public interest or carried out in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;
- processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party to whom data are disclosed, except where such interests are overridden by the interests of the data subject which require protection under this proposed Directive.

Specific conditions apply to the processing of special categories of data ("sensitive data") by Article 8. Data whose processing may affect the fundamental freedoms of privacy, such as data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning health or sex life may not be processed as a general rule. However, there are exemptions to this general principle:

- where the data subject has given explicit consent (unless the prohibition is unwaivable);
- where processing is necessary for the purposes of fulfilling labour law obligations of the controller (provided for by legislation containing adequate safeguards);
- processing is necessary to protect the vital interests of the data subject or another person;
- where processing is carried out in the course of the legitimate activities of a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to members or persons who have regular contacts with it in connection with its purposes and the data are not disclosed to third parties without the data subject's consent;
- where the processing relates to data which are manifestly public;
- the data are required for the purposes of preventative medicine, medical diagnosis, the provision of care or treatment or the management of health care services and where the data are processed by a health professional or another person subject to an obligation of professional secrecy ;
- processing of data relating to offences, criminal conviction or security measures may only be carried out under the control of official authority (there may be derogations except in relation to a register of criminal convictions).

By Article 8(3) Member States may lay down further exemptions on the basis of important public interest and, by Article 8(4), Member States may provide that data relating to administrative sanctions and civil trials shall be processed under the control of official authority.

Furthermore, by Article 8(6), Member States shall determine the conditions under which a national identification number or other general identifier may be processed.

By Article 16(1), every person shall have a right not to be subjected to a decision which produces legal effects concerning him which is based solely on automatic processing defining a personality profile. However, there are two major exceptions and the automated decision-making may still be performed if either of the following apply:

- the decision is taken in the course of the entering into or performance of a contract, provided any request by the data subject has been satisfied, or that there are suitable measures to safeguard his legitimate interests, which must include arrangements allowing him to defend his point of view; or
- the decision is authorized by law which also lays down measures to safeguard the data subject's legitimate interests.

Positive action is required by means of legislation or court decision for the second exception to apply.

By Article 11, information must be given to data subjects from whom data are being collected (unless already in possession of such information). The information that must be given is:

- the purpose of the processing for which the data are intended;
- the obligatory or voluntary nature of any reply to the questions to which answers are sought and the consequences for him if he fails to reply;
- the recipients or categories of recipients of the data;
- the name and address of the controller and of his representative, if any.

Also, unless previously informed, by Article 12(1) similar information must be given to the data subject when the data are recorded (the same applies to disclosure to a third party, see *infra*). In many cases, the data subject will have been informed previously. The controller is excused this requirement if it proves impossible or involves a disproportionate effort, Article 12(2). However, Member States shall provide appropriate safeguards in such cases.

The Article 14 exemptions may be applied to the above requirements of notifying the data subject (national security, defence, public security, crime, etc.).

The data subject has, by Article 15(a), a right to object on legitimate grounds (for example, data relating to him are inaccurate or are otherwise being processed in contravention of proposed Directive). Where the objection is justified, the controller may no longer process these data. Legitimate grounds would be where

the processing is in contravention with the other provisions of the proposed Directive.

By Article 15(b), the data subject has a right to obtain, free of charge, the blocking of personal data which the controller anticipates being processed for the purposes of marketing by mail. (This right arises again if the data are to be disclosed to third parties, see *infra*).

Transfer of Personal Data to Third Countries

The intention is to provide for the free flow of personal data throughout the EC. Thus, Article 4 provides that a controller shall only be subject to the national law of the Member State in which he is established. By Article 26(1), transfer to third countries (outside the EC) of personal data which are undergoing processing or are intended for processing after transfer will be allowed only if the third country in question has an adequate level of protection.

Article 26(2) defines adequacy of protection in terms of, particularly, the nature of the data, the purposes and duration of the processing operations, the country of final destination, the rules of law in force in the country in question and the professional rules and security measures that are complied with in that country.

Notwithstanding the above, transfer to countries without an adequate level of protection may still be permitted under any of the following circumstances, by Article 27(1):

- the data subject has explicitly consented to the proposed transfer;
- the transfer is necessary for the performance of a contract between the data subject and the controller (or preliminary to such a contract in response to the data subject's request and provided he has been informed that the third country does not ensure an adequate level of protection);
- the transfer is necessary for the performance of a contract concluded in the interest of the data subject between the controller and a third party;
- the transfer is necessary on important public interest grounds;
- the transfer is necessary in order to protect the vital interests of the data subject.

By Article 27(2) and subject to Article 27(1), Member States may authorize a transfer or category of transfers of personal data to a third country which does not ensure an adequate level of protection (within the meaning of Article 26(2)) where the controller adduces sufficient guarantees with respect to the protection of the private lives and basic rights and freedoms of

individuals (such guarantees may result from terms in a contract).

Provisions are proposed for Member States to inform each other if they consider a third country does not have an adequate level of protection (Article 26(3)). The Commission may take action by requiring other Member States to ban the transfer of personal data to such countries (Article 26(4)) and may enter into negotiations with such countries with a view to remedying the situation, Article 26(5). Member States must take the measures necessary to comply with the Commission's decision (either that personal data may not be transferred to a third country or that a third country does ensure an adequate level of protection).

4.4.6 Relationships

Another way of looking at the proposed Directive is in terms of relationships, primarily concerning the controller as one of the parties to the relationship. The relationship between the controller and the data subject is of prime importance, as might be expected. However, the controller may also be in a relationship with the supervisory authority, a processor, third party and, even, any person whether or not a data subject. Those relationships and their corresponding duties and obligations and powers are examined more closely below. (By necessity, there is some overlap with what has been discussed before in this chapter, but examining relationships in addition to activities provides a deeper insight into the workings of the proposed Directive.)

Controller - Data Subject

The proposed Directive gives data subjects a number of rights which are driven by data subjects with the corresponding obligations placed on controllers such as subject access. Additionally, controllers also have some obligations to inform data subjects. In terms of the former, the controller behaves in a reactive sense but in the latter cases, the controller must be proactive.

Data subject driven rights

Right of Access: Data subjects have a right of access by Article 13. This is a right to obtain at reasonable intervals and without constraint from the controller without excessive delay or expense:

- confirmation as to whether or not the controller is processing personal data relating to the data subject;
- information as to the purposes of the processing;
- the categories of data concerned;
- the recipients or categories of recipients to whom the data are disclosed;

- communication in an intelligible form of the data relating to the data subject and any available information as to their source;
- knowledge of the logic involved in any automatic data processing operations with which the data subject is confronted (particularly where based solely on automatic processing defining a personality profile within Article 16(1)).

The right of access includes a right to obtain the rectification, erasure or blocking of data, the processing of which does not comply with the provisions of the proposed Directive, in particular because they are incomplete or inaccurate, Article 13(2). This extends to informing third parties to whom the data have been disclosed unless impossible or if it involves a disproportionate effort, Article 13(3).

Article 14 contains a number of exemptions from the right of access which may be adopted by Member States. They are available when the restriction is necessary to safeguard:

- national security;
- defence;
- public security;
- the investigation, detection and prosecution of criminal offences;
- an important economic or financial interest of a Member State or the European Union, including monetary, budgetary and taxation matters;
- a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority;
- the protection of the interests of the data subject;
- the protection of an equivalent right or freedom of another person;
- [where obliged to do so by Community law].

The right of access may also be limited where the data are only temporarily in personal form which are intended to be processed solely for the purposes of creating statistics, for example, for scientific research, Article 14(2).

Right to Object: Where the processor is processing under Article 7(e) (necessary for the performance of a task carried out in the public interest) or Article 7(f) (necessary for the purposes of the legitimate interests pursued by the controller or third parties of persons to whom the data are disclosed), the data subject has a right to object on legitimate grounds, Article 15(a). The controller may no longer process these data. Recital 20

suggests that "legitimate grounds" are when the data are being processed in contravention of the provisions of the proposed Directive and not simply based on the whim of the data subject.

Right to Blocking of Data to be Processed for Marketing by Mail: Article 15(b) gives the data subject a right to obtain on request and free of charge the blocking of personal data to be processed or disclosed to third parties or used on their behalf for the purposes of marketing by mail. If the right is not exercised, the data subject must be informed before disclosure and expressly offered the right of blocking.

The wording of Article 15(b) in the June 1994 text, is not entirely clear. It would seem to suggest that every time data relating to the data subject are to be disclosed to a third party (or used on that third party's behalf) for the purposes of marketing by mail, the data subject must be informed and offered the opportunity to have the data blocked.

Controller's Obligations

To Inform Data Subject On Collection of Data: The controller (or his representative) must provide a data subject from whom data relating to himself are collected with a minimum of the following information, except where it is already in the data subject's possession (Article 11).

- The identity of the controller and representative, if any;
- the purposes of the processing for which the data are intended;
- the recipients or categories of recipients of the data;
- the obligatory or voluntary nature of any reply as well as the possible consequences of failure to reply.

The subject access exemptions may also be applied to this obligation.

Informing the Data Subject when Data are Recorded or Disclosed to a Third Party: The controller or representative must provide the data subject with information when recording the personal data or at the time of first disclosure to a third party except where the information is already in the possession of the data subject, Article 12(1). The information to be provided is:

- the identity of the controller and representative, if any;
- the purposes of the processing;
- the recipients or categories of recipients;

- the categories of data concerned.

However, this does not apply where it would prove impossible or would involve a disproportionate effort (Article 12(2)). In such cases, Member States shall provide appropriate safeguards.

Marketing by Mail: As discussed above, the controller has a duty to inform a data subject who has not exercised his right of blocking that his personal data are to be disclosed to a third party (or used on behalf of a third party) for the purposes of marketing by mail, Article 15(b). The controller must also give the data subject an opportunity to have the data blocked prior to such disclosures.

Data Subject's Consent to Processing/Disclosure: Apart from what has been indicated above, in rare cases, the controller must seek the data subject's consent to processing or disclosure. One of the grounds for processing data is the data subject's unambiguous consent, Article 7(a). However, this would be rarely required as Articles 7(b) to (f) provide other grounds for processing not requiring the data subject's consent.

Consent to disclosure could be required by Article 8(2)(b) - processing of special categories of data ("sensitive data") by a foundation, association or any other non-profit-seeking body, etc. The data subject's consent is required for disclosure to third parties if Article 8(2)(b) is to apply.

Controller - Supervisory Authority

Unless exempt, controllers have a duty to notify the supervisory authority of their proposed processing operations, as discussed earlier. The supervisory authority will check the notification to ensure that the requirements of the proposed Directive are being complied with. The supervisory authority's interpretation of the principles relating to data quality, *inter alia*, and how they impact on the controller's intended processing will be highly significant.

By Article 30, the supervisory authority is given powers to enforce the data protection provisions which may entail the investigation of the controller's processing, interventionary powers and the power to prosecute violations.

The supervisory authority is also given the power to examine notified operations prior to processing under Article 19(3).

Controller - any person

Where notification is not required (that is, where the controller is exempt from notification), any person is entitled to obtain on request, by Article 20(3), the information normally specified in the notification with

the exception of the description of security measures taken under Article 17. (In cases where notification is required, the obligation to provide this information is satisfied by the fact that the register will be available for public inspection, Article 20(2).)

Controller - processor

An obligation of confidence is imposed on a processor by Article 17 in that the processor must not disclose personal data to a third party except on instructions from the controller.

Where processing is carried out on behalf of the controller by a processor, the controller must, by Article 17a(2) to (4) ensure that:

- he selects a processor who provides sufficient guarantees in respect of the technical security measures and organizational measures governing the processing and the controller ensures compliance with those measures;
- the processing must be governed by a binding contract in writing stipulating that the processor must act only on instructions from the controller and placing duties on the processor in respect of security measures as laid out in Article 17a(1).

Controller - third party

The notification must stipulate the recipients or categories of recipients to whom personal data might be disclosed. (Note, "recipient" includes third parties but is not restricted to third parties. It will, for example, include processors.) Bearing in mind that some forms of processing may be exempt from notification, this gives the supervisory authority some control over disclosure to third parties. If the authority anticipates that a particular third party or category of third parties is likely to be in breach of the provisions in the proposed Directive, such as the principles relating to data quality, the authority may require or stipulate that such disclosures do not go ahead.

The relationship between the controller and a third party is not directly affected by the proposed Directive. However, before personal data can be transferred to a third party, the controller may have to inform the data subject and/or obtain the data subject's consent.

The controller has an obligation to obtain the consent of the data subject prior to disclosure of sensitive data by a foundation, association or any other non-profit-seeking body, etc. (Article 8(2)(b)).

The controller has an obligation to notify the data subject before disclosure to a third party unless this proves impossible or involves a disproportionate effort, Article 12(2)

The controller also has an obligation to inform the data subject and give him a right to block data before disclosure to a third party where the data are to be used for marketing by mail, Article 15(b)

4.4.7 The Supervisory Authority

The supervisory authority's duties and powers are laid down in Article 30 (more than one supervisory authority may be set up by a Member State). It will be responsible for monitoring the application of the national provisions adopted in pursuance of the proposed Directive and act in complete independence in the exercise of its functions.

The supervisory powers of the authority are, to some extent, implicit in the provisions of the proposed Directive. For example, the power to reject or accept, whether subject to modification or not, notifications by controllers and the power to enter into negotiations with various bodies representing controllers and data subjects.

Specific powers of the supervisory authority are set out in Article 30(2) and are:

- **investigative powers - including powers of access to data and information collection necessary for the performance of its supervisory duties;**
- **effective powers of intervention - for example, delivering opinions under Article 19(3) before processing of, especially, sensitive data is carried out; ensuring appropriate publication of such opinions; ordering blocking, erasure or destruction of data; imposing temporary or definitive bans on processing; warning or admonishing the controller; referring the matter to the national parliament or other political institutions;**
- **the power to engage in legal proceedings where there has been a violation of the national provisions adopted in pursuance of the proposed Directive.**

Decisions of the supervisory authority are subject to appeal to the courts.

The supervisory authority shall hear claims concerning the protection of persons' rights and freedoms, Article 30(3). Also, by Article 30(3), there is provision for the supervisory authority to hear claims for checks on the lawfulness of processing in situations where the subject access exemptions adopted under Article 14 apply. The person concerned must be informed subject to the interests to be protected being fully respected.

The supervisory authority must publish a report on its activities at regular intervals (probably an annual report), Article 30(4).

There are provisions for supervisory authorities in the Member States to cooperate with one another and to forward requests from persons concerning the processing of data where the controller is established in another Member State to the supervisory authority in that other Member State, Article 30(5).

Member States shall ensure that staff of supervisory authorities shall be subject a duty of confidence even after their employment is terminated, Article 30(6).

By Article 31(1a), the Working Party on the protection of individuals with regard to the processing of personal data, set up under the proposed Directive, shall include a representative of the supervisory authority or authorities of each Member State.

4.4.8 Derogations and options

The opinions and assumptions made below are the result of a detailed consideration of the provisions of the proposed Directive, existing law and the other sources mentioned above. Also, they have been informed by consultation with a number of persons and bodies.

Described below are the derogations and points of discretion specifically and expressly provided for in the June 1994 text of the proposed Directive on the protection of individuals with regard to the processing of personal data.

Article 5 gives Member States discretion in determining the precise conditions under which processing is lawful within the limits of the provisions of Chapter II (Articles 5 to 21 inclusive).

Article 7(f) implicitly gives discretion to the supervisory authority to determine its scope (subject, of course, to challenge and clarification in the courts) and, hence, the scope of instances when the data subject's consent under Article 7(a) is required, unless any of the other grounds for processing in Article 7(b) to 7(e) apply.

Article 8(3) - Member States may lay down additional exemptions in terms of the processing of sensitive data on the grounds of important public interest.

Article 8(4) - Member States may allow processing of data relating to offences, criminal convictions or security measures by persons other than under the control of official authority, subject to safeguards, but registers of convictions may only be kept under the control of official authority.

Article 8(4) - Member States may provide that data relating to administrative sanctions or civil trials may only be processed under the control of official authority

Article 14(1) allows restrictions to be imposed by Member States on the rights and obligations provided for by:

- *Article 6(1)* - principles relating to data quality;
- *Article 11* - informing the data subject on collection;
- *Article 12(1)* - informing the data subject on recording or disclosure;
- *Article 13* - data subject's right of access;
- *Article 21* - publicizing processing operations.

Such restrictions may be provided for to safeguard national security, defence, etc.

Article 14(2) - Member States may limit the right of access when data are temporarily in a personal form prior to conversion to statistics such that the data subject can no longer be reasonably identified.

Article 16(2)(b) - Member States may by law authorize automatic processing defining a personality profile subject to safeguards protecting the data subject's legitimate interests.

Article 18(2) allows Member States to simplify or exempt from notification processing operations not likely to affect adversely the right and freedoms of data subjects. Member States may specify "conditions" and/or may require, in the case of exemption, the appointment of a data protection official by the controller. That official would be responsible for the maintenance of a register of processing operations.

Article 18(3) - Member States may exempt from notification the processing of sensitive data for the legitimate activities of a foundation, association or any other non-profit-seeking body, etc., under Article 8(2)(b).

Article 18(4) - Member States may require notification of some or all manual processing operations.

Article 19(3) gives discretion to the supervisory authority to examine notified processing operations prior to the commencement of processing - a two month time limit is set for such examination.

Article 21(3) allows Member States to exempt, from the publicity provisions, processing operations whose sole object is holding registers established by national law in

order to provide information to the public (for example, a register of births, marriages and deaths).

Article 26(2) deals with the adequacy of protection afforded by third countries. One question raised is who decides? Perhaps this is something that a Member State would leave to a supervisory authority. It may be that a presumption is raised by Article 26(2) and (3) in favour of transfer unless the supervisory authority decides otherwise or, of course, where the Commission has confirmed a decision of a Member State to the contrary.

Article 27(2) - under certain conditions in Article 27(1), Member States may authorize transfer to third countries that do not afford an adequate level of protection if the controller can adduce sufficient guarantees. This will be a matter, at least initially, for the supervisory authority.

Article 35(2) allows Member States to delay the implementation of the proposed Directive in the case of manual files for up to eight years after adoption of the proposed Directive (five years in the case of sensitive data) unless the data are further processed in the meantime.

4.5 Implementation of the proposed Directive into United Kingdom Law

Of specific interest is the manner in which the proposed Directive would be implemented into United Kingdom law. Two types of provision are important in this respect. Some provisions contain express discretionary derogations and options. These allow Member States a degree of latitude in their selection of the precise model of data protection to be implemented.

Other provisions contain a degree of discretion associated with the interpretation of its precise meaning and scope. The recitals to the proposed Directive may give some assistance in such cases as may the present regime of data protection in the United Kingdom. Other useful, though not binding, sources include the House of Lords Report on data protection and the views of the Data Protection Registrar (see, for example, the discussions in his annual reports). In some cases, analogies can be drawn with other legislation and common law sources concerning individuals' rights and freedoms in relation to information concerning them. Overall, where the meaning of a provision would otherwise remain unclear, it is reasonable to take a purposive interpretation as in, for example, the mischief rule in *Heydon's case* (1584) 3 Co. Rep. 7a.

4.5.1 Assumptions made regarding the derogations for the purposes of study

Scope of lawful processing - the principles (Article 6): the UK will retain the existing law and, in particular, case law such as the decisions of the Data Protection Tribunal in *Innovations (Mail Order) Ltd. v. Data Protection Registrar*, (unrep.) 29 September 1993, and *Equifax Europe Ltd. v. Data Protection Registrar*, (unrep.) 28 February 1992 as regards the meaning of "fairly"; *Rhondda B.C. v. Data Protection Registrar* (unrep.) 11 October 1991 as regards the excessiveness of data; the Court of Appeal's view of the scope of the exemptions from disclosure in *Rowley v. Liverpool City Council* (unrep.) 24 October 1989 and the same court's opinion as to the meaning of use of data in *Rv. Brown* (unrep.) 4 June 1993.

Article 7(f) (processing necessary for the purpose of the legitimate interests pursued by the controller or third party etc.) will have wide application.

Article 8(4) gives scope to allow organizations (other than official authorities or by another under the control of official authority) to process data relating to convictions. The UK will allow relevant organizations (credit reference agencies, banks and insurance companies) to hold information as to the fact that a person has been convicted of a criminal offence, subject to the Rehabilitation of Offenders Act 1974. This will not be a register as such but just information appended to the entry relating to the person concerned.

The UK will not require that data relating to civil judgments, for example, where judgment has been made against a person who has defaulted on a loan, must be processed under the control of official authority. Relevant organizations will be able to process such data; for example, credit reference agencies, financial institutions and insurance companies. The scope of organizations that can hold such data (and the same applies in the case of criminal convictions) will be determined by application of the principles relating to data quality.

In terms of exemptions from the requirements of the proposed Directive contained in Article 14(1), it is most likely that the UK will adopt a similar regime as now in place. That is, some processing operations will be exempt from subject access and some from non-disclosure, etc.

The UK will limit the right of access to data temporarily in a personal form awaiting conversion to statistical data.

Automatic processing defining personality profiles - positive legislative (or judicial) action has to be taken

to allow this (apart from the contractual provision in Article 16(2)(a)). Initially, no action will be taken by the UK. In terms of credit scoring in the course of entering into a contract, Article 16(2)(a) will apply.

The UK will adopt the following mechanism as regards notification:

- the processing of non-sensitive data will be exempt broadly along the lines suggested by the Data Protection Registrar in his report of June 1993;
- the appointment of data protection officials will not be required;
- processing sensitive data by foundations, trade unions, etc. will be exempt from notification;
- notification of manual processing will not be required (even if concerning sensitive data processed under Article 8)

The UK will exempt public records from the publicity provisions in Article 21.

In terms of transfer of data to third countries, this will be a matter for the supervisory authority in the first instance unless the Commission has already confirmed the decision of another Member State that a third country does not afford an adequate level of protection, in which case Member States will take appropriate action. In time, a list of "no-go" areas may evolve. This is difficult to predict at this stage. Even with respect to such countries, transfer will still be allowed under certain circumstances (for example, with the data subject's consent or in the context of a contract). The supervisory authority may authorize such transfers if satisfied as to the controller's guarantees.

The UK will take advantage of the provisions allowing delay of implementation of the proposed Directive in respect of manual files contained in Article 35(2).

4.5.2 Points of interpretation

Article 2(c) - "personal data file" (this is important as regards the scope of manual processing within the proposed Directive). As a personal data file must be a structured set of personal data accessible according to specific criteria, this means that it will apply to, for example, a card index system or set of paper files each having a data subject's name or other identification on them. It will not apply to general correspondence files where abstracting data relating to a specific individual cannot be performed easily (there is no structure to the personal data nor are the data accessible by specific criteria). This interpretation is entirely consistent with the "mischief" addressed by the proposed data protection law.

Article 6 - the principles relating to data quality. The effect of these principles will be similar to the equivalent principles in the Data Protection Act 1984 as they have been interpreted and applied in the UK, particularly in the light of decisions of the Data Protection Tribunal and the courts.

Article 12(2) - "disproportionate effort" (Member States to provide appropriate safeguards). Whether an organization can rely on this exception to notification when data are recorded or disclosed to a third party could have significant financial implications. The fact that notification could be very costly could show that the effort required is disproportionate though this is unlikely to be conclusive. However, the question must be asked - disproportionate to what? Presumably it must be in terms of the rights and freedoms of natural persons. It is not possible to provide a general formula and it is a matter of looking at each case on its facts. In many cases, however, notification will not be necessary because the data subject will already be in possession of the information.

Article 13(1) - right of access - knowledge of the logic in automatic data processing operations. Where relevant, the controller will have to disclose sufficient detail in a general way to enable to a data subject to understand the basis of the decision affecting him but will not have to disclose detail to such an extent as could encourage or assist the carrying out of fraud against the controller or another person.

Article 15(a) - right to object on legitimate grounds. These are grounds where data are inaccurate or processing is unlawful in terms of the provisions of the proposed Directive. This does not allow a data subject to object simply because he does not want his personal data processed by the controller.

Article 15(b) - right to block data and when data subject must be informed of this right. It is assumed that a once only notification will be required rather than notification EVERY time the data are to be disclosed for marketing by mail (even though that seems to be the literal interpretation of the Article). The justification for saying that a single opportunity to have the data blocked be afforded to the data subject is on the basis that the mischief of marketing by mail can be simply met by a single notification, particularly if the notice to the data subject is worded so as to cover other future similar disclosures. The first principle in Article 6(1) that processing must be fair and lawful could also impact on this provision. It is possible that a significant proportion of data subjects would exercise this right to have data for marketing by mail blocked.

Article 16 - personality profiles. A personality profile is personal information (possibly also demographic and other data) concerning a number of characteristics of the data subject; for example, lifestyle data. It is not a simple credit blacklist. As far as "legal effects" are concerned these are taken to include legal powers as well as rights (otherwise, where, as a result of the automatic processing, the controller or third party refuses to enter into a contract with data subject, it could be argued that there have been no legal effects as the data subject does not have a right to enter into a contract, merely a power.)

4.6 Implementation of the proposed Directive into Dutch Law

4.6.1 General assumptions made regarding the derogations

The position of the Dutch Ministry of Justice is that the proposed Directive should not lead to additional bureaucracy and regulations. A balance should be established between the protection of data subjects as regards the processing of their personal data, and the interests of the private and public sectors in being able to process these data. Further, the Minister stresses that it is highly desirable that the text of the provisions provide clarity regarding the intention of the legislation. This applies to both European and national legislation. In general the Minister considers that the provisions of the proposed Directive must allow controllers to proceed with their activities in a normal manner, provided they act according to the basic principles of good faith and fair dealing.

The Ministry of Justice considers that the proposed Directive offers the opportunity to simplify the present notification procedures under Dutch law. The Ministry expects that, in the future, controllers will be confronted with less administrative burdens than is the case at present. The Ministry intends to make full use of the simplified notification procedures under the proposed Directive. The rights accorded to data subjects under the proposed Directive offer adequate protection as a compensation for simplified notification procedures.

In the opinion of the Dutch Registration Chamber:

- The proposed Directive offers a balanced set of rules.
- The existing system of law will be affected by the implementation of the proposed Directive but the consequences will be limited.
- The Registration Chamber stresses that "once the dust is settled" the new system will look very much

like the present Dutch system. The Registration Chamber has emphasized that both the Dutch Data Protection Act and the proposed Directive apply the principles laid down in Convention 108. Further, the application of the provisions of the Dutch Data Protection Act in the light of its legislative history has resulted in an interpretation of the law that appears to be generally in line with the provisions of the proposed Directive. Nonetheless, there remains scope for some differences to arise in the day to day operation of the legislation arising from the proposed Directive.

The Registration Chamber considers that some difficulties may arise regarding uncertainty in determining the actual meaning and scope of the proposed Directive. This applies equally to the present Dutch legislation, which has already been in effect for five years. A problem in this respect is that case law on privacy issues (and hence the interpretation of various rules) is seldom published. Indeed, the decisions of the Registration Chamber were not published until recently. This means that organizations and data subjects are not familiar with the precise meaning and effect of the existing law. However, recently this situation has improved as decisions of the Registration Chamber on privacy issues are now being published through various channels.

4.6.2 Specific assumptions for the purposes of study

Notification Procedures

The processing of non-sensitive data will be exempt, along the lines of the regime presently in force. Furthermore, notification of manual data will not be required. At present the public sector is required to include detailed information in a statement (internal regulation), instead of notification. This is not required by the proposed Directive which merely defines the information to be made available on request, but the overall effect is likely to be similar. Further, both the proposed Directive and the Dutch Data Protection Act provide for the possibility to exempt certain categories of processing from the notification requirement. Article 19 enables exemption from notification for small and medium sized enterprises carrying out processing of non-sensitive data (in a wide sense) such as contained in payroll, customer, supplier, subcontractor and client databases. The Dutch legislature has expressed its intention to make full use of the opportunity to exempt types of data users. Hence, no great differences are expected in this respect. There is an overriding requirement that exemption from or simplification of notification can only be permitted if the categories of processing operation concerned do not adversely affect the rights and freedoms of data subjects.

Informing Data Subjects

The proposed Directive includes the principle that it is not necessary to provide information if it is already in the possession of the data subject. It should be noted that the criterion "possession" does not imply that the data subject has the information on paper. The Ministry of Justice takes the view that the proposed Directive does not require the data subject to be aware of the information and that it is sufficient under Article 11 and 12 that the information is mentioned on a periodical bank account, a receipt or commercial mailing.

As regards the data subject's right to be informed of disclosures to third parties or categories of third parties, the absence of a specific time limit under the proposed Directive provides controllers with leeway in deciding on the specific time period within which information is provided. This may be interpreted as less onerous than the Dutch Data Protection Act which states a specific time limit, being one year following the request.

The Dutch officials interpret the regimes imposed by Article 11 and Article 12 as separate. Thus, the rationale behind Article 11 is that the data subject is informed about the purpose of the processing and the name of the controller in order to put him in the position to obtain further details on his own initiative. However, the controller need provide no more than a very general statement of the scope of the categories of third party to whom the data are disclosed under Article 12, leaving the data subject with no clear notion as to the precise identify of third parties to whom their data are disclosed.

Right of Access

As regards the exemptions from the requirements of the proposed Directive on subject access rights under Article 14(1), the Dutch Ministry of Justice has indicated that it will retain a similar regime to that now in place.

Data Subjects' Rights

Dutch law states that, when informing the data subject whether data concerning him have been disclosed to any third party, the controller may supply a notification couched in general terms concerning the nature of the data disclosed where no detailed record of the disclosure has been made by the controller and he could reasonably assume that the interests of the data subject would not thereby suffer a disproportionate adverse effect. This implies that there is no obligation to keep a record of disclosures to third parties in all instances. It is the Dutch Ministry of Justice's view that the proposed Directive requires controllers to provide a general statement of the third parties or categories of third parties to whom data have been disclosed. The controller will decide whether to give information about third parties or categories of third parties.

Notwithstanding the above, and in order to inform third parties about corrections to data, the controller should keep records of the occasions when data were provided to a third party. However, the notification to third parties of rectification, etc. of inaccurate or incomplete data is not required if it proves impossible or involves a disproportionate effort. The Dutch view is that the criterion "disproportionate" effort should be evaluated in the light of the particular circumstances. The rights and freedoms of individuals are seen as important evaluation criteria in this respect. It is, for example, considered that a credit reference agency is less likely to be able to claim that such a request involves a disproportionate effort. In terms of running a data processing operation efficiently, it is good practice to keep track of disclosures.

The data subject is given a right to object on "legitimate grounds" against the processing of his data where processing is carried out under Article 7(e) or (f). Although this right to object appears broader than under Dutch law, it is the view of the Dutch officials that it is in fact very similar. The criterion "legitimate grounds" is evaluated in terms of whether the data are inaccurate or the processing is unlawful according to the proposed Directive. It does not allow the data subject simply to state that he does not wish data relating to him to be processed.

Processing

Both the Dutch Ministry of Justice and the Registration Chamber agree that, as regards the private sector, the proposed Directive may impose more stringent conditions on data processing than presently required under the Dutch law. They stress, however, that Articles 4, 5, 6 and 11 of the Dutch Data Protection Act already restrict processing activities that are not in compliance with the "purpose" of the data processing file. The Act contains reference points similar to the proposed Directive. The Dutch Act requires a "sufficient" interest, which is a balance very much in line with the proposed Directive. It is the view of the Dutch officials that the implementation of the proposed Directive will require the permission of the data subject in only a limited number of circumstances (Article 7).

The Dutch Ministry of Justice also believes that the Dutch legislature may retain its particular provision on the processing of personal data by information bureaux under Article 13. The Ministry feels that Article 5 of the proposed Directive in combination with Article 7(f) allows for such a system.

With respect to the processing of personal data in the public sector, the criterion under the Dutch Data Protection Act is whether this is necessary for the effective execution of the functions of the controller. Files in the public sector shall contain only such

personal data as are required by the purpose of the file. Data may be issued, on request, to persons and bodies with a function under public law where such persons or bodies require the data for the execution of their function and this does not have a disproportionate adverse effect on the privacy of the data subject. Of particular importance in determining differences in practice will be how far the criterion "public interest" reaches, especially for reasons associated with fraud detection. The Minister of Justice points out that as regards the use of personal data for fraud detection and criminal investigations, no changes will result from the proposed Directive for both the private and the public sectors. The language of Article 7(f) and Article 14 of the June 1994 text leave no doubt that what is presently allowed under the Dutch Data Protection Act will still be allowed under the proposed Directive.

Although Dutch law does not have the equivalent of Article 7, Article 7(f) is considered to be potentially very wide and should, according to the Ministry of Justice, apply in many cases. In practice there should not be any major changes, bearing in mind the interpretation of "purpose" already accepted in the Netherlands.

The general exceptions of Article 7 are considered broad enough to allow data processing for statistical purposes and scientific research without permission (since no express mention is made of an exception for use of personal data for statistical and scientific research). The Minister of Justice considers that Article 7(f) provides a researcher with the opportunity to undertake personal data processing for statistical purposes and scientific research, provided such processing is in compliance with Article 6(1)(b).

Where it concerns the processing of sensitive data, the Netherlands will interpret the proposed Directive in such a manner that is consistent with the present regime.

As regards Article 15(b) - the right to block data - it is considered that informing the data subject once only will suffice and the data subject will not need to be informed each and every time the data are to be disclosed for marketing by mail.

Security and Liability

In terms of liability for damage resulting from the loss or destruction of data or from unauthorized access, the proposed Directive allows Member States to provide that the controller may be exempted in whole or in part from his liability for damage resulting from the loss or destruction of data or from unauthorized access if he proves that he has taken suitable steps to satisfy the confidentiality and security requirements set by the

proposed Directive (and Member States at their discretion). The Dutch officials are at this point not sure whether they may still adhere to the principle of strict liability. If not, this could result in benefits for Dutch controllers.

4.7 Issues arising from the legal analysis for the case studies

The legal analysis provides a crucial input to the case study impact assessments. It was considered desirable to provide case study organizations with guidance as to the anticipated legal effects contained within the proposed Directive so as to assist them in completing the questionnaire. For this purpose material describing the legal effects was produced for use in both the UK and the Netherlands and was left with the study organizations at the time of the first contact after their agreement to participate in the study.

In the debriefing sessions with case study organizations, further consideration and discussion of the legal analysis was undertaken. This focused upon the particular issues which were perceived by the organization or the study team to have a more than trivial impact on the organization.

The legal analysis employed in the case studies revolved around eight issues. These were derived from a comprehensive study of the proposed Directive and how it differed from current national law on data protection. In particular, it was considered that each issue would be associated with economic effects for at least one organization, but some would be relevant for several. The issues reflect the legal analysis in this chapter and the consideration of the activities and relationships resulting from the proposed Directive in comparison with existing national laws. The eight issues are listed in Table 4.2.

The case study organizations were informed that their views on the legal analysis would be welcome and that any significant differences of opinion would be discussed. If these could not be resolved, the organization's interpretation would be stated in the case study report. The organizations were also invited to add more issues if they considered that there were others that related to them, but which had been omitted from the study team's legal analysis.

4.8 Summary

This chapter has charted the development of the legal analysis used in the study and which has formed the basis for the cases studies and the study organizations' considerations and calculations of the estimated costs and benefits resulting from the proposed Directive.

The existing national laws in the UK and the Netherlands have been briefly described and the provisions of the proposed Directive detailed. Together with discussions with relevant organizations and bodies, this has permitted a detailed consideration of the most likely changes required in the national laws in the UK and the Netherlands in order comply with the provisions contained in the June 1994 text of the proposed Directive. A number of differences and similarities between the provisions in the proposed Directive and the national laws were identified, but it was noted that the basic principles of data protection would remain unchanged.

References

- Council of Europe (1981) 'Convention for the protection of individuals with regard to automatic processing of personal data', Council of Europe.
- Data Protection Registrar (1992) 'Data Protection Guidelines', Second Series, Office of the Data Protection Registrar.
- Lindop Report (1978) 'Report of the Committee on Data Protection', Cmnd. 7341.
- Nouwt, J. (1994) 'Privacy en medische informatie', in Privacyregulering in theorie en praktijk (Berkvens, Prins, red.), Kluwer at p. 181.

Table 4.2: Issues for the case studies

Issue No.	Description	Comment
1.	Notification	There is scope for exemption from registration which may be of some benefit some of the organizations by relieving them of the burden of registration (though not the other provisions)
2.	Informing data subjects of the collection or disclosure of data relating to them	Most organizations could be affected by these provisions. In some cases, changes to literature and forms might suffice. However, the provisions could be especially important for organizations trading in data.
3.	Data subjects' right of access	All organizations will be affected by this and, in particular, there will be subject access to manual files in the UK.
4.	Occasions when data subjects' consent to processing is required	In some, possibly rare cases, the data subject's consent will be required. This issue also deals with the data subject's right to object to processing and, importantly, with the right to have data for marketing by mail blocked which could have a significant effect on list trading and targeted marketing by mail
5.	The processing of personal data	This issue looks at the occasions when data may be processed. It is not generally restrictive (no more so than existing legislation) but important aspects are whether existing forms of processing are prohibited or restricted and the effects on processing sensitive data
6.	Transfer of data within the EU and to third countries	An important aim of the proposed Directive is to facilitate the free flow of personal data within the Community. This could have significant benefits for organizations. Also, the implications of transfers to outside the Community will be an issue with a number of organizations
7.	Security of personal data	The proposals require levels of security commensurate with factors such as the nature of the data, risks, costs and the state of the art. Networks are mentioned specifically. This may require a review of security arrangements and the implementation of higher levels of security and the putting in place of regular security audits. The fact that a higher profile may be given to security may have benefits
8.	Automated individual decisions	Automated decisions based on personality profiles are likely to be relevant for organizations such as credit suppliers and credit reference agencies

Chapter Five: Impacts on the UK case study organizations

5.1 Introduction

The purpose of this and the subsequent chapter is to evaluate the impacts of the proposed Directive on a number of organizations selected from different sectors of the national economy. This chapter deals with impacts on UK organizations whilst Chapter Six focuses upon impacts amongst the Dutch case study organizations.

The response of each organization to a questionnaire has been used as the starting point for the analysis, the organization's justification is briefly described and the study team's comments, including any disagreement with the organization's view, are inserted as appropriate.

Differences in anticipated effects of the proposed Directive have tended to centre around:

- different interpretation of the extent to which derogations will be used in translating the proposed Directive into national legislation, and
- uncertainty as to the likely interpretation in practice of certain words and expressions.

These areas of difference are highlighted in the text of each case study: broadly, organizations have tended to take a pessimistic view compared with that of the study team. Part of the value of the case studies has been to identify the nature and extent of these differences; indeed, the prolonged uncertainty involved in this regulatory process seems to be one of the major sources of irritation to those interviewed. The case studies cover the following:

- nature of business activities;
- initial estimates of major costs and benefits arising from the proposed Directive;
- discussion of estimates by study team;
- wider economic issues for the organization.

It should be appreciated that the case studies are highly summarized versions of both the questionnaire responses and prior and subsequent discussions between the study team and representatives of each organization.

1. Nature of business activities

A major mail order business, one of six which dominate the market in the UK and which have, together, an annual turnover of £4bn (about 3% of retail sales). Although it retails goods, the company is essentially a credit provider as goods sold are paid for by instalments over one or, in cases of higher value goods, two years.

The company has an annual turnover of approximately £540m, employs 4,475 staff and holds approximately 7.5m personal records of which 6.4m are non-manual. This count does not include the records of some 900,000 'agents', through whom historically the majority of business has been done and whose records are overwhelmingly manual. Most agents are small-scale operators having possibly only 2 or 3 customers, or even acting purely on behalf of themselves; a few are much larger businesses with correspondingly higher sophistication in record-keeping including, in some cases, computerized records. For the majority of transactions, the company deals with the agent, not the customer, although the trend of business is towards direct customer contact.

On recruitment, agents are 'scored' for suitability through the use of both personal and demographic data held by the company itself and other mail order companies with whom it shares data. On those occasions on which it checks the acceptability of individual customers, the company uses a credit reference organization.

2. Initial estimates of major costs and benefits arising from the proposed Directive

Benefits: It may be argued that the review of systems, practices and security brought about by the need to comply with the notification and security requirements of the proposed Directive could be of benefit to the business. It may be, also, that the increased cost of obtaining valuable mailing lists could act as a bar to market entry; but while this may be an indirect benefit to the organization, it can hardly be seen as a benefit to the economy as a whole.

Costs: Table A sets out by issue the organization's estimates of costs to be incurred. Significant costs are limited to Issues 3, 4, 8 and 9. Table B incorporates the study team's estimates.

MAIL ORDER COMPANY

**Table A: Summary of increases in costs – organization's view
(Figures in £m)**

Issue	Manual Records		Non-manual Records	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.023	0.027	0.050	0.075
2. Informing data subjects of collection/ disclosure	0.002	-	0.004	-
3. Data subjects' right of access	0.040	0.030	0.500	0.250
4. Data subjects' consent	-	-	-	1.790
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	-	-	0.030	0.070
7. Security of personal data	-	-	0.025	-
8. Automated individual decisions	0.040	0.040	0.200	0.940
9. Extra issues: Impact on agents	2.980	1.290	-	-
Total	3.085	1.387	0.809	3.125

MAIL ORDER COMPANY

Table B: Estimates of costs (£m) by organization and study team

Issue	Organization		Study team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.073	0.102	0.038	0.014
2. Informing data subjects of collection/ disclosure	0.006	-	0.006	-
3. Data subjects' right of access	0.540	0.280	0.150	0.100
4. Data subjects' consent	-	1.790	-	-
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	0.030	0.070	0.030	0.070
7. Security of personal data	0.025	-	0.025	-
8. Automated individual decisions	0.240	0.980	0.120	0.300
9. Extra issue: impact on agents	2.980	1.290	1.200	0.600
Total	3.894	4.512	1.569	1.084

3. Discussion of estimates

• Issue 1: Notification

It is assumed that no exemption would be available for information on customer and personnel records which are subject to automated processing, but that the form of notification and scale of fees for notification would not be significantly different from those under existing legislation.

Additional resources will be required for the review and analysis of operations for notification, the need to identify a much broader spectrum of internal recipients and the management of the process of notification. The costs relate to additional staff (1 set-up, 2 recurring) plus small amounts of 'other' costs.

Notification of security measures must be in general terms only, to avoid the possibility of compromising the organization's data security.

Study team's comment:

We acknowledge that costs will arise with respect to the organization's duties in respect of notification, but that these will relate primarily to manual records. We do not believe that the recurring costs will be significant and have reduced them accordingly.

• Issue 2: Informing data subjects of collection/disclosure

It is assumed that adequate notice may be given by means of the medium through which the information is sought, and repeated in the catalogue or other selling medium sent to the data subject. Collection of information on ethnic origin of employees only, for the purposes of monitoring for the avoidance of unlawful discrimination, will be permitted (Article 8(2)(aa)). The only cost impact will be textual revision of employment application forms.

• Issue 3: Data subjects' right of access

It is assumed that subject access requests do not need to be in writing to be validly expressed, and that permitted charges for complying with an access request will not exceed current rates under existing legislation. The largest item of cost is a speculative estimate of £0.5m set-up cost (and £0.1m recurring) for changing the systems base for credit scoring, to guard against damaging disclosure of the 'logic' of automated decisions (Article 13.1). Most of the remainder is for additional staff and their training to be able to discharge the organization's responsibilities satisfactorily. The income receivable from search fees is netted off against the costs. The organization estimates that it will have to deal with 6,000 access requests annually (as opposed to 1 or 2 currently): this volume represents about 1% of personal records held.

Study team's comment:

We do not believe that the logic of automated decisions will be required to be disclosed other than in very general terms. Any other interpretation would mean that the basis of credit-granting decisions could be probed and unfairly influenced, leading to either a

substantial increase in fraud or a reduction in credit-based retailing (acting to the detriment of those who are in most need of credit) or both. The organization disagrees.

We judge the organization's estimate of likely subject access requests to be excessive. We do acknowledge, however, that some set-up and recurring cost will be involved in providing subject access facilities in respect of manual data.

• *Issue 4: Data subjects' consent*

It is assumed that processing under Article 7(b) includes processing for the purposes of deciding whether or not to grant credit to a data subject; alternatively, such processing is permitted under Article 7(f). It is also assumed that the featuring of direct response advertisements in a medium circulated in part or wholly by subscription does not constitute use on behalf of the advertiser of the subscription list for the purposes of marketing by mail within Article 15(b): this is contrary to UK practice as currently interpreted by the Data Protection Registrar.

Given these assumptions, the organization's problem lies in wishing to retain the possibility of list-trading, an activity which it does not currently pursue. The costs given are for the annual mailing to 4 million data subjects, postage, plus 15 staff to process, plus incentives to reply, on the assumption that notification of disclosure will require to be obtained for each list-trade; interpretation of Article 15(b).

Study team's comment:

We do not believe that the organization's interpretation of Article 15(b) is correct, but that a single opportunity to have data blocked in respect of a range of disclosures would suffice, bearing in mind the British Code of Advertising Practice rules for database management and the Mailing Preference Service.

Since the organization does not currently engage in list trading, we have disallowed this cost, and instead alluded to the potential costs as a factor relating to possible constraints on business development (see Section 3. Wider economic issues).

Host mailing will be subject to Article 15(b), but can be accommodated within the same single opportunity.

• *Issue 5: The processing of personal data*

It is assumed that the recording of ethnic origin and trade union membership data of employees will be

permitted under Article 8(2)(aa), and that county court judgments and other information on debtors/defaulters will continue to be consulted and retained under Article 8(4). It is further assumed that the processing of data relating to health of employees will not be prohibited.

Consent will need to be obtained from employees as to processing of data as to health, and from agents and customers as to processing data outside the normal contractual relationship (for example, monthly 'scoring' of agents' performance).

These are not regarded as cost problems, although some staff training will be required (costs to be absorbed elsewhere).

Study team's comment:

In most cases consent to processing health data of employees will not be required, as it falls within Article 8(2)(aa) or 8(2)(b).

We consider that monthly scoring of agents is within the normal contractual relationship.

• *Issue 6: Transfer of data to third countries*

The company exports goods valued at approximately £20m annually, and it is not anticipated that the proposed Directive will have a significant effect on this. Some cost will be involved in the training of staff involved in conducting business outside the UK, and textual amendments to catalogues and ordering literature will be required (costs to be absorbed elsewhere). The minimal costs given are for inducements and direct margin subsidies to agents.

• *Issue 7: Security of personal data*

Existing security measures will need to be reviewed. The staff costs will be absorbed elsewhere, but a small systems cost may be anticipated.

Concern exists as to the security of the description of security measures to be notified to the supervisory authority under Article 19(1)(f): it is assumed that there is a drafting error in Article 21(3).

• *Issue 8: Automated individual decisions*

It is assumed that a refusal to grant credit or enter into contractual relations is within the scope of Article 16. Automated decisions will be permitted subject to a right of appeal: notification of the right of appeal and of the use of automated decision making processes may validly be given to agent and customer via the selling medium. Any obligation to explain the decision making system must respect the need to maintain the integrity of the system.

The costs include systems work, stationery and staff to cope with an estimated 60,000 appeals per annum. The organization receives approximately 14 million orders per annum of which 400,000 are rejected; it is estimated that an appeal will occur in 15% of the rejections.

Study team's comment:

It is clearly impossible to be accurate with this kind of forecast. We believe that the appeal rate will be much lower – perhaps 5% of rejections, and have reduced the costs accordingly. The organization disagrees.

It should be noted that guidelines requiring similar facilities are shortly to be issued by the Office of Fair Trading. Depending upon the precise requirements, the cost attributable to the proposed Directive could therefore be Nil.

• *Issue 9: Impact on agents (an issue unique to this organization amongst those interviewed)*

Of particular concern is the status of the agents. It is assumed that each agent will be classified as a data controller in his/her own right, and that the consequent obligations on the agents, who are typically hostile to any complexity in the agency relationship, will cause problems with the recruitment and retention of agents. Catalogue agency mail order will therefore be seriously disadvantaged as against conventional retailing, and may have to cease altogether. To counter this, it would be necessary to recruit and train a team of advisers and to support the agents with both hardware and software provision. The costs given envisage up to 190 advisers for set-up and 70 advisers on a continuing basis, with appropriate equipment.

Study team's comment:

We believe that the organization would be better advised to make the agents processors. This would require some additional complexity in the agency relationship, but much less than if the agents are classed as data controllers. It may even be of some advantage in that it would give the organization more control over the agents. We have reduced the estimated costs accordingly. The organization does not agree that this is a viable approach to the problem.

4. Wider economic issues for the organization

The organization suggested that the changes in operations and practices brought about by the proposed Directive would have very little, if any, impact on service quality. It expected to suffer a small loss of competitiveness relative to its major mail order rivals because it derives a larger proportion of its business

through agencies rather than by direct customer contact. However, this would be partly offset by the fact that its recording systems are closer than those of its rivals to those which will be necessary under the proposed Directive.

It was stated that effect on turnover would not be significant, but that trading profit would be adversely affected by as much as 8-10%. While coping with the proposed Directive might imply some extra employment in the short-term, the need to achieve cost-cutting elsewhere in the business in order to remain competitive would ensure that long-term employment levels remained, at best, stable.

It was not envisaged that compliance with the proposed Directive would help to attract customers; nor was it believed that the organization was advantageously placed, in net terms, by the proposed Directive compared with its competitors

The organization's responses are likely to be quite typical for the sector, except for the agency issue. The organization's agents tend to be more productive and more loyal than those of competitors: this advantage could be eroded by the need to support them in relation to their data protection obligations; alternatively, the need for support could make competitors' agents uneconomic.

Business development could be impeded by the heavy cost of entry to list trading activities (see under Issue 4 above).

The organization expressed great concern as to certain potential problems:

- (a) the need to inform data subjects on collection/disclosure (see Issue 2 above) may restrict the use of non-print media for recruitment of staff and agents;
- (b) the need to inform the supervisory authority of security measures could, if in more than very general terms, actually compromise data security (see Issue 1 above);
- (c) data subjects' right of access to records, combined with disclosure of the 'logic' of automated decisions, is likely to result in increased fraud; and
- (d) inability to process county court judgments and other information as to debt/default, or to continue with monthly 'scoring' of agents, would similarly result in increased fraud or bad debts.

5. Summary

The significant cost issues can be reduced to the cost of list trading (an activity which the organization does not currently undertake), data subjects' right of access (including an appeals procedure in cases of refused credit), and the unique problem of agency trading.

Potentially far more important for this business will be the outcomes of those points of interpretation which remain uncertain.

Case study - Credit reference/ mailing list company

1. Nature of business activities

A company of approximately £90 million turnover and 2,000 employees, concerned almost exclusively with the holding and other processing of personal data.

Its major business activities are credit referencing and marketing (the provision of mailing lists); it also offers direct mailing services and bureau processing, and has some work carried out in third countries particularly data entry.

It holds on file the name of every adult citizen entitled to vote in the UK, and correlates information from many sources as to persons' credit performance (e.g. county court judgments) and purchasing preferences (e.g. lifestyle data).

2. Initial estimates of major costs and benefits arising from the proposed Directive

Data protection legislation is of fundamental significance to the company as, potentially, it not only gives rise to costs and benefits but also affects the kinds of business that may be done and their effectiveness and value. In comparison, purely internal data-handling implications of the proposed Directive (e.g. payroll and pensions) are regarded as insignificant.

Benefits: The company has a clear interest in the free flow and responsible use of personal data, particularly within the UK but also worldwide. To the extent that the proposed Directive promotes these ends it will be of benefit. It has not been possible to be more specific than this; even a central justification of the proposed Directive, namely facilitating flows of personal data within Europe through the avoidance of fragmentation, is not seen by this company as conferring any benefit or avoiding any restraint that could not be achieved by other means; this is, however, the experience to date and may not hold good for the future.

Costs: Table A sets out by issue the company's estimates of costs to be incurred. It should be noted that, with the possible exception of the implications of Issue 3, Data subjects' right of access, the significant costs are confined to three issues.

CREDIT REFERENCE/MAILING LIST COMPANY

Table A: Summary of increases in costs - organization's view (Figures in £m)

Issue	Manual Records		Non - Manual Records	
	Set-up	Recurring	Set-up	Recurring
1. Notification	-	-	0.020	
2. Informing data subjects of collection/disclosure	-	-	9.500	0.100
3. Data subjects' right to access	-	-	-	-
4. Data subjects' consent	-	-	9.500	0.100
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	-	-	-	1.200
7. Security of personal data	-	-	-	-
8. Automated individual decisions	-	-	-	-
Total			19.020	1.400

CREDIT REFERENCE/MAILING LIST COMPANY

Table B: Estimates of costs (£m) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.020	-	0.020	-
2. Informing data subjects of collection / disclosure	9.500	0.100	-	-
3. Data subjects' right of access*				
4. Data subjects' consent	9.500	0.100	9.500	0.100
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	-	1.200	-	-
7. Security of personal data	-	-	-	-
8. Automated individual decisions	-	-	-	-
Total	19.020	1.400	9.520	0.100

*See discussion

3. Discussion of estimates

• Issue 1 : Notification

The proposed Directive may require the nomination of a person in each operating division to be responsible for data protection registration, whilst a small cost would arise for the checking and reinforcing of existing procedures and the documentation of security measures.

It is assumed that the UK would make no stipulation under Article 18(4).

• Issue 2 : Informing data subjects of collection/disclosure

It is unlikely that a data source (e.g. a bank or finance house) would be able to discharge the company's obligation to inform under Article 12, and in some cases (e.g. CCJs) no one is in direct relationship to the data subject to be able to inform without additional costs being incurred.

The costs given in Table A represent:

	£m	
	Set-up	Recurring
(a) Capital cost of equipment	1.0	-
(b) Mailing costs, including labour	8.5	0.1
	<u>£9.5m</u>	<u>£0.1m</u>

and are based on existing experience of volume direct mailings. Volume assumed for this purpose is 50 million data subjects (set-up) plus new data subjects coming annually onto voters' list.

Study team's comment :

Our view is that provision of information under Article 12 will be exempted by Article 12(2) on the grounds of disproportionate effort, particularly as much of the data is publicly available. Even if this turns out not to be so, satisfaction of Article 12(1) could be contemporaneous with satisfaction of Article 15(b) (see Issue 4), avoiding duplication of cost.

Article 11 seems not to apply as the company does not collect data direct from data subjects. The company would, however, have to ensure that its data sources, other than those providing publicly available information, included appropriate cover within their own procedures for informing data subjects.

• Issue 3 : Data subjects' right of access

The company already provides access annually to 300,000 data subjects, under s 158 Consumer Credit Act 1974, at a cost (net of the fee charged) of £300,000.

The company believes that provision of information under Article 12 would stimulate subject access requests and thereby increase costs; such requests would continue to be dealt with under s 158 CCA, unless data subjects specifically required access to information falling outside CCA access, such as a correspondence file.

The cost involved is predominantly staff cost, but is impossible to estimate - requests have grown by 30% pa over the last 5 years and the stimulus mentioned above would accelerate the trend.

Study team's comment :

We do not believe that the provision of information under Article 12 (1) will be required. But would the stimulation of subject access requests come from anywhere else ? Possibly through increased awareness of rights via Citizens' Advice Bureaux or Data Protection Registrar publicity.

• Issue 4 : Data Subjects' Consent

Article 15(b) will have considerable impact on the provision of lists for direct marketing. The best interpretation is that the provision of information prior to disclosure to third parties or use on their behalf will involve communication with all 50 million data subjects for whom records are held, and even if this is staggered on an "as needed" basis the cost will still be incurred over a fairly short period (say 2-3 years). The cost of doing this will be as described for Issue 2 above, although one communication could serve both purposes.

Study team's comment :

We agree with the company's assessment of the best interpretation. An alternative, worse, interpretation is that Article 15(b) requires the provision of information not once, for all time, but on each and every occasion. This could mean the end of targeted direct mailing as a form of business. We find it difficult to believe that this is what is intended, but the wording of the Article is not unambiguous. Subsequent amendments to Article 15(b) should reduce or eliminate this possibility.

• Issue 5 : The processing of personal data

Processing without consent under Article 7(e) or (f) gives the data subject the right to object on "legitimate" grounds (Article 15(a)). Concern exists over the possible interpretation in practice of the word "legitimate". A wide interpretation would weaken the data base from which credit reference information is

drawn, thereby devaluing the service provided by the company.

Concern is also expressed that Article 8(4) may prevent the company from keeping a list of CCJs, with similar devaluation of the credit referencing services.

No specific costs are identified for either point of concern, but devaluation of the business base would be significant.

Study team's comment :

We believe that the company's fears as to the interpretation of "legitimate" are unfounded, and that it would be taken to mean "otherwise contrary to data protection legislation". Recital 20 supports this view.

We assume that the UK would take advantage of derogation from Article 8(4).

• **Issue 6 : Transfer of data to third countries**

The company sends to third countries for processing certain data collected in the UK. The company assumes that, in practice, transfer to third countries would be barred unless specifically permitted for individual countries; the cost given is the amount of cost-saving currently achieved by processing in third countries.

Study team's comment :

We take an opposite view to that of the company. We believe that data transmission to third countries will be permitted unless and until restrictions are imposed by individual Member States. This seems to be the rationale of Article 26(2) to (4). We also note that Article 27 provides for derogations from Article 26, including the "sufficient guarantees" of Article 27(2).

• **Issue 7 : Security of personal data**

Security of data is not seen as an issue. The company, as part of its normal business practice, applies security measures in excess of any likely to be required.

• **Issue 8 : Automated individual decisions**

Not an issue for this company, but could be one for some of its clients.

4. Wider economic issues for the organization

The increased costs of preparing mailing lists (Issue 4: data subjects' consent) are likely to reduce the demand for this service from other organizations. We agree with the company's argument that restrictions on targeted direct mailing would act partially to the detriment of

the consumer because it would result in more indiscriminate mailing as, for example, in Germany.

The overall effect on turnover or profitability is likely to be a substantial reduction from direct mailing /list trading activities, with a substantial one-off reduction in the profitability of the credit reference activities. The impact is likely to be similar for each of the major credit reference companies in the UK and market share is unlikely to be effected.

Even the single set-up cost to comply with the requirements as to data subjects' consent could be sufficiently important to precipitate rationalisation within the industry; but, while this could act marginally to the advantage of the company interviewed and perhaps reduce the net damage to the sector, it would be unlikely to increase employment in net terms in the sector.

The potential reduction in business activity will be reflected in some employment issues in the longer term in the company but, in the short term, employment will increase in order to ensure compliance with the proposed Directive.

It is unlikely that the company's international trading pattern would be affected by the proposed Directive.

Any short-term benefits which may arise from the proposed Directive, in terms of improving the efficiency of existing practices, are likely to be significantly outweighed by costs, and future changes in systems management are unlikely to be attributable to the proposed Directive. Indeed, the company has suggested that any loss of sales income may lead to a slowing up in the development of new techniques and services.

5. Summary

Given the assumptions made, the study team believes there to be only one major issue, that of data subjects' consent, having significant cost implications for this company; potential increased cost in relation to data subjects' right of access is unquantifiable and probably insignificant.

Probably more of an issue for this type of business is the potential effect on the trading of targeted mailing lists of the study team's alternative interpretation (see Issue 4). The overall effect on turnover and profitability is likely to be a substantial reduction from direct mailing/list trading activities, with a substantial one-off reduction in the profitability of the credit reference activities. Subsequent changes to the text of the proposed Directive are likely to mitigate these impacts.

5.4 Case study: Bank

1. Nature of business activities

Although the organization is part of a group offering a wide variety of services, for the purpose of this case study all observations and figures relate to its UK banking activities only, that is, in addition to internal personnel administration, the provision of personal account banking services, card, trustee and tax services. Within this scope, the organization has a turnover of £5bn and employs 70,000 staff. It operates through some 2,500 branches and 500 other offices throughout the United Kingdom.

2. Initial estimates of major costs and benefits arising from the proposed Directive

Benefits: No benefits are perceived by the organization under any interpretation of the proposed Directive.

Costs: Table A sets out by issue the organization's estimates of costs to be incurred. Because of uncertainty as to the interpretation of parts of the proposed Directive, the organization has tended to take the worst view. For other significant concerns expressed by the organization, reference must be made to Section 4, Wider economic issues.

The table discloses five issues of potentially significant cost increases, with qualification as to wider effects on other issues. The only issues that the organization regards as completely insignificant is that of security of personal data.

BANK

Table A: Summary of increases in costs – organization's view (Figures in £m)

Issue	Manual Records		Non-manual Records	
	Set-up	Recurring	Set-up	Recurring
1. Notification	1.640	1.150	-	0.481
2. Informing data subjects of collection/ disclosure	0.500	-	10.000	-
3. Data subjects' right of access	6.970	0.720	0.640	0.640
4. Data subjects' consent	-	-	-	-
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	-	-	-	2.600
7. Security of personal data	-	-	-	-
8. Automated individual decisions	3.000	13.000	-	-
Total	12.110	14.870	10.640	3.721

3. Discussion of estimates

• Issue 1: Notification

Even if notification of manual records is not required, the costs will be incurred because of the need to be able to respond to requests made under Article 21(3) and to conform to the principles relating to data quality under Article 6; (it is assumed that there is a drafting error in Article 21(3) and that details of security arrangements will not have to be disclosed to any person on request). A little over £2m of the cost is associated with the need to examine and organize, and subsequently maintain, existing manual records; most of the remaining cost is for the treatment of new manual records. There are in excess of 10 million manual records, relating mainly to personal account customers but also to card, trustee and tax services, and personnel administration.

BANK

Table B: Estimates of costs (£m) by organization and study team

Issue	Organization		Study team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	1.640	1.631	0.250	0.120
2. Informing data subjects of collection/ disclosure	10.500	-	-	-
3. Data subjects' right of access	7.610	1.360	7.610	0.700
4. Data subjects' consent	-	-	-	-
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	-	2.600	-	-
7. Security of personal data	-	-	-	-
8. Automated individual decisions	3.000	13.000	-	-
Total	22.750	18.591	7.860	0.820

Serious concern exists that compliance with Article 19(1)(f) will compromise the organization's data security.

Study team's comment:

We do not believe that notification of manual data will be required, but accept that the editing and structuring of manual files will have to be done for other purposes. We believe that all purposes for which files have to be edited and structured could and would be satisfied in one exercise (Issue 3). Preparation of statements to be furnished to persons requesting information under Article 21(3) will doubtless have some cost.

The concern expressed as to compliance with Article 19(1)(f) is shared by several organizations in the UK.

We do not understand the need for recurring cost in respect of manual records which will not require to be notified.

- **Issue 2: Informing data subjects of collection/disclosure**

Some costs will stem from the need to reprint literature and revise training manuals, but the main costs will arise where processing requires the consent of the data subject obtainable only by a separate additional mailing which would not otherwise have been undertaken. It is not thought that a message on a routine statement would suffice to discharge a notification requirement under Article 11.

Study team's comment:

Notification in respect of existing data is not required under Article 11. Notification on recording or disclosure would fall within Article 12 and could be accommodated within routine statements or would not be required on the grounds of disproportionate effort (Article 12(2)).

- **Issue 3: Data subjects' right of access**

The main cost involved is for putting the data, particularly manual files, into a form suitable for response to data subject access requests; the organization states that this is a different operation additional to the one required under issue 1, and that the confidentiality and sensitivity involved require a different calibre of staff input. Recurring staff costs anticipate an additional 60 staff involved full-time in dealing with access requests. Current known level of requests is approximately 250 p.a. at a cost of £200-£400 each.

Study team's comment:

The set-up cost given represents 1 person spending 1 month in each branch and are accepted as reasonable. The level of staffing on a recurring basis anticipates some 4,000 data subject access requests annually. This is less than 2 per branch, but seems excessive in relation to the present level. The cost of dealing with each request seems particularly high compared with figures quoted by other organizations and may be assumed to be moderated by the improved condition of the restructured files. In the longer term some benefits may be anticipated from ensuring that data quality criteria are met and that files are in proper order.

- **Issue 4: Data subjects' consent**

Any or all of the five criteria for processing, other than unambiguous consent, (Article 7), would normally apply. In addition, the Code of Banking Practice is

unlikely to permit processing in conflict with the criteria of the proposed Directive.

One possible problem could arise from the organization's customer mail information service (mail order selling). In order to comply with Article 15(b) each customer will have to be given the right to have personal data blocked for this purpose. This will be done in the course of routine communication.

- **Issue 5: The processing of personal data**

The organization holds certain sensitive information. It is possible that written consent may have to be obtained to continue holding health and other records. Staff and other costs involved would be absorbed elsewhere.

A major problem would be any restriction on holding records relating to criminal convictions. This would obstruct fraud prevention and result in additional losses from fraud of as much as £10 million per annum.

Study team's comment:

We believe the organization's concern as to restriction on records relating to criminal convictions will be met by derogation from Article 8(4).

- **Issue 6: Transfer of data to third countries**

The organization currently experiences no problems with transborder data flows. One view of the proposed Directive (stemming from the wording of Article 26(1)) is that transfer of data to third countries would be prohibited until a country had been 'cleared'. The costs given assume this worst scenario, and consist of loss of transmission income costs partly offset by staff savings as a result of a reduced volume of business.

Study team's comment:

The logic of Article 26(2) to 26(4), qualifying Article 26(1), is that transfers will continue to be permitted until restrictions are imposed by individual Member States.

- **Issue 7: Security of personal data**

Security of personal data is not a cost issue for the organization. Nor is any benefit perceived, due to the high levels of security presently in place which are continually being evaluated and enhanced to reflect technological development.

- **Issue 8: Automated individual decisions**

The organization has assumed that automated payment systems, for example, automated telling machines (ATM) and electronic funds transfer at point of sale (EFTPOS), are caught by Article 16(1) and has

calculated the costs of manual intervention to circumvent the 'solely' criterion.

A second concern is the likely effect on credit scoring. It was suggested that credit scoring may be prohibited. Even if allowed, disclosure of 'logic' under Article 13 would undermine the credit scoring process. The impact would be incalculable in terms of increased fraud and lost business.

Study team's comment:

We do not believe that automated payment systems fall within the scope of 'automatic processing defining a personality profile'.

Credit scoring will be permitted under Article 16(2)(a), nor do we believe that the logic of automated decisions will be required to be disclosed other than in very general terms.

The organization already has procedures in place, and literature, aimed at informing customers of opportunities to discuss and receive explanations of credit scoring decisions.

4. Wider economic issues for the organization

Subject to the caveats below, the organization envisages relatively little, if any, impact on the quality of its services, its turnover, employment and profit. The new burdens arising from the proposed Directive will have a relatively larger impact on smaller businesses within the sector; in other respects, the organization is reasonably typical of the sector.

The main caveats relate to the interpretation in practice of certain expressions in the proposed Directive:

- (a) the nature of disclosure to be required under Article 19(1)(f) (see under Issue 1 above);
- (b) the ability to process records relating to criminal records (see under Issue 5 above), and
- (c) the nature of disclosure needed to satisfy the 'logic' requirement of Article 13 (see under Issue 8 above).

The study team believes the organization's concern on these issues to be largely unfounded.

5. Summary

The organization's main cost problem arising from the proposed Directive, is with the sorting, editing and structuring of existing manual records. A substantial amount of the recurring costs also relates to the

provision of information about, or subject access to, manual records.

Prolonged and continuing uncertainty as to the outcome of the concerns highlighted in the second paragraph of Section 4, Wider economic issues, has been and remains a major source of irritation to this organization.

5.5 Case study: Small/Medium size enterprise

1. Nature of business activity

The organization is a company making aluminium and bronze castings, mainly for the automotive industry. It employs 214 people and has an annual turnover of about £9 million, of which £0.4 is in exports, mainly to other EC countries. It is fairly typical of many SME's involved in manufacturing in the UK. Its personal data files relate exclusively to staff employed by the company, past and present.

2. Initial estimates of major costs and benefits arising from the proposed Directive

Benefits: No major benefits are anticipated, although the proposed Directive may encourage greater efficiency in data management and improved security arrangements.

Costs: Table A sets out by issue the organization's estimates of costs to be incurred. It is apparent that the financial impact is likely to be small.

SMALL/MEDIUM SIZE ENTERPRISE
Table A: Summary of increases in costs - organization's view.
(Figures in £m)

Issue	Manual Records		Non-manual Records	
	Set-up	Recur-ring	Set-up	Recur-ring
1. Notification	-	-	-	-
2. Informing data subjects on collection/disclosure	-	-	-	-
3. Data subjects' right of access	-	-	-	-
4. Data subjects' consent	-	-	-	-
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	-	-	-	-
7. Security of personal data	0.004	0.001	0.001	<0.001
8. Automated individual decisions	-	-	-	-
Total	0.004	0.001	0.001	<0.001

SMALL/MEDIUM SIZE ENTERPRISE

Table B: Estimates of costs (£m) by organization and study team

Issue	Organization		Study-Team	
	Set-up	Recur-ring	Set-up	Recur-ring
1. Notification	-	-	-	-
2. Informing data subjects on collection/disclosure	-	-	-	-
3. Data subjects' right of access	-	-	-	-
4. Data subject's consent	-	-	-	-
5. The processing of personal data	-	-	-	0.001
6. Transfer of data to third countries	-	-	-	-
7. Security of personal data	0.005	0.001	0.004	-
8. Automated individual decisions	-	-	-	-
Total	0.005	0.001	0.004	0.001

3. Discussion of estimates

• **Issue 1: Notification**

Even if the notification of manual records to the supervisory authority is not required, the organization will need to prepare a document to meet the requirements of Article 21(3). However, this is unlikely to be significantly more onerous than the existing registration applied to automatic records. It is of no concern that information on security arrangements will need to be passed to the supervisory authority, but it is recognized that existing security arrangements will need improvement; Article 19(1)(f). This last aspect relates to Issue 7.

Study team's comment:

We agree with the organization's view that costs will be limited and will be absorbed within the organization's current operations.

• **Issue 2: Informing data subjects of collection/disclosure**

The data subjects who will be affected are employees, who can easily be informed of collection, recording or disclosure. Like most companies it divulges personal information to a variety of organizations but the exemptions under Article 14 largely cover this. The organization recognizes that it maintains records on past employees but assumes that they would not need to be contacted on the grounds of disproportionate effort; Article 12(2). The organization proposes that existing employees will be informed of the content of their personal records and that new staff will be told of company practice on recruitment. Each will be informed of the right of access to such records. The

impact of these changes to current practice are not regarded as significant in cost terms.

Study team's comment:

Notification under Article 11 will not be required in respect of existing data. The organization is correct in its assumption that it will not need to contact all its past employees. Its proposals with regard to new employees are sensible but informing employees of their rights of access is not a requirement of the proposed Directive, although it is good practice.

• **Issue 3: Data subjects' right of access**

The organization does not currently provide access to manual records. To meet the requirements of the proposed Directive it will be necessary to check through all current and past records to ensure that the information held meets the principles relating to data quality in Article 6. Automated data files, which comprise three separate systems; time and attendance, piecework and payments, would not be affected. The total number of current manual files is 218, whilst past employee personal files number about 400. The organization comments that costs will arise but these will not be excessive and the tasks involved will be undertaken by existing staff without extra cost.

Study team's comment:

We agree that the costs will not be significant and will be absorbed. We believe that the company will need to put in place a simple system to comply with the proposed Directive and check both the current and past employee records to ensure that the principles are being met. The latter could be done on an incremental basis within Article 35.

• **Issue 4: Data subject's consent**

The organization does not consider that this will have any impact upon its activities. The provisions of Article 7(b), (e) and (f) and Article 8(2) will be apply.

• **Issue 5: The processing of personal data**

The organization sees no impacts under this issue.

Study team's comment:

We agree, but recognize that there will be marginal costs from putting manual records in a suitable state to comply with Article 6. The organization mentions the need to put data in a suitable state under Issue 3.

• **Issue 6: Transfer of data to third countries**

The organization does not transfer personal data to other Member States or to third countries.

• **Issue 7: Security of personal data**

Existing computer data is very secure, but there has to be a question as to the security of manual records. Additional resources do need to be devoted to protecting manual records and second copies should be made for archive purposes. The control of access to personnel records will need to be improved and better security hardware will be required.

Study team's comment:

Since the organization has recently experienced the theft of much of its computer equipment, there are strong grounds for assuming that security should be improved. This could be reflected in the transfer of manual data to an automatic format via, for example, an optical character reader. However, it would be unrealistic to attribute all the costs to the proposed Directive. The study team notes that the organization's security arrangements in respect of automatic data should already meet the requirements of the Data Protection Act 1984.

• **Issue 8: Automated individual decision**

The organization is not involved in this form of processing.

4. Wider economic issues for the organization

The organization perceives very little impact on its activities either in respect of the quality of its services, turnover, employment or profit. Its responses are regarded as typical for this economic sector, except that the impact on businesses with a large personal customer database may be greater.

5. Summary

The organization will need to pay some attention to the structuring of manual files, meeting the notification requirements and data quality provisions in addition to improving its security arrangements.

The company may have underestimated the potential costs in some areas. Nevertheless, the overall impacts will be slight and, in most cases, what costs there are will be absorbed within the organization's current administrative commitments.

5.6 Case study: Major manufacturing company

1. Nature of business activities

The organization is a large group of companies concentrating on manufacturing in the chemical sector, particularly in respect of paints, explosives, chemicals and polymers. The group turnover for the year to the end of 1993 was in excess of £10 billion. World-wide, the group employs approximately 90,000 of which 22,000 are employed in the UK. The study relates to the UK operations only.

2. Initial estimates of major costs and benefits arising from the proposed Directive

Benefits: No particular benefits are perceived by the organization under any interpretation of the proposed Directive.

Costs: Table A sets out by issue the organization's estimates of costs to be incurred; notification and obtaining consent were the main concerns.

MAJOR MANUFACTURING COMPANY

Table A: Summary of increases in costs - organization's view (Figures in £m)

Issue	Manual Records		Non-manual Records	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.363	0.143	0.522	0.167
2. Informing data subjects of collection/disclosure	-	0.102	0.110	0.102
3. Data subjects' right of access	-	0.004	-	0.004
4. Data subjects' consent	2.500	-	0.500	-
5. The processing of personal data	-	-	-	-
6. Transfer of data to third countries	-	-	-	-
7. Security of personal data	-	-	-	-
8. Automated individual decisions	-	-	-	-
Total	2.863	0.249	1.132	0.273

Note: for issue 3, no distinction was made between manual and non-manual records and the estimate was between £300 and £15,000 (based on between 1 and 500 requests per year). An average figure of £7,500 is taken divided equally between manual and non-manual records.

MAJOR MANUFACTURING COMPANY

Table B: Estimates of costs (£m) by organization and study team

Issue	Organization		Study team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.885	0.310	0.172	0.124
2. Informing data subjects of collection/disclosure	0.110	0.204	0.110	0.184
3. Data subjects' right of access	-	0.008	-	0.008
4. Data subjects' consent	3.000	-	-	-
5. The processing of personal data	-	-	0.612	0.183
6. Transfer of data to third countries	-	-	-	-
7. Security of personal data	-	-	-	-
8. Automated individual decisions	-	-	-	-
Total	3.995	0.522	0.894	0.499

3. Discussion of estimates

• **Issue 1: Notification**

The organization considered that notification to the supervisory authority of manual processing would not be required, neither would the controller be required to appoint a data protection official. It also considered that approximately two-thirds of its automated systems would be exempt because they did not involve "sensitive data". A large contribution to the organization's estimate of costs is based upon changing registration from its current simple registration by "purpose" to separate registrations of each "system" (increasing to 200 registrations from the existing 30 registrations). The organization felt that this would be required for compliance with Articles 19(1)(c) and (f).

The organization has also included the costs of decentralizing the registration function, given the fact that many systems are shared between legal entities and have a number of controllers. An education role is also envisaged by the organization in giving in-house training to each system "owner" as to the requirements of the new law. Prior to this a working group would be set up to design and promulgate new arrangements, policies and procedures for data protection within the organization.

Study team's comment:

The organization's view that a system based registration will be required could be considered reasonable in view of the number and diversity of computer systems within the organization. However, it may be possible, in a number of cases, to group a number of systems together for

the purposes of registration. If the total number of registrations was based on 150 systems rather than the 200 systems, as the basis of registration forecast by the organization, this would result in a saving on set-up costs of at least £25,750 (£22,000 difference in cost for registrable system and exempt system plus saving of fees £3,750) and a saving on recurring costs of £2,575.

Although we have allowed a reduced amount for this provision, we are not entirely convinced of the need to change from 'purposes' to 'systems' and are mindful that only one notification will be required when processing operations serve either a single or several related purposes. It is possible that this reflects a lack of central control over the nature of information handling within the organization (or willingness to allow managers more freedom and discretion in their handling of personal information). Faced with the costs indicated, it is possible that this would stimulate a review of the organization's information handling systems with resulting savings in both compliance with the data protection provisions and in the overall efficiency of business operations.

We believe that some savings could be made in terms of the education process by the distribution of guidelines to system "owners" (with the possibility of using a number of "help points" to handle queries). However, in view of the number of systems (approximately 1,000 with the likely addition of some 100 per year) the estimates are not unduly large. The recurring cost for existing systems is made up of only 1 man day per system each year.

The organization's estimate includes the cost of putting its manual personal data files in a form such that they will comply with Article 6 relating to quality of data. (In fact, this should be assigned to Issue 5.)

The organization included a cost for new systems in their set-up costs (£33,000 for manual records and £42,000 for non-manual records). The study team believe that this should appear only in the recurring costs figures and, to that extent, is a duplication.

• **Issue 2: Informing data subjects of collection/disclosure**

In many cases, for example, existing employees, this would be covered by "notification" forms prepared under Issue 1 to comply with Article 21(3). A cost of

£20,000 was estimated to result from notification being given to the data subject in respect of each of 10,000 new records each year. Article 12 notifications were estimated at only 2,000 per year costing at £10 each. Software changes to be able to flag when a data subject had been informed were included at £110,000. Some concern was expressed that some data subjects might object to the processing of their data

Study team's comment:

The organization's view of these provisions is reasonable and the study team are in general agreement with the estimate of costs. However, the organization's concern about the fact that some data subjects may be able to object to the processing of their data under Article 15(a) was, in the study team's opinion, unfounded as this would only apply in exceptional circumstances. This leads to a saving of £20,000.

• *Issue 3: Data subjects' right of access*

This is not a major concern of the organization. Present levels of subject access are very low and are not expected to rise significantly. However, the organization anticipates that subject access could rise to as many as 500 per year and this would involve increased costs. The cost of satisfying each access request is estimated at £300, based on 1 man-day effort.

The organization welcomed the amendment to Article 13 compared to the 1992 text (in respect of notification to third parties of rectification, erasure or blocking of data unless impossible or involving a disproportionate effort). The organization had estimated notification to third parties would have cost £1,000,000 set-up plus £400,000 recurring costs (mainly in software changes to allow disclosure logging and the resulting notification procedure) and these figures had been given to the Home Office for its survey. The organization considered that, in respect of their processing, notification to third parties would involve a disproportionate effort and these costs are, therefore, no longer applicable.

Concern was expressed by the organization over whether certain sensitive data, such as medical data and information relevant to appraisal, potential promotion and career prospects, would have to be disclosed. This is something it would rather not do. If such data had to be disclosed, this could result in an unquantifiable burden (by not being able to hold such data or by having to disclose them to the data subject).

Study team's comments:

The study team agree with the organization's view of the effects of the subject access provisions except to the extent that the

exceptions in Article 14 may be relied on to prevent disclosure to the data subject of certain, but not all, of the information, the disclosure of which gives rise to concern. Articles 14(1)(g) and (h) should apply in some cases. Only recurring costs are given. The set-up costs are included in Issue 1 - Notification.

• *Issue 4: Data subjects' consent*

The organization considered that its health and epidemiological data concerning its current employees would be processed under Article 8(2)(a) and the data subjects' consent would not be required. However, as regards similar data relating to past employees which was archived (and necessary for several purposes including potential future claims for negligence and monitoring hazardous occupations and working environments), the organization expressed concern that this would require the data subjects' consent. This would require writing to all current and past employees and chasing up those who fail to reply. The estimated cost, based on a unit cost of about £25 per data subject, is £500,000 for current employees and £2,500,000 for past employees (22,000 current UK employees and 100,000 past employees).

Recurring costs would be trivial (dealing with new employees) as obtaining consent could be dealt with during the recruitment process. No cost is assigned to this aspect.

Study team's comment:

It would be unfortunate if the organization had to write to all its ex-employees, many of whom will have died, because of the distress this would cause the families of such persons. The study team's view is that an exemption under Article 8(3) would be appropriate here. This would require legislative action (it is unlikely that such a matter would be left to the Data Protection Registrar's discretion). The study team consider that such an exemption would be forthcoming. Nevertheless, if this were not so, the study team consider that the estimate produced by the organization is entirely realistic.

If exemption were granted under Article 8(3), there may be some costs associated with reviewing the nature of the information stored relating to ex-employees and how long it is kept for.

• *Issue 5: Processing of personal data*

The organization does not consider that there are any significant costs under this issue that have not been allowed for elsewhere. It assumes that the UK

Parliament will grant derogations under Article 8(4) such that the organization's freedom to process sensitive data will be not be unduly hindered. What is of concern here is information relating to criminal convictions that could be relevant to some of the organization's activities. Restriction of this would be a minor hindrance rather than a major concern. The costs of compliance with the data quality requirements have been included in Issue 1.

Study team's comment:

The organization's views are accepted.

• **Issue 6: Transfer of data to third countries**

The organization takes the view that transfers will be permitted unless specifically prohibited as a result of the procedure in Articles 26(2) to 26(5). In any case, there would not be any significant effect on the organization's business. Very few countries would be identified as failing to ensure adequate levels of security. For those that do, the organization would cease to transfer personal data or would use the provisions of Article 27(2).

Study team's comment:

The study team agree with the organization's view of these provisions.

• **Issue 7: Security**

The organization believes that its existing security measures are such that the proposals will not have any significant effect either on those security measures or their costs.

Study team's comment:

The study team agree with the organization's view of these provisions.

• **Issue 8: Automated individual decisions**

The organization does not use automatic processing to define personality profiles.

4. Current costs of complying with existing legislation

The organization spends approximately £50,000 per annum directly attributable to the Data Protection Act 1984. This is mainly associated with registration, training and monitoring procedures. The set up costs of compliance with the Data Protection Act 1984 were estimated as £1,500,000 at present values. Much of this cost was associated with determining the implications of the legislation, setting up procedures and training.

5. Wider economic issues for the organization

This is an extremely large business with extensive experience of data protection legislation. The anticipated costs of meeting the requirement of the proposed Directive will have a negligible impact upon its operations, turnover, or profits.

6. Summary

The anticipated costs are small in comparison with the overall level of activity in the company. The widely held view that the consent of past employees would be necessary was misconceived. The suggestion that extensive notifications would be required to reflect the large number of computer systems was also found to be exaggerated. The study team accepts that more registrations may be required where the processing serves general purposes but that some rationalization of data handling could be triggered, reducing overall costs. It is accepted that some costs (previously entered against Issue 1) will be incurred under Issue 5, in respect of manual files.

5.7 Case study: Hospital

1. Nature of activities

The organization is a directly managed unit, which includes three major hospitals providing acute care. There are 350 units of this kind in the UK, but this one serves about twice the average population. In addition to providing acute services to about 1/2 million people in the immediate vicinity, specialist services are available to those living in the surrounding region. Some 4,500 staff are employed and the unit has an annual budget of £150m, including £30m for capital expenditure.

HOSPITAL

Table B: Joint estimate of costs (£m) by organization and study team

Issue	Organization and study team	
	Set-up	Recurring
1. Notification	0.003	0.001
2. Informing data subjects on collection/disclosure	0.010	-
3. Data subjects' right of access	-	-
4. Data subject's consent	-	-
5. The processing of personal data	0.010	-
6. Transfer of data to third countries	-	-
7. Security of personal data	-	-
8. Automated individual decisions	-	-
Total	0.023	0.001

In this case study, the organization was unable to present detailed initial estimates of costs, although some tentative costs were indicated. The final estimates were drawn up in discussions between the organization and the study team.

2. Discussion of estimates

• *Issue 1: Notification*

The organization currently has three registrations; relating to staff, health care records (patient administrative data) and a specialist register including data on HIV carriers, children at risk, etc. Personal files include information on payroll, manpower management systems (basic personnel data, employment record, professional qualifications, etc.) and at least one manual file on each member of staff. Taken together, about 13,500 files are maintained on current staff, and 6,000 to 8,000 files on past members of staff, which are kept for five years.

In addition to automated data, each patient registered over the past ten years has a personal file containing case notes. There are about 1.5 million, although some are duplicates: subsidiary files are held on current patients in different parts of the organization. The unit holds personal data for research purposes in an aggregated form and is responsible for making returns to the Department of Health at regular intervals.

It is assumed that notification to the supervisory authority will not be required in the case of manual files. Nonetheless, the organization will need to follow a similar set of procedure to those adopted with respect to automatic processing.

The organization has well established procedures for dealing with manual records but some resources will need to be devoted to taking stock of these procedures for notification purposes. It is estimated that the set up costs associated with notification will be about £3,000, with recurrent costs of less than £1,000 per year.

• *Issue 2: Informing data subjects of collection/disclosure*

Information is generally collected from staff and patients directly. In addition, information is provided via General Practitioners. For new staff and patients, notification on collection, recording or disclosure would fall within Articles 11 and 12 and procedures can easily be put in place to inform existing staff of collection/disclosure alongside the other information circulated.

Information is not normally disclosed about patients but, if data is to be disclosed to other recipients,

safeguards can be put in place rendering Article 12(2) applicable.

A very large proportion of patient files are 'past' records, but it is assumed that the costs of informing all past patients that their personal data is being processed would involve a disproportionate effort; Article 12(2). Nevertheless, on those occasions when a registered patient is re-admitted, this should trigger a transfer of information about collection/disclosure.

The costs arising are not significant, but action will be required to amend existing forms, for staff and patients alike. Including administration and materials, the set up costs will be about £10,000. Recurring costs will be minimal.

• *Issue 3: Data subjects' right of access*

This is not a cause of major concern for the organization. The Access to Health Records Act 1990 already offers data subjects access to their records, although this must be via a health professional and the records covered are not retrospective. The introduction of this legislation has not resulted in any significant demand in subject access requests which are, at present, only one or two each year.

It is assumed that the proposed Directive will not lead to significantly more requests. The costs involved in meeting subject requests are currently as much as £500 and if the present number of requests was to rise to perhaps twenty or thirty, they would increase recurring costs to between £10,000 to £15,000.

The organization takes the view that if requests were to increase substantially this would trigger changes in the way in which it maintains patient records, leading to greater pressure for automation. These costs could be significant although in the longer term, cost savings could arise.

Requests from staff for access are regarded as insignificant.

Study team's comment:

We believe that given the current legislative arrangements relating to access to manual files, the number of requests for data access is unlikely to increase and we assume that the proposed Directive will generate no increases in requests.

• *Issue 4: Data subject's consent*

The provisions of Article 7 will enable the organization to process data, even in the absence of subject consent. Moreover, whilst the unit processes large quantities of

sensitive data, Article 8 (2b) provides a derogation for health services.

Data subjects who are members of staff may need to grant their consent to the processing of their health records, but information on the ethnic origin of employees is already obtained with the data subject's consent.

The costs of meeting these provisions are regarded as negligible. This is in marked contrast to the estimates produced by the UK Department of Health in its response to the 1992 text of the proposed Directive. This anticipated very substantial costs arising from the need to gain consent from all data subjects with access to health services. Article 8(2b) meets this concern.

• *Issue 5: The processing of personal data*

The organization considers that its current practices and procedures largely meet the requirements in the proposed Directive. However, some concern was expressed about how the principles relating to data quality (Article 6) might be interpreted. It was acknowledged that there were gaps and inaccuracies in some patient records, but the task of ensuring that all information was correct would clearly prove impractical. The Access to Health Records Act had encouraged improvements to data management practices, but this does not extend to older records.

The organization and the study team consider that, given the nature and purpose of the information held, it would be unrealistic to check each file for accuracy and that the reference to reasonableness in Article 6(d) would apply.

Study team's comment:

The organization should pay particular attention to the quality of the information held in the residue of "past-files" containing sensitive data which will be held at the end of the transitional period. In addition, it is essential that the organization applies the quality criteria to data on new patients at the earliest date following the adoption of the Directive by the European Council and Parliament.

• *Issue 6: Transfer of data to third countries*

This does not apply at present. In the longer term the proposed Directive could bring significant benefits, given the likelihood of convergence in health care systems across the Community. For a small number of hospitals, particularly in the private sector, which offer services to overseas patients, this could be an issue.

• *Issue 7: Security of personal data*

Current security standards are regarded as good and are under constant review. Particular attention is given to the protection of highly sensitive data. Increased emphasis is being given to the use of networks within the organization, which brings with it pressures to ensure that systems are secure. The contracting out of health services is also giving rise to concern about the confidentiality of patient records. Nonetheless, the organization does not perceive any additional costs arising under this issue.

• *Issue 8: Automated individual decisions*

Health care professionals are making increased use of this technique as an aid to decision-making. However, all decisions about care/treatment are always made by a qualified professional in consultation with the patient.

3. Wider economic issues for the organization

The organization assumes that there will be some beneficial impacts upon the quality of the service which it provides, principally to patients. In this respect, it builds upon recent UK legislation.

Like the rest of the National Health Service a significant proportion of its budget is for information handling by staff and any improvements to existing systems, particularly those encouraging the use of automatic processing, should reduce costs and improve effectiveness.

The overall impact of the proposed Directive on the budget of the organization is minimal and does not add materially to the annual recurring cost of £6,000 spent on meeting the requirements of data protection legislation. However, in many respects, this is an underestimate of the full costs of data protection which are built into the wider costs of data processing.

If the organization embarked upon a programme which resulted in the majority of its records being processed automatically this could produce enormous savings, although the initial costs would be high. For example the purchase of a Hospital Investment Support System (HISS) from the USA would be about £5 million. The pressure to follow this route will increase as the contracting out of health services in the UK proceeds. For this reason the proposed Directive provides a further spur to improving data handling procedures but, alone, its beneficial impact will be limited.

5. Summary

The anticipated costs are small, with the main costs potentially arising from having to take stock of the quality of patient files and rights of access.

It is estimated that the cost of information handling in the UK Health Service is of the order of £2.8 billion. There are considerable opportunities for savings and increases in efficiency flowing from an increasing commitment to information technology. The proposed Directive may provide an added incentive to this end.

5.8 Case study: Local Authority, County Council Education and Social Services Departments

1. Nature of business activity

A medium size, upper tier local authority serving a population of about 579,000. Like all shire counties in England and Wales, and Regional Councils in Scotland, it provides a number of strategic functions; the most important, in terms of both budget and manpower, being education and social services.

In this case study the impacts of the proposed Directive upon the Education and Social Services Departments are assessed. It was not possible to obtain the Council's initial estimates of the costs for the education department, these being determined jointly between the respondent and the study team.

2. Education department

(i) Activities

It employs 9,339 staff, including teachers, administrative staff and manual workers. About 70% of the annual budget of the councils is devoted to education (£223m) of which three-quarters is allocated to staff costs, mostly teachers. Over the past few years individual schools have taken on increasing responsibilities for their own budget and staffing, but the County retains considerable residual powers and there is a good deal of personal information exchange between the county and schools.

Personal information held by the department includes manual file records, comprising application forms, references, medical notes and automatic files, including date of birth, date of appointment, salary grade, ethnic origin, and payroll information.

Given the special responsibilities of teachers the local authority undertakes standard checks on applicants for teaching posts, in respect of criminal records. Furthermore, the authority is circulated with information by the Department for Education about teachers who have been suspended, in accordance with the Children's Act 1989.

Some 35,000 files are currently held, the majority on staff, but a small proportion relate to children, for example those with special needs for whom

psychological reports may have been prepared. In most cases second copies of reports are forwarded to the respective schools and individual line managers. The department already provides individuals with access to their personal files, as required. However, personnel are not permitted access to personal references and sensitive health reports will be made available only through a doctor.

LOCAL AUTHORITY, EDUCATION DEPARTMENT

Table B: Joint estimate of costs by organization and study team (Figures in £m)

Issue	Organization and Study Team	
	Set-up	Recurring
1. Notification	0.001	<0.001
2. Informing data subjects on collection/disclosure	-	-
3. Data subjects' right of access	-	-
4. Data subject's consent	-	-
5. The processing of personal data	0.012	-
6. Transfer of data to third countries	-	-
7. Security of personal data	0.005	-
8. Automated individual decisions	-	-
Total	0.018	<0.001

Information is generally held for thirty years after a member of staff has left the employment of the authority, but some may be discarded from time to time.

(ii) Discussion of major costs and benefits arising from the proposed Directive

• Issue 1: Notification

It is assumed that the authority will not need to notify the supervisory authority of its processing of manual data. However, a document satisfying the requirements of Article 21(3) will have to be prepared. The department has expressed some concern that the existing measures governing the security of manual files in its possession were not up to standard (see Issue 7). It did not express concern about disclosing details of its security arrangements to the supervisory authority.

Study team's comment:

We agree that the costs associated with notification will be minimal.

• Issue 2: Informing data subjects of collection/disclosure

Some costs will arise from having to prepare amended job application forms and to advise existing employees of the arrangements regarding the disclosure of information. Given that this type of documentation is

amended on a fairly regular basis this is not likely to involve excessive costs. Furthermore, the department is in regular contact with its staff.

• **Issue 3: Data subjects' right of access**

The department already provides staff with the opportunity to view their personal files, under supervision. The number of requests for access from data subjects is currently small and it is not expected to increase substantially. Where copies of data are required by the data subject a small charge would be made to cover the costs. However it is acknowledged that substantial costs could be incurred from putting data in manual files into a form suitable for responses from data subjects. At present the number of active manual files is about 12,000, but the department would also need to take stock of its archived material, a large proportion of which is not automatic, in order to ensure compliance with the data protection principles. In the first instance it will be necessary to check through the contents of each of the active files. Secondly, the department will need to review its retention of archived data and put in place a programme to ensure that it is in order. The cost of this is estimated to be £12,000 based upon the appointment of the equivalent of one additional administrator for six months. Strictly speaking, this cost is attributable to Issue 5 and is shown in the table as such.

• **Issue 4: Data subjects' consent**

The department does not envisage any difficulties in meeting this requirement since, in addition to unambiguous consent under Article 7(a), reliance may be placed upon other criteria, including Article 7(f).

• **Issue 5: The processing of personal data**

The department holds sensitive information but, apart from health records which may require consent, no problems are perceived. For example, all education authorities undertake checks with the police on criminal records of applicants for teaching and ancillary posts. Similarly, the DFE circulates information from authorities on staff suspended from their duties under the Children Act. In this respect, the impact of the proposed Directive is likely to be nullified by the public interest exemption available to Member States under Article 8(3).

• **Issue 6: Transfer of data to third countries**

Apart from personal references for teachers to work abroad or for overseas teachers to work as licensed teachers in the UK, no transfers take place.

• **Issue 7: Security of personal data**

The department is aware of the poor quality of existing security measures, particularly in relation to manual data, and acknowledges that its practices do not meet 'good practice' criteria. It is currently considering how it can improve its practices and the costs of doing so. Initial estimates suggest that £30,000 is required to bring security up to standard and the proposed Directive may encourage the authority to devote the necessary resources. However, these costs should not be attributed solely to the proposed Directive, since they are not truly additional. The study team consider that the greatest proportion of the costs identified is a result of complying with accepted good practice and the amount attributable to the proposed Directive would not exceed £5,000.

• **Issue 8: Automated individual decisions**

The department does not employ this technique.

(iii) Wider economic issues for the department

The department envisage relatively little, if any, impact on the quality of the service which it provides the community. In this respect its response is likely to be similar to other local authority education departments. During the short term the department may need to devote additional resources to enhancing the management of personal data, but, in the long term, this could produce considerable benefits in terms of efficiency savings. As compulsory competitive tendering is extended, competence in the field of data protection is likely to become important in the provision of personnel services.

(iv) Summary

The department's main costs will arise from the sorting, editing and structuring of existing manual records relating to current and previous staff.

In the longer term the department is likely to shift the majority of data processing activities to automatic systems and the proposed Directive will speed that process. This should provide for greater efficiency, security and confidence in the processing of personal data.

3. Social services department

(i) Activities

The department is responsible for providing, either directly or through voluntary and private organizations, a wide variety of personal services for the elderly, disabled and children in care. It employs 2,295 staff and has an annual budget of £51m, but its main data processing activities relate to clients. Some of the

information held is highly sensitive, including that relating to children. As in the case of similar organizations it undertakes the clearance of staff using police records.

LOCAL AUTHORITY SOCIAL SERVICES DEPARTMENT

Table B: Estimates of costs (£m) by organization and study team

Issue	Organization		Study-Team	
	Set-up	Recur-ring	Set-up	Recur-ring
1. Notification	0.001	0.001	0.001	-
2. Informing data subjects on collection/disclosure	0.001	-	-	-
3. Data subjects' right of access	-	-	-	-
4. Data subject's consent	-	-	-	-
5. The processing of personal data	0.038	-	0.012	-
6. Transfer of data to third countries	-	-	-	-
7. Security of personal data	-	0.001	0.007	-
8. Automated individual decisions	-	-	-	-
Total	0.040	0.002	0.020	-

*The organization did not distinguish between costs relating to manual and non-manual records.

Like other social service departments, it is increasingly involved in joint working arrangements with other agencies, including the health service, police and probation services and the education department.

Aggregated personal data is forwarded to the Department of Health for statistical purposes on a regular basis, together with detailed information on the progress of children in care. Information on all adopted children is currently held for 75 years. As such the department is influenced by national legislation regarding the retention of personal data.

(ii) Discussion of major costs and benefits arising from the proposed Directive

• Issue 1: Notification

The department is regarded as a single entity under existing data protection legislation. It is assumed that its manual processing activities will be exempt from notification. A short document will have to be prepared to meet the requirements of Article 21(3) and the authority will need to take steps to inform its staff of the new arrangements; this would be undertaken on a corporate basis within the authority.

Since the Access to Personal Files Act 1987, the Department has taken steps to improve the quality of its manual records, these now being in a reasonable form, but is concerned about records prior to 1988.

• Issue 2: Informing data subjects of collection/disclosure

The department already informs clients that information is held on computer records, but these contain only a limited amount of information. Since information is primarily obtained from staff and clients the need to inform them that information is being collected about them is not regarded as an issue.

It will be necessary for data subjects to be informed of the category of recipients to whom information may be disclosed. In the case of staff there may be some limited disclosure of their health records, but in respect of clients the scope of disclosure is far wider. The organization considers that modification to existing forms should be sufficient to meet the requirements. The cost of this should be minimal, considering that the department is currently undertaking a review of its current data management practices.

• Issue 3: Data subjects' right of access

Clients already have a right of access to their files and staff also may have access to their personal files. The department currently deals with about 15 access request annually from clients, together with a further 50 applications in respect of adoption records. It is not thought that this will increase significantly as a result of the proposed Directive.

• Issue 4: Data subjects' consent

Any or all of the criteria under Article 7, other than unambiguous consent, will normally apply. In those cases where information may be disclosed to a third party, for example, a private/voluntary home for the elderly, it is assumed that whilst the provisions of Article 12 will apply, processing by virtue of 7(f) will be permitted.

• Issue 5: The processing of personal data

Like many organizations, the department is concerned about its ability to meet the quality requirements in Article 6 and the need to trawl through past records to ensure that the principles are being observed. It is therefore concerned about the costs arising.

Study team's comments:

An initial estimate by the organization indicated that it had about 100,000 personal files on clients. It is assumed that, since the 1987 Act, personal files on clients are in a much better order and are more accurate than older files.

This may be regarded as a major benefit arising from the introduction of legislation which relates to manual files in the UK. If further allowance is made for the fact that most files are only retained for ten years, coupled with the derogation allowed under Article 35, the scale of the problem is likely to be far less than might first appear. Nevertheless, there will be a residue of perhaps 3,000 to 4,000 files, mainly relating to children and adoption cases, which will need to be checked to ensure that the information meets the necessary criteria.

It is acknowledged that some files, particularly children's, may go back many years and that it will not be possible to ensure that the records are entirely accurate. Nevertheless, the department will need to have taken every reasonable step to ensure accuracy to meet its obligations; Article 6(d).

It is estimated that resources will be required to establish a document management system which will involve ensuring that the contents of files are put in order, that duplicate information is removed and that files are in a form suitable for subject access. The cost of this is estimated to be £12,000 based upon the appointment of the equivalent of one additional administrator for six months. It is a cost that is likely to be repeated in most social service departments in the UK.

- **Issue 6: Transfer of data to third country**
Such transfers are extremely rare.

- **Issue 7: Security of personal data**
The department assume that additional expenditure is required to improve the standard of security with respect to manual files. However, in the main, this reflects current concerns and any improvements will not be attributable directly to the proposed Directive. The study team consider that it would be reasonable to assume an amount attributable to the proposed Directive of not more than £7,000.

- **Issue 8: Automated individual decisions**
The department assumes that its current practices meet the requirements of Article 16(2).

(iii) Wider economic issues for the department

The department does not perceive any major impacts with regard to the quality of service it provides, its turnover or staffing. It already provides information to clients from manual files and this has encouraged the adoption of a more rigorous approach to record

management. In the opinion of the organization this has resulted in an improvement in the quality of data, greater awareness of the need for accuracy, less prejudice and improved reliability. Given the emphasis now being placed upon multi-disciplinary team work in social services this is seen as a pre-requisite for improving effectiveness. The proposed Directive will apply similar pressures.

(iv) Summary

The department's main costs arise from the sorting and editing of pre-1988 manual records. For local authorities there may be economics of scale in dealing with this issue as part of an authority wide initiative. The retrospective nature of the proposed Directive clearly gives rise to particular concerns in this department, which are likely to be replicated elsewhere.

5.9 Case study: Business services company

1. Nature of business activities

The company is part of an international organisation which is involved in the provision of accountancy and management advice to private and public sector organisations. It is one of the five largest such companies in the UK, employing some 6,000 staff and having an annual turnover of £400m. In addition to a group headquarters in London it has a number of offices based at regional and sub-regional levels.

2. Initial estimates of major costs and benefits arising from the proposed Directive

BUSINESS SERVICES COMPANY

Table A: Summary of increases in costs - organization's view
(Figures in £m)

Issue	Manual Records		Non-manual Records	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.020	-	0.010	-
2. Informing data subjects of collection/ disclosure	0.028	0.007	0.064	0.017
3. Data subjects' right of access	-	-	-	-
4. Data subjects' consent	0.005	-	0.005	-
5. The processing of personal data	-	-	-	-
6. Transfer old data to third countries	-	-	-	-
7. Security of personal data	0.050	0.020	0.025	0.025
8. Automated individual decisions	-	-	-	-
Total	0.103	0.027	0.104	0.042

Benefits: Like other similar companies which rely extensively upon computer technology the proposed Directive is likely to encourage a reassessment of current data handling practices leading to an enhancement of systems and procedures.

Costs: Table A sets out by issue the organisation's estimates of costs to be incurred. Three issues in particular have been identified, notification, informing data subjects and the need to improve security.

BUSINESS SERVICES COMPANY

Table B: Estimates of costs (£m) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recur-ring	Set-up	Recur-ring
1. Notification	0.030	-	0.030	-
2. Informing data subjects of collection/ disclosure	0.092	0.024	0.010	0.002
3. Data subjects' right of access	-	-	-	-
4. Data subjects' consent	0.010	-	0.010	-
5. The processing of personal data	-	-	-	-
6. Transfer old data to third countries	-	-	-	-
7. Security of personal data	0.075	0.045	0.045	0.015
8. Automated individual decisions	-	-	-	-
Total	0.207	0.069	0.095	0.017

3. Discussion of estimates

• **Issue 1: Notification**

It is assumed that the organisation will not need to notify the supervisory authority but will need to review the contents of files and the systems associated with manual operations. In addition, costs will arise from having to prepare and disseminate information about new legislation within the organisation, through documentation, debriefings and follow ups. The company has some 30-40 registrations under existing data protection law.

No major difficulties are anticipated in responding to these requirements, indeed the proposed Directive may be less demanding than current arrangements. Information about processing operations will still need to be provided on request.

It was noted that, like similar companies, it is on the verge of joining a USA based international network which will make the control of data movements much more difficult to monitor.

Study team's comment:

We accept that some additional costs will arise from having to prepare notification documents relating to manual files. However, costs relating to notification in respect non-manual processing systems have been discounted.

• **Issue 2: Informing data subjects of collection/disclosure**

The organisation took the rather pessimistic view that it would need to inform each of its staff and personal clients. It was particularly concerned about the retention of personal information on manual files, for example on potential clients, which would need to remain confidential. A similar concern was expressed about confidential reports on staff. Some personal information was collected on an informal basis and it would be difficult to inform data subjects on collection; indeed it would be practically impossible. For each of these reasons the organisation regarded this aspect of the proposed Directive as onerous.

Study team's comment:

We acknowledge the concerns of the organisation but assume that the need to contact all existing personal clients (and others) which number over 100,000, would involve disproportionate effort. (Article 12(2)). Secondly, we believe that data subjects can be informed of either collection or disclosure, in combination with the circulation of other information or correspondence. However, we do accept that the organisation will need to set in place new procedures, which will involve some additional costs.

• **Issue 3: Data subjects' right of access**

The organisation was concerned that this provision could enable access to be obtained to confidential information relating to staff performance assessment, personal references and data relating to individuals as part of take-over or redundancy plans. The impact was regarded as potentially fundamental to its business activities.

A system is currently in place to deal with data subject's requests regarding automatic processing, but no rights of access have ever been exercised. The estimated costs of responding to an access request in one of the organisation's offices is estimated at £300, whilst a request covering all the organisation's UK operations would be about £2,000. If a substantial number of additional requests was to occur the organisation would need to amend its procedures, by linking up automatic and manual file processing. No

assumptions have been made about an increase in the number of access requests.

Study team's comment:

We accept the company's rather cautious approach regarding the number of access requests and the small costs of putting in place a system to respond to access requests. Indeed, it should largely be met in relation to Issue 1.

We are concerned, however, about the potential adverse impacts which access to commercially confidential information could give rise to. This could involve the release of sensitive commercial information, maintained on manual files. No costs have been attributed to this issue.

• **Issue 4: Data subjects' consent**

The provisions of Article 7 are regarded as sufficient not to give rise to costs, although the organisation takes the view that some costs would arise from the need to take legal advice.

• **Issue 5: The processing of personal data**

This was not identified by the organization as likely to give rise to significant costs. The main impact of this issue would be in relation to manual files, but Articles 7(b) and 7(f) would apply in most cases. The costs of putting manual files in a state such that they complied with the proposed Directive was included under Issue 1.

• **Issue 6: Transfer of data to third countries**

The organisation does not consider that the proposed Directive would have an adverse impact upon its activities although, as noted above (Issue 1) the growth of international computer networks could make the monitoring of data flows extremely difficult in practice.

• **Issue 7: Security of personal data**

The organisation already has excellent security for its automatic systems. The notification procedure requiring details of security arrangements to be lodged with the supervisory authority is not regarded as a problem. It will be necessary to marginally increase the number of staff who are responsible for security compliance monitoring.

Study team's comment:

We accept the organisations view that some additional costs will arise from having to take stock of the existing security system, in order to respond to Issue 1. We also recognise that there will be some recurring costs associated with the checking of security systems on a regular basis. However, there is no justification for including

costs relating to the security of automatically stored records. Consequently, the estimates have been reduced accordingly.

4. Wider economic issues for the organization

The organisation does not believe that the proposed Directive will have anything but a very marginal impact upon the quality of services it offers its clients, turnover, its market position or staffing levels.

Nonetheless, since the organization offers advice to a wide range of public and private sector organisations, including advice on data protection legislation and information management, some financial benefits may arise. Moreover, given its position as a market leader in this field, its own interests dictate that it, and its competitors, achieve the highest possible standards regarding the confidentiality and security of personal data. The growth of data processing business opportunities amongst local authorities highlights this point.

It was noted that the overall impact of the proposed Directive on similar companies in this and other sectors of the UK economy, will depend upon the existing balance between automatic and manual processing. In this respect it is assumed that the proposed Directive will encourage many more organisations to move more quickly to automatic processing, than might otherwise have been the case. For this reason important cost savings could arise but it was acknowledged that these would be difficult to quantify.

5. Summary

The overall impact of the proposed Directive will be marginal although some uncertainty was registered about the storage of commercially sensitive personal data. The impact of the proposed Directive would be broadly similar for other organizations in the same field. There was some evidence to suggest that the proposed Directive could stimulate investment in automatic processing, leading to efficiency and cost savings in the longer term.

5.10 Summary of findings from the UK case studies

Given the variability in the characteristics of the case study organization it is apparent that the proposed Directive will produce quite distinct impacts and responses. Nonetheless, a number of general findings have emerged:

- The financial impacts of the proposed Directive will be moderate and, after some initial adjustments, will be mostly absorbed in existing costs.

- The overall impact of the proposed Directive will be most significant for the bank, the credit reference company and the organisations dealing in list trading; there will also be significant impacts on the mail order company and the major manufacturing company (Table 5.1).
- Organizations substantially over-estimated the costs of compliance with the proposed Directive.
- In terms of the organizations' estimates, the study team's estimates were 40% of the set-up costs and 10% of the recurring costs.

Table 5.1: Total costs (£m) by Organization in the United Kingdom

Case study	Organization		Study team	
	Set-up	Recurring	Set-up	Recurring
Mail Order Company	3.894	4.512	1.569	1.084
Credit Reference Agency	19.020	1.400	9.520	0.100
Bank	22.750	18.591	7.860	0.820
Small/Medium Sized Enterprise	0.005	0.001	0.004	0.001
Major Manufacturing Company	3.995	0.522	0.894	0.499
Hospital	0.023	0.001	0.023	0.001
Local Authority	0.058	0.002	0.038	0.000
Business Services Company	0.207	0.069	0.095	0.017

- The major cost concerns of case study organizations in the UK related to informing data subjects, obtaining data subjects' consent, data subjects' access, automated individual decisions and notification (Table 5.2). The study team concluded that for this group of organizations, gaining subjects' consent and responding to subject access requests were likely to give rise to the most significant costs.
- Subsequent changes to Article 15(b) would substantially reduce the above costs, notably in respect of the Credit Reference Agency.
- Many of the costs could be significantly reduced by implementing suitable procedures.
- Organizations having a continuing relationship with data subjects would be able to comply with the provisions relating to informing data subjects relatively easily.
- Concern expressed about increased subject access was not supported by experience in sectors where subject access to manual files was already provided for, for example, the health service and local authorities.

Table 5.2: Total costs (£m) by Issue in the United Kingdom

Issues	Organization		Study team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	2.653	2.045	0.515	0.259
2. Informing data subjects	20.219	0.328	0.136	0.186
3. Data subjects' access	8.150	1.648	7.760	0.808
4. Data subjects' consent	12.510	1.890	9.510	0.100
5. Processing personal data	0.060	0.000	0.646	0.184
6. Transfer to third countries	0.030	3.870	0.030	0.070
7. Security	0.110	0.047	0.086	0.015
8. Automated decisions	3.240	13.980	0.120	0.300
9. Other	2.980	1.290	1.200	0.600
Total	49.952	25.098	20.003	2.522

- Particular concern in the UK has been focused upon the consequences of extending data protection law to manual records. The case studies revealed that just over half the costs of meeting the proposed Directive were associated with manual records. These were largely attributable to the costs in two case studies, from the mail order company having to deal with its multitude of agents and the requirement that the bank put in place systems for data subject access.
- Given the large number of manual records held by both the local authority and hospital it might have been expected that costs would have been significantly greater. But UK legislation already provides data subject access to personal manual files in the health and social service sectors.
- The transitional arrangements provided for under the Directive will significantly ease the costs involved in the processing of manual data.
- Concern was expressed by some organisations that, when the proposed Directive is transposed into national legislation and subsequently interpreted by the supervising authorities, more restrictive standards may be imposed than those assumed by the study team.
- The length of time since the proposed Directive was initially drafted and the lack of precision and clarity in the early drafts have resulted in considerable concern and uncertainty for some of the organizations interviewed.

Chapter Six: Impacts on the Dutch case study organizations

6.1 Introduction

The survey procedures in the Netherlands paralleled those in the UK; this chapter summarizes the impact assessments of case study organizations in the Netherlands.

6.2 Case study: Mail order business

1. Nature of business activities

The organization offers a large selection of items to the Dutch public using various mail catalogues. It carries close to 10,000 different products ranging from clothes to furniture. The main catalogue has a circulation of 1.5 million copies twice a year. More than 1.2 million households order at least once a year. This amounts to almost a quarter of all Dutch households. It has 1,282 employees and its turnover was f643 million in 1992/93. This is equivalent to a market share of 35%.

It has close to 10million registered data subjects. Registration is mostly for client administration and for marketing purposes and in data protection terms it is representative of the mail ordering sector in the Netherlands.

2. Estimates of costs and benefits arising from proposed Directive

Benefits: No particular benefits are perceived by the organization under any interpretation of the proposed Directive.

Costs: Given the inclusion of manual files under existing Dutch law the table (below) does not distinguish between the costs relating to manual and non-manual files.

3. Discussion of estimates

Issue 1: Notification

Under the proposed Directive the number of notifications will increase and efforts to comply with this over the years will be substantial. This will require more administrative costs both in terms of personnel and information systems.

MAIL ORDER BUSINESS

Estimates of costs (fm) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.095	0.010	0.095	0.010
2. Informing data subject	0.257	0.092	0.257	0.000
3. Data subject access	0.180	0.044	0.180	0.044
4. Data subjects' consent	0.000	0.000	0.000	0.000
5. Processing personal data	0.000	0.000	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.000	0.000	0.000	0.000
8. Automated decisions	1.000	2.000	0.100	0.200
Total	1.532	2.146	0.632	0.254

• Issue 2: Informing data subject

The proposed Directive requires information per transaction and per data subject. This implies that more information has to be kept per individual data subject. Administrative procedures and file keeping will expand substantially. Under Dutch law this is much simpler as it falls under the rule of 'presumed knowledge' of the data subject. The company's fax machines and telephone system allow for storing personal data; the organization fears these will fall explicitly under the proposed Directive.

The company's cost estimate is based on the interpretation provided the study team. However, if information has to be gathered and kept on an even more individualized basis than seems reasonable under the study team's interpretation of the proposed Directive, costs will increase fivefold.

Study team's comment:

The study team accepts the modest set-up costs estimated by the organization and the provision of more extensive information, given the anticipated alterations to existing administrative procedures. However, the need for continuing costs is not accepted.

• Issue 3: Data subjects' access

Under the proposed Directive it is expected that the organization will need to review its documentation and provide more and better access facilities to allow it to cope better with search requests. Also, costs will be

arise in training personnel to familiarize them with new responsibilities.

The organization fears that the proposed Directive will make its marketing strategy public knowledge. This would imply increased marketing costs for the organization to counter this effect.

Study team's comment:

The study team believes the organization's estimate of cost impacts on the issue of data subjects' access to be reasonable. The organization's fears in respect of the disclosure of information relating to marketing strategies are unfounded.

• **Issue 4: Data Subjects' Consent**

The organization sees no impacts under this issue. The study team agrees.

• **Issue 5: Processing of personal data**

The organization does not process sensitive data.

• **Issue 6: Transfer of data to third countries**

International data transmission occurs only within the European Union.

Study team's comment:

In view of the nature of this organization's activities within the Community, benefits may arise as existing obligations in respect of the laws of other Member States may be dispensed with (Article 4).

• **Issue 7: Security of personal data**

The present law requires extensive security measures. The organization sees no additional costs under this issue.

• **Issue 8: Automated individual decisions**

Automated individual decisions are an important issue for the organization as they are taken on a regular basis. For instance, decisions about the acceptance of a consumer's order is at present based on automatic processing. Under the proposed Directive this process will require manual intervention which would require a whole new administrative procedure, involving costs and would also severely restrain the speed of operation.

Study team's comment:

The study team acknowledges that costs will be incurred where a refusal to grant credit has to be checked by human intervention. The study team, however, sees the organization's estimate as excessive as the organization can adapt its

automated decision making system in order to signal negative decisions which can subsequently be checked by staff. We estimate negative decision to be one tenth of total decisions and the organization's cost estimated are reduced proportionally.

4. Wider economic issues for the organization

The organization perceives no positive impact on its activities either in respect of the quality of services provided or the efficiency of its business operation. Its responses are regarded as typical for this economic sector.

5. Summary

The main costs for this organization arise from the need to put in place procedures for informing data subjects and to provide additional staff to deal with 'negative' automatic decisions in respect of credit requests. The study team agrees with the organization's estimates of costs in relation to subject access rights. However, the organization's fears in respect of the disclosure of information relating to its marketing strategies are regarded as unfounded. Like other similar organizations its business activities extend to other Member States and some benefits may arise in the longer term as existing obligations in respect of the laws of other Member States are dispensed with.

6.3 Case study: Credit reference agency

1. Nature of business activities

A non-profit agency (foundation) for credit referencing providing services to 242 participating organizations (mostly banks and other financial institutions). Its staff numbers 97 persons (81.5 full time equivalents). It has records on 4.6m households and handled 8.7m enquiries in 1993. Turnover and total costs were f12m in 1993.

Data protection legislation is of fundamental significance to the core business of the agency. The organization is exclusively concerned with holding and processing personal data and providing credit references.

The organization adopted and updated a 'Privacy Code of Conduct' (Privacy Gedragscode) in 1990. This code of conduct satisfies the requirements of present Dutch Law. It also set up a board to deal with complaints in the area of privacy protection (Geschillencommissie) in 1991.

The costs of adhering to the requirements imposed by the existing Dutch law are estimated at 10% of total costs, i.e. f1.2m per year.

2. Estimates of costs and benefits arising from proposed Directive

Benefits: No particular benefits are perceived by the organization under any interpretation of the proposed Directive. It is admitted that data subjects might perceive benefits, as more information is available to them.

Costs: The cost impacts are perceived by the organization as significant and relate largely to notification and informing data subjects of processing activities.

CREDIT REFERENCE AGENCY

Estimates of costs (fm) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.000	12.000	0.000	0.000
2. Informing data subject	6.800	0.000	0.800	0.000
3. Data subject access	0.000	0.600	0.000	0.060
4. Data subjects' consent	0.000	0.240	0.000	0.000
5. Processing personal data	0.000	0.480	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.000	0.000	0.000	0.000
8. Automated decisions	0.000	0.000	0.000	0.000
Total	6.800	13.320	0.800	0.060

3. Discussion of estimates

• Issue 1: Notification

No substantial additional costs are seen by the organization if the present format of notification at the Registratiekamer holds. However, if additional internal files (such as protocol files, correction files, correspondence files, back up files, dumps etc.) fall under the proposed Directive then that would completely change the way of doing business and the additional cost are estimated at f12m, thereby doubling the operating costs of the credit reference agency.

Study team's comment:

The study team confirms that no substantial additional costs are likely and, indeed, notification procedures might even be simplified as a result of the proposed Directive. Benefits may be expected at this point.

• Issue 2: Informing data subjects

The organization has to prepare a new information booklet and expand its mailing. The estimated cost are f0.8m on the assumption that the participating institutions of the credit reference agency take care of the distribution of the new brochure among their clients. The organization claims that if a mailing by them is required to all individuals presently registered, this implies an extra set up costs of approximately f6m. The credit agency doubts that this would be feasible as they do not have the means to regularly update addresses of individual clients.

Study team's comment:

The study team considers that their costs for individual mailing will not be necessary on the basis of disproportionate effort (Art. 12(2)). The study team accepts the moderate interpretation of the organization and the f0.8m cost estimate for the preparation of a new brochure to be distributed by institutions, although even this may be generous.

• Issue 3: Data subjects' access

The organization estimates costs of f0.06m for data subject access under the assumption that protocol and rectification are limited in time (up to one year). If protocol and rectification are unlimited the organization expects an increase of f0.6m.

Study team's comment:

The study team agrees recurring costs will be involved in providing subject access facilities, but these will be limited because of the "balancing of interests" implied in Article 14(h). A more moderate cost estimate of f0.06m has been allowed.

• Issue 4: Data subject's consent

There are no additional costs under the assumption that the present legal situation is maintained. If, however, data subjects see more reasons (under Art. 15) to lodge complaints with the agency about registration then the organization estimates additional legal costs at f0.24m.

Study team's comment:

The study team believes that the proposed Directive will impose no obligations in excess of existing Dutch law.

- **Issue 5: Processing personal data**

As regards the lawfulness of processing, additional costs of $\text{f}0.48\text{m}$ are expected if the organization interprets Articles 6 and 7 as requiring a more careful consideration of the contents of the registration, leading to more detailed information (e.g. a finer code to specify an individual's credit standing) to be included in their files. The organization sees no additional cost under this issue if the present situation under Dutch law is maintained.

Study team's comment:

As careful consideration is already required under Dutch law, the study team agrees that additional costs will not arise.

- **Issue 6: Transfer of data to third countries**

The organization sees no impacts under this issue. The study team agrees.

- **Issue 7: Security of personal data**

The organization sees no impacts under this issue. The study team agrees.

- **Issue 8: Automated individual decisions**

The agency does not take decisions at the individual level.

4. Wider economic issues for the organization

Under the assumptions leading to large changes in the privacy regulations some additional employment might be necessary. Cost increases due to the proposed Directive mean increases in charges to the participating organizations and credit referencing becomes more expensive. As this is a non profit agency all cost increases are directly translated into tariff increases. The total additional costs arising for the organization are set-up costs of 7% of turnover and recurrent costs of 0.50%.

5. Summary

The overall impact of the proposed Directive will be modest although set-up costs (as a proportion of turnover) are rather higher than in other case studies. Informing data subjects is a major issue and the study team's estimate allows for the preparation of a new brochure to be distributed by the participating institutions to their customers. It is agreed that recurring costs will be incurred in respect of subject access, but the organization's estimate ignores the 'balancing of interests' implied in Article 14(b): a reduced figure has been allowed by the study team.

6.4 Case study: Major Bank¹

1. Nature of business activities

The organization surveyed comprises a major bank which is part of a large financial group. It currently has approximately 11,000 employees.

The organization stressed that the very short period allowed to respond to the survey questionnaire imposed considerable restraints on them as regards the scope and detail of their answers. Nevertheless, it considered that it had identified a number of important consequences which will have a major impact on the way in which it operates.

The answers given relate to the administrative system for customers only. The estimated number of clients is approximately 2.42 million. The consequences of the proposed Directive for personnel registration and personnel policy are not taken into account. The same holds true for registration of "incidents", which concerns the registration of individuals who have intentionally caused the organization financial damage. The organization has three current notifications with the Registration Chamber (i.e. clients, personnel and "incidents").

The yearly costs to adhere to the requirements of existing Dutch law are estimated by the bank, in employment terms, at approximately 0.5 full time employment equivalents, which is only a tiny fraction of total costs.

2. Estimates of costs and benefits arising from proposed Directive

Benefits: No particular benefits were perceived by the organization under any interpretation of the proposed Directive.

Costs: General – Information processing is central to banking operations. The application of information technology to banking operations is of strategic importance to the effective organization of the bank and to its market position and competitive strength. The respondents indicated that the bank had built over the decades a complex of many hundreds of information systems which requires hundreds of millions of guilders just for maintenance each year. Changing one small detail is claimed to cost weeks of work. A system change is measured in years of work.

¹ Unlike each of the other case studies, in both the Netherlands and the UK, this organization insisted that its critique of the proposed Directive be included in full in the final report of the study.

MAJOR BANK

Estimates of costs (£m) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recur-ring	Set-up	Recur-ring
1. Notification	1.400	1.000	0.060	0.003
2. Informing data subject	17.100	0.000	5.000	0.000
3. Data subject access	0.000	0.000	0.000	0.030
4. Data subjects' consent	137.410 ^b	33.000	0.000	4.840
5. Processing personal data	140.000 ^b	0.000	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.000	0.000	0.000	0.000
8. Automated decisions	0.000	0.000	0.000	0.000
Total	295.910	34.000	5.060	4.873

(a) The zero entries in the table above and tables below provided by the bank do not imply that there are no costs, but rather that the organization was not able to specify at short notice the exact figures. These zero entries should be read as pro memoria figures (pm). Also the numbers quoted for the organization in the table above are selected by the study team from the information given by the bank in the tables which follow.

(b) The costs under data subject's consent and processing of personal data are based on the organization's interpretation of the relevant provisions in the proposed Directive.

Bank's cost estimates under notification

Non-recurrent notification at specific level (holder of product) 700 (number of subsidiaries and sub-subsidiaries) x 10 (average number of products) x £200	£1,400,000
Periodic maintenance/changes	£1,000,000
Registration of processing operations by non-automatic means	pm
Updating of records	£1,700,000
Monitoring of processing of 3.5 million files	pm
training of personnel	pm
Notification charge	pm

Bank's cost estimates under informing data subjects

Adjustment of system (protocol)	pm
Mailing to customers	£12,100,000
Review of contracts	£5,000,000
Screening of manual files	pm
Retrospective effect	pm
Loss of marketing efficiency	pm

Bank's cost estimates under data subjects' access

Modification to systems (access, internal/external protocol)	pm
Processing of manual files	pm
Public decision-making processes	pm
reverse engineering	pm
Marketing (increase in operational costs as a result of loss of efficiency)	pm

Bank's cost estimates under consent and processing

Modification to systems	pm
Obtaining consent	£137,410,000
Review of contracts (idem issue 2)	£5,000,000
Marketing (idem issue 3)	£33,000,000

Bank's cost estimates under processing

File screening	pm
Archive screening	pm
Manual file screening	£140,000,000
Modification to systems	pm
Impaired efficiency of fraud prevention	pm

Bank's estimates under transfer to third countries

Modification to systems	pm
Screening of third countries	pm
Conclusion of contracts with correspondent banks	pm
Reduced efficiency of fraud prevention	pm

At present the system is based on the principle of a central registration of customers. The organization is concerned that introduction of the proposed Directive (Articles 6 and 7) will force it to restructure its basic information processing design; i.e. building up a large number of customer registers, develop new information systems, charting the present situation with regard to the entire information management system, completely adapt existing systems, restructure interrelationships between subsystems and add additional features to allow for the proposed Directive's requirements on informing data subjects, their right of access and their consent. This new design will provide less efficient information processing than at present. The organization considers that the overall costs of completely redesigning its information systems and adopting new procedures would amount to billions of

guilders. These cost estimates were not included in the table prepared by the organization.

3. Discussion of estimates

• *Issue 1: Notification*

The present situation is that the organization, in its capacity as controller, has given three notices of registration to the Registration Chamber, namely:

1. customer administration
2. personnel administration
3. incident administrations.

This arrangement is a consequence of the views concerning the concept of the controller's organization (section 6(2) of the Dutch Data Protection Act) and results in a practicable and workable arrangement which requires relatively little maintenance and provides the necessary flexibility in daily business operations.

In the view of the organization, it is unclear from the proposed Directive whether this notification practice can be continued. It should be noted in this respect that, under the present Dutch legislation, financial services are expressly not excluded from the duty of notification pursuant to Article 9 (2a) of the Standard Exemptions Decree (*Besluit Genormeerde Vrijstelling*). It may therefore be assumed that the possibility of exemption under Article 18 of the proposed Directive will have no effect on the organization's duty of notification.

If the proposed Directive requires that notification must be given at a specified level, for example product group or product application, and if it does not allow the notification to be given at a holding level, this will greatly increase the administrative burden. The organization's administration is arranged around 18 principal product groups, each of which is divided in turn into many applications. Notification becomes even more complicated in the light of what is said in Article 18 concerning the processing of data which are intended to serve related purposes. Furthermore, notice should be given not only by the organization as controller but also by all legal persons that have not been brought under the control of the organization. Any exemption from notification for the numerous small subsidiaries will nonetheless require a system of permanent control and administration. The administrative obligations of notification in practice and the resulting costs would certainly have to be multiplied by a factor of a thousand, depending on the exact interpretation of the proposed Directive.

Additionally, the need for maintenance of the system of notification in practice, which is relatively low at

present, because of the high level of abstraction, will increase proportionately. Since the proposed Directive seems to advocate a very factual notification, and each change in the existing situation will have to be notified, this will result in a situation that is extremely laborious in administrative terms and will require that the Registration Chamber is given information at frequent intervals.

Account must also be taken of legislation to introduce a notification change, partly due to the expected increase in the number of operations and hence the costs of the Registration Chamber. A bill to this effect is presently being considered by the Dutch Council of State.

Finally, the organization points out that Article 18(4) provides that a duty of notification can be introduced with regard to processing operations not carried out by automated means. Depending on how this is interpreted, it may entail a very considerable expense owing to the need to give instructions to all employees concerned (many thousands) and to keep the administration up-to-date. It is necessary to base these calculations on the existence of some 3.5 million files held by the organization. Such files also differ very greatly in nature in the size, a standard monitoring system is not feasible.

Study team's comment:

The study team does not believe that the organization's interpretation of Article 18(1) is correct, since from the way the provision is formulated it follows that only one notification is required when the processing operations serve a single purpose or *several related* purposes. Thus, the proposed Directive does not require a notification for every specific processing activity. The study team considers that the present practice under Dutch law suffices with one single notification for *all* processing operations, but notes that even under the Dutch Act there is some uncertainty as to how far the single notification concept reaches. It is the opinion of the Registration Chamber that controllers such as banks cannot suffice with one single notification for the wide scope of purposes for which they process personal data. Nonetheless the number of registrations is likely to be modest in practice and the costs arising may not be wholly attributable to the proposed Directive.

Furthermore, the study team feels that the organization takes too negative an approach on the possibility of exemption from notification where there is a data protection official appointed by the controller (provided this is done in compliance with the national law).

The organization expects that the Registration Chamber will charge 200 guilders per notification and initially estimated an increase in its number of notifications up to 7,000. After discussions with the study team the organization reduced its estimate to 300 notifications at f200 each for set up and f10 each for updating. Even this modest estimate may prove excessive.

• *Issue 2: Informing data subjects*

The organization considers that Articles 11 and 12 of the proposed Directive may pose much greater problems than those that exist under the present legislation.

First of all, the proposed Directive requires a notification to the data subject unless he or she "has already been informed", which is a stricter provision than section 28(2a) of the Dutch Data Protection Act ("can reasonably know").

The organization maintains that if it is assumed that the provision of data within the organization of the controller constitutes disclosure to a third party, a note must be kept of these data and the data subject should be informed of the disclosure (Article 12). This duty of information is unlimited in time. Observance of this obligation requires modification of the administrative systems of the organization since no such records exist at present. The notification obligation should be satisfied by a mailing to existing customers and adjustment of the opening forms and contracts in the case of new customers.

Since the collection of personal data is also covered by the concept of processing, even where data are not collected in files kept by automatic means, each processing operation with respect to such personal data (e.g. fax communications) would have to be screened to ensure compliance with the relevant provisions. The organizational burden and expense of instruction and administration which this would entail in relation to 3.5 million files would be substantial.

Compliance with the provisions of Article 12, which is required with retrospective effect under Article 35(2), must either be deemed impossible or held to involve a disproportionate effort.

Finally, the organization considers that compliance with the obligations of Articles 11 and 12 in the case of marketing activities will require extra time or make it necessary to provide the data subject with more detailed documentation than is presently the case.

Study team's comment:

The study team does not believe that the organization's claim that all presently registered data subjects will have to be informed by means of a separate individual mailing. The study team confirms that informing data subjects can be handled by means of including an information sheet in mailing that normally goes to customers. The study team takes the view that the provision of information under Article 12 will largely be exempted by Article 12(2) on the grounds of disproportionate effort. However, it does accept that costs will arise from the need to prepare and print revisions to existing contracts, estimated at f5m by the organization. It is not believed that disclosures within the controller's organization will constitute disclosures to a third party.

• *Issue 3: Data subjects' access*

The organization claims that the proposed Directive will bring major changes in the way it presently conducts its business. The right of access relates to all processing operations covered by the proposed Directive; this provision would therefore be relevant to all processing operations carried out in relation to manual files (3.5 million) and would naturally apply to the files kept by automatic means.

In addition, the proposal relates to archive files and auxiliary files. As regards automated files, this necessitates a modification in order to determine to which persons, not only externally but also internally, data have been disclosed. As regards the other processing operations, this would represent an increase in the administrative burden.

Furthermore, the organization would have to make public its decision-making processes, for which purpose it must be possible to reconstruct previous decision-making processes or processes that have since been modified.

Since the provision is not limited in time, the administrative obligations would continue in existence for an unlimited period.

Although it has been suggested that the exemptions in Article 14 would lighten the burden, this is not, in the organization's view, correct since it refers to "an equivalent *right* of another person". This is not the case here, because the juxtaposed interests are the data subject's right of access and the administrative burden and expense which the controller is required to bear (unlike Article 12(2)). (See also Article 7(f): the interests of the controller weighed against those of the data subject).

Study team's comment:

The organization expects that the rights of access in the proposed Directive will require it to substantially redesign its information systems, but has been unable to indicate the costs involved. The study team does not accept the need for such substantial changes and notes that access to files is already provided. It is accepted that the proposed Directive may induce some additional access requests, leading to a small increase in costs (f0.030m).

- **Issue 4: Data subjects' consent**

- **Issue 5: Processing of personal data**

(the organization elected to treat these two issues together)

The organization believes that Article 7 places much greater constraints on processing personal data than exist at present in the Netherlands. First, this is because the proposed Directive applies, at the data level, to a larger number of technical processing operations and types of data, and, secondly, because multiple criteria concerning necessity (necessity criteria) are introduced which have to be satisfied by all processing operations. The Ministry of Justice assumes that the provisions will have little effect in practice. Presumably, this belief is based on the existing practice within the public sector, since the "necessity" criterion applicable to the public sector does not present problems because it is rarely enforced. A large number of public sector activities (in particular in connection with transfers of data) are based on special laws and on the fact that section 18(3) of the Data Protection Act excludes the necessity criteria in cases where data are mutually exchanged.

It may be expected that the public, particularly in the financial services sector, will most certainly make use of the necessity criterion in order to terminate all kinds of activities that are currently legitimate.

The organization illustrated the effect by comparison with the Dutch Data Protection Act as follows. Under section 4 of the Data Protection Act, a record may be kept for a particular purpose where this would reasonably be in the interest of the controller. *Unlike the proposed Directive it is the controller who determines such purpose.* The data to be included must be in keeping with the purpose (section 5(1), Data Protection Act). The use of the data must be in keeping with that purpose (section 6(1), Data Protection Act). The internal provision of data is linked to the function of the employee and not to use for a concrete purpose. Disclosure of data to third parties is allowed if this is a result of the (widely defined) purpose of the registration. The Data Protection Act therefore has

greater flexibility in relation to use and disclosure operations.

The organization noted that the proposed Directive has the potential to link every collection, technical and disclosure operation separately to the necessary criterion. As there is often a set of operations, there is a cumulative effect. In the first instance, processing must be necessary for the performance of a contract (to which the data subject is a *party*). Necessity means that no alternative arrangement is possible (even a more expensive arrangement). If there is secondary use of data (i.e. technical processing, use or disclosure which is not necessary for the performance of a contract), resort must be had to Article 7(f). This refers to the legitimate interests of the controller or of a third party to whom the data are disclosed, except where the interests of the data subject prevail.

The relevant assessment has to be made in respect of every technical processing operation. In addition to implementation of the contract, it involves:

- (a) updating the records of the organization;
- (b) technical back-up for business processes;
- (c) integrity of business operations;
- (d) quality of business operations;
- (e) compliance with statutory obligations;
- (f) rendering accounts;
- (g) producing evidence;
- (h) combating fraud;
- (i) managing contracts with customers;
- (j) marketing.

The organization stressed that it is important to note that, in connection with *corporate groups*, data kept by the separate parts of the group are also used in the normal day-to-day operations of other parts of the group. Furthermore, data from separate product contracts are used in an *integrated* fashion in the context of the activities described above. At present, it is not clear to what extent the integrated, multifunctional use of data can be brought within the ambit of Article 7(f). In so far as it cannot, the consent of the data subject must be obtained. This consent should be explicit and, on the basis of information, given in advance. It may also be withdrawn. It is expected that this provision will result in a huge increase in bureaucracy. In addition, the necessary reorganization of automated systems will be a very significant cost factor. Efficiency will be impaired.

A separate problem results from processing data relating to persons with whom the organization has no relationship. Under Article 7(b) of the proposed Directive, the scope to process data under a contract is extended to cover persons who are a *party* to the contract. Payment systems involve the processing of

personal data of principals who are customers of other banks, of beneficiaries who have their account at other banks and of persons whose name is mentioned in the notification box of the payment order. In addition, the organization often acts as an intermediary and there is no relationship of any kind with the data subject. A case can be made out for saying that the other party to a payment order should be treated as such, but the position is less clear in the case of persons who are mentioned in the notification box of the payment order. It is inconceivable that the organization be required to screen the notification box, even if it is obliged to do so as controller (cf. also Articles 8 and 18).

Since the organization is treated as controller in respect of a payment order given by a private individual or a business, the organization claims that a problem arises in connection with the technical processing of the payment orders. The organization cannot check to ensure lawfulness under Article 7(f). A customer/patient could attempt to stop payments by an insurer to a doctor if the notification box of the payment orders contains references to data covered by the professional duty of medical secrecy. What is the status of incorrectly executed payment orders and what is the legal position of the parties concerned in relation to one another?

Even if the organization is entitled to process data under Article 7(f), it believes that it would still have to make allowance for an objection by the data subject under Article 15. If it is assumed that disclosure of data within the group constitutes disclosure to third parties, this provision would mean in practice that whenever there is a cross-selling or, for example, a calculation of a yield for customers, the customer would have to be informed of the proposed mailing beforehand and of his right to protection. At the customer's request, the organization would have to block his personal data.

Both the right of objection to the processing of data and the obligation to give prior notification and to block data would require modifications to automated systems and entail an expensive administrative obligation.

As regards the interpretation of the term "necessary" in Article 7, the organization is not reassured by the Minister of Justice in his letter to the Lower House of the Dutch Parliament. The organization makes the following observations in this connection.

Recently, the Dutch Copyright Act was amended to bring it into line with the European Software Directive, which specifies that certain operations are deemed permissible if they can be said to be "necessary". In reply to questions from the Lower House regarding the meaning of the term "necessary", the Minister of Justice stated as follows (see TK 22.531, no. 5, page 28): "The

word "necessary" expresses the fact that the relevant acts must be technically absolutely essential in order to be able to use the program in accordance with the stated object".

In relation to data protection, the word "necessary" forms the essence of the proposed Directive (see Article 7(b) and (f)). If it can be interpreted flexibly, as stated by the Registration Chamber and the Ministry of Justice, the term could mean that everything which is compatible with the reasonable interests of the "controller" is permitted.

However, both the Software Directive and the proposed data protection Directive have been drafted in DG-III of the European Commission. The Ministry of Justice is responsible for incorporation of both into Dutch law.

The organization believes that it is unlikely that the same term from the same DG-III can be interpreted in different ways (broadly on one occasion and narrowly on another) by the same Ministry of Justice. The organization seriously doubts that the courts will follow the interpretation advocated by the Ministry.

Further to what the organization has said in relation to Issue 4 regarding the requirement of consent under Article 7, the following point was also made. The obligations of Article 6 will apply in full to all processing operations by virtue of Article 35. The period set for this purpose is 30 June 1997 for all processing operations which began before 1 July 1994. In practice, this means that all automated files, auxiliary files and archive files will have to be screened. Compliance with this obligation would be impossible. This is also the case with respect to the processing of data which are not included in automated files. The processing of these data must be modified in accordance with Articles 6, 7 and 8 of the proposed Directive, albeit over a transitional period of 8 years.

The organization also identified a problem in connection with the processing of sensitive data. The proposed Directive treats the carrier as the controller of the content of the message. This means that the organization is obliged to screen the notification box to ascertain whether sensitive data are present. This obligation requires a modification to the administrative systems. Quite apart from the costs, it would be impossible to satisfy this obligation. Nor is it precisely clear what is meant by "sensitive data".

Article 8(4) of the proposed Directive prohibits private organizations from processing (which includes holding) data concerning criminal convictions. The organization considers that this will impede crime prevention and detection and make it harder to obtain redress. In addition, the efforts to prevent and combat international

fraud would be hindered by Articles 26 and 27, since they would, for example, make it more difficult to exchange data about a worldwide fraud involving credit cards or insurance policies or about money laundering arrangements (which are becoming increasingly international). If there is only a suspicion of fraud or the facts are less than certain, it is debatable whether the necessity criterion of Article 7(f) is satisfied, particularly since the interests of the person in question must be taken into account. Compared with the Sensitive Data decree and the Data Protection Act, under which data may be used if the use is for a reasonable purpose and disclosure to third parties is permissible if this is a consequence of the object of registration, the proposed Directive introduces a much more restrictive test by virtue of the strictly worded necessity criterion and the obligatory consideration of the interests of the data subject.

Finally, the organization takes the view that any exemption under Article 8(3) relates only to the processing of sensitive data and does not detract from the requirements of Article 7.

Study team's comment:

The study team considers that the organization's interpretation of Article 7(b) and (f) in combination with Article 15(b) is too strict and therefore considers the organization's estimate of costs on Issue 4 to be excessive. The study team does not agree with the organization's view that in all instances the data subject's consent is required, basing its view on Article 7(f), *i.e.* that the normal commercial activities of the organization can be considered to qualify as 'legitimate'. Under this view the normal business activities of the organization are covered under Article 7(b) and (f), even where it concerns mailing to bring certain commercial activities to the client's attention. (The study team believes that, should the criteria 'necessary' and 'legitimate' used in Article 7 result in a more strict regime than presently exists under the Dutch Act, the organization's estimates of the costs attributable to obtaining consent from data subjects and additional marketing activities may be more acceptable.)

As regards Article 15(b) in relation to its present marketing activities, the organization claims an unspecified amount of costs related to adapting its information-processing systems and specifies f33 million costs as a result of the use of other marketing measures. The study team accepts that some costs will occur, but the amount specified by the organization is excessive. The study team estimates the costs at two guilders for each data subject, resulting in a total of

f4.84 million. An amendment to Article 15(b) in subsequent texts of the proposed Directive will further mitigate these impacts.

The study team does not accept the costs under Issue 5 in relation to manual files. It stresses that at present manual files already fall within the scope of the Dutch law. As far as personal data in manual files under the Dutch Act are concerned, these files already have to be structured in order to meet the requests of data subjects to have access, etc. Thus, the study team does not accept the organization's estimate of costs on this issue.

• *Issue 6: Transfer to third countries*

The organization considers that the proposed Directive now takes account of international payment transactions, since Article 26(2) provides that the country of destination is decisive for the transfer of data and also since payment systems as such are a factor which must be taken into account in assessing the suitability of the level of protection. However, not all the problems have been solved. The organization would have to screen all payment orders and other administrative operations (e.g. debt collection and letters of credit) relating to international payment transactions to ensure that they are not addressed to a prohibited final destination. For this purpose, the administrative system and automated files would have to be modified.

The problem referred to in respect of Articles 7 and 8 is relevant also if the organization does not have a contractual relationship with persons mentioned in the notification box. Article 27 does not provide a solution since the organization will often have no information about the underlying legal relationship between the data subject and the third party and cannot therefore gauge the applicability of the provision. In addition, it is still the case that the organization may not have a relationship with persons referred to in the notification box.

The organization is unclear as to how, in practice, it must satisfy its screening obligation in order to determine whether a country of final destination guarantees an adequate level of protection. It also considers that it will have to enter into specific contracts with all its correspondent organizations pursuant to the provisions of Article 17a(3) and (4).

Finally, this provision, when combined with Article 8(4), means, in the organization's view, that international fraud prevention and detection will be made more difficult.

Study team's comment:

The organization claims unspecified amounts of costs related to adhering to the proposed Directive in relation to transfer of data to third countries. The study team considers that transfer of data to third countries will be permitted until, and only when, restrictions are imposed by individual Member States. Transfers still may be permitted subject to sufficient safeguards.

• **Issue 7: Security**

Traditionally, the organization has been accustomed to safeguarding technical and administrative facilities in order to offer the best possible security and confidentiality of data. As a result of Article 7(3) and (4) the organization claims that it would have to conclude a written contract with every third party responsible for carrying out a processing operation. Since the organization is the controller of messages and correspondent organizations are regarded as processors, it maintains that specific contracts would have to be concluded with all such correspondent organizations.

Study team's comment:

The organization claims unspecified amounts of costs relating to the proposed Directive. The organization will already have written contracts with other financial institutions that process personal data relating to the organization's customers.

• **Issue 8: Automated decisions**

The organization assumes that, for the time being, the relevant provisions will not affect its banking operations. This is in turn based on the assumption that the authorization system of GEA/BEA and systems such as the automated preparation of cheques etc. will not come under the scope of the provisions relating to automated processing defining a personality profile.

Study team's comment:

The study team agrees.

4. Wider economic issues for the organization

The organization is concerned that compliance with the provisions of the proposed Directive will result in a huge increase in its internal bureaucracy. This will impair efficiency and lead to an increase in the incidence of risky transactions, a weakening of the yield management system and an increase in costs. The increase in costs will be reflected in the cost of the organization's banking products and payment transactions in general.

The organization does not perceive any additional privacy protection for its customers. Rather, it sees some irritation from customers because of the obligation to provide extensive information.

If all European banks adhere to the proposed Directive, as interpreted by the organization, banking costs should remain comparable. However, the organization is concerned that there will be national differences in the implementation of the proposed Directive resulting in cost differences. Another factor is that, if the pessimistic view of the organization is accepted, European banks would become less competitive on the world market.

5. Summary

The organization believes that the proposed Directive will have a dramatic impact upon its operations. In addition to identifying a number of set-up and recurrent costs a range of other, unspecified, costs are claimed. In particular, the organization anticipates costs arising from the need to inform and gain the consent of data subjects, and from data processing (checking, structuring and editing files). The study team does not consider that existing customers will need to be informed and their consent obtained, by virtue of the provision contained in Article 12(b) and 7(f). Furthermore, since existing Dutch law already requires that the contents of both manual and non-manual files are maintained in 'good order', no additional costs will arise (Issue 5). The study team accepts that some costs may arise from the need for compliance under Article 15(b) in respect of marketing by mail. However, it notes that an amendment to the June 1994 text of the proposed Directive may reduce or eliminate this cost. In view of these findings, the study team considers that the wider economic impacts anticipated by the organization are overstated.

6.5 Case study: Small/Medium size enterprise

1. Nature of business activities

This is a company in the private service sector whose main activity is the provision of legal assistance and advice. It has approximately 250 employees and approximately 50,000 clients. The organization was unwilling to disclose its turnover figure.

Registration involves mainly personnel administration and salary administration. The organization's view is that the introduction of the proposed Directive will be at the same cost level as the introduction of the WPR. These costs are seen as small.

2. Estimates of costs and benefits arising from proposed Directive.

Benefits: No particular benefits are perceived by the organization under any interpretation of the proposed Directive.

Costs: It is anticipated that these will be negligible.

SMALL/MEDIUM SIZE ENTERPRISE

Estimates of cost (fm) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.000	0.000	0.000	0.000
2. Informing data subject	0.008	0.024	0.008	0.004
3. Data subject access	0.000	0.000	0.000	0.000
4. Data subjects' consent	0.000	0.000	0.000	0.000
5. Processing personal data	0.000	0.000	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.000	0.000	0.000	0.000
8. Automated decisions	0.000	0.000	0.000	0.000
Total	0.008	0.024	0.008	0.004

3. Discussion of estimates

• Issues 1, 2, 3 and 5

The organization's estimate is that the costs of introducing the proposed Directive are minor and will mostly be absorbed. The costs which are mentioned cover the issues of notification, informing data subjects, data subject access and lawfulness of processing. Because of the small amounts involved these have been aggregated against Issue 2 which is likely to be the most significant. The organization expects that the requirements under the four relevant issues will result in a total cost increase of f0.008m set-up and f0.024m recurring.

Study team's comment:

The study team agrees that costs will not be significant. The study team considers the organization to be correct in its estimate of the costs pertaining to personnel and salary administration files under the relevant four issues. Employees can be easily informed on collection, recording or disclosure. Where data subjects who are clients need to be informed, the tasks involved will be undertaken by existing staff without much costs. The study team does not understand why the recurring costs are higher than the set-up costs. The study team accepts the set-up costs, but believes the recurring costs to be, at most, half the set-up costs.

• Issue 4: Data subjects' consent

The organization does not consider the issue of data subjects' consent to have any impact because of the provisions of Article 7(b) and (f) and Article 8(2). The study team agrees.

• Issues 6,7 and 8

The organization sees no impacts under these issues. The study team agrees.

No costs will arise as regards manual files since the present situation will not change with the introduction of the proposed Directive. The question as to what extent manual files are covered under both the present Dutch law and the proposed Directive is something that has to be resolved by case law.

4. Wider economic issues for the organization

The overall impact is regarded as negligible.

5. Summary

The overall impact of the proposed Directive, as estimated by the organization and confirmed by the study team, will be small. In practice, it would seem likely that costs would be mainly absorbed within existing levels.

6.6 Case study: Major manufacturing company

1. Nature of business activities

This firm markets an extensive and advanced range of products and services for the representation and reproduction of information and may be considered a "high-tech" firm. Each year some 7% of turnover is invested in research and development. The firm employs almost 12,000 people world-wide (almost 3,500 in the Netherlands alone) and has an annual turnover of f2.6 billion, 10% of which is earned in the Netherlands. This turnover is obtained from sales of machines, rental, leasing and service activities.

The yearly costs to adhere to the requirements of the Dutch law are estimated at f30,000 which is only a tiny fraction (less than 0.01%) of total costs.

2. Estimates of costs and benefits arising from proposed Directive

Benefits: No particular benefits are perceived by the organization under any interpretation of the proposed Directive.

Costs: These largely relate to the organization's perception of the need to inform its employees of data processing.

MAJOR MANUFACTURING COMPANY

Estimates of costs (£m) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.000	0.000	0.000	0.000
2. Informing data subject	0.350	0.014	0.050	0.010
3. Data subject access	0.000	0.008	0.000	0.002
4. Data subjects' consent	0.000	0.000	0.000	0.000
5. Processing personal data	0.000	0.000	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.000	0.000	0.000	0.000
8. Automated decisions	0.000	0.000	0.000	0.000
Total	0.350	0.022	0.050	0.012

3. Discussion of estimates

• **Issue 1: Notification**

The organization assumes that the proposed Directive will not require additional notification to existing Dutch law. The study team agrees.

• **Issue 2: Informing data subjects of collection/disclosure**

The organization expects an increase in its administrative costs caused by the requirement to inform data subjects. Further, the organization claims some additional set up costs due to the necessity to adapt its computer programs to the information requirement (estimated at £50,000). If files containing information on an individual fall under the proposed Directive, the organization expects an increase in costs (up to £300,000 on an annual basis).

Study team's comment:

The study team agrees that some set up costs will be necessary, but that extended file management will not be necessary.

• **Issue 3: Data subjects' right of access**

The recurring costs due to maintenance, training, and management of the expanded information transmission are estimated at £20,000. Moreover, there will be some material costs of £2,000. These recurring cost are for both provision of information and increased use of the right of access.

Study team's comment:

The study team agrees that costs will occur. However, in view of the present level of total

costs related to the requirements of the Dutch law, the study team considers £12,000 to be more reasonable. These recurring costs are divided between the issues 'informing' and 'access'.

• **Issue 4: Data Subjects' Consent**

No significant changes compared with present situation are expected. The study team agrees.

• **Issue 5: The processing of personal data**

No significant changes compared with present situation are expected. The study team agrees.

• **Issue 6: Transfer of data to third countries**

The number of international transmissions of personal data is minimal. No significant changes compared with present situation are expected. The study team agrees.

• **Issue 7: Security of personal data**

No changes in present procedures and protection requirements are necessary. The study team agrees.

• **Issue 8: Automated individual decisions**

Not an issue for this company. The study team agrees.

4. Wider economic issues for the organization

The overall impact is regarded as negligible in this large organization.

5. Summary

The impact of the proposed Directive upon this very substantial manufacturing company will be extremely limited with costs being restricted to informing data subjects and responding to requests for access. In large part it may be anticipated that these costs will be absorbed over time at existing levels.

6.7 Case study: Hospital

1. Nature of business activities

The organization is a municipal hospital providing general health care. The organization works with different registrations depending on specific characteristics of the medical care provided (e.g. poli-clinical; clinical, etc.). Other registrations concern personnel and finance. Total budget is £170m, employment 1,965.

2. Estimates of costs and benefits arising from proposed Directive

Benefits: No particular benefits are perceived by the organization under any interpretation of the proposed Directive.

Costs: No additional costs were anticipated.

HOSPITAL

Estimates of costs (fm) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.000	0.000	0.000	0.000
2. Informing data subject	0.000	0.000	0.015	0.008
3. Data subject access	0.000	0.000	0.000	0.000
4. Data subjects' consent	0.000	0.000	0.000	0.000
5. Processing personal data	0.000	0.000	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.000	0.000	0.000	0.000
8. Automated decisions	0.000	0.000	0.000	0.000
Total	0.000	0.000	0.015	0.008

3. Discussion of estimates

The organization expects no additional costs due to the proposed Directive because the organization already adheres to regulations on personal data protection that are more stringent than at present required under the Dutch Law. The study team broadly agrees with this view.

The organization is correct in its view that where data subjects are registered, they can be easily informed on collection, recording or disclosure. A considerable proportion of the patient files are old records and the study team agrees that no costs will result from the proposed Directive because the costs involved in informing all past patients can be considered as disproportionate effort under Article 12(2).

The study team, however, feels that the organization is somewhat optimistic in its statement that no costs will occur as regards providing information and data subject access. Minor costs may occur as result of the requirement to amend existing forms, for patients and personnel alike. The study team estimates set-up costs for this at f0.015m and recurring costs at f0.008m.

The organization does not consider the issue of data subjects' consent to have any impact because of the provisions of Article 7(b) and (f) and Article 8(2).

Article 8(2) expressly mentions an exemption for health services. The study team agrees.

No costs result from the provisions on data quality (Article 6) and the lawfulness of processing, since the organization's current practices and procedures meet the criteria posed.

No costs will arise as regards manual files since the present situation will not change with the introduction of the proposed Directive. The question as to what extent manual files are covered under present Dutch law is something that has to be resolved by case law.

Other issues are not seen as relevant.

4. Wider economic issues for the organization

None were identified.

5. Summary

The hospital was unable to identify any significant costs arising from the proposed Directive. However, the study team believes that some minor costs will be incurred in amending existing forms for patients and personnel, although over time these will be largely absorbed within existing levels.

6.8 Case study: Local authority, social services department

1. Nature of business activities

The organization is a municipal social services department responsible for providing financial benefits for unemployed, elderly, disabled and people in need. The organization works with different registrations depending on the specific applicable benefit system. In addition to personnel and staff files it holds 6,500 personal files some of which contain sensitive data.

2. Estimates of costs and benefits arising from proposed Directive

Benefits: The organization expects benefits will occur because a more clear and stringent data protection system will offer them better instruments to fight misuse of social services and benefits (benefits estimated at 1-3 % of annual budget). The study team is uncertain whether such benefits will indeed occur compared with present Dutch law.

Costs: These were identified as being associated with informing data subjects and security.

SOCIAL SERVICES DEPARTMENT

Estimates of costs (fm) by organization and study team

Issue	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	0.000	0.000	0.000	0.000
2. Informing data subject	0.100	0.050	0.008	0.004
3. Data subject access	0.000	0.000	0.000	0.000
4. Data subjects' consent	0.000	0.000	0.000	0.000
5. Processing personal data	0.000	0.000	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.120	0.030	0.000	0.000
8. Automated decisions	0.000	0.000	0.000	0.000
Total	0.220	0.080	0.008	0.004

3. Discussion of estimates

General

The organization expects only marginal additional costs due to the proposed Directive because it already provides an equivalent level of protection on the basis of different public laws dealing with social benefits. It also expects that most of the potential cost will be absorbed within normal operating costs. The study team agrees with this view.

• **Issue 1: Notification**

The organization is correct in stating that benefits can be attributed to the proposed Directive because the present burdensome practice under Articles 19-20 of the Dutch law by which personal data files are subject to a regulation which will no longer apply. Notification will suffice in the future, and most files will even be exempt from notification. The study team agrees.

• **Issue 2: Informing data subject**

The organization does anticipate set up costs caused by changes in the automated information system and recurring costs relating to informing data subjects.

Study team's comment:

The study team believes an amendment of existing forms is seen as sufficient in this respect. Informing existing clients can be considered disproportionate effort under Article 12(2). The study team estimates set up costs to be about f0.008m and recurring costs of f0.004m.

• **Issue 3: Data subject access**

The organization deals with several access requests yearly under the WOB ('Wet Openbaarheid van Bestuur': Act regulating access to public files) and expects no significant increase. The organization

mentions that where the right of access will also apply to manual files containing specific information on an individual, the costs in relation to the right of access may be significant.

The study team's comment:

The study team considers these files not to fall within the scope of the proposed Directive. No costs will occur.

• **Issue 4: Data subjects' consent and Issue 5: Processing**

The organization does not consider the issue of data subjects' consent to have any impact because the provisions of Article 7 as well as Article 8(2) cover its activities. No costs result from the provisions on data quality (Article 6) and the lawfulness of processing, since the organization's current practices and procedures meet the criteria posed the study team agrees.

• **Issue 6: Transfer to third countries**

Issue is not seen as relevant. Study team agrees.

• **Issue 7: Security**

The organization fears a substantial increase in its cost for providing adequate security for manual files with sensitive data.

The study team's comment:

The study team feels that no costs will arise in relation to manual files since the present situation will not change with the introduction of the proposed Directive. The question as to what extent manual files are covered under the present Dutch law is something that has to be resolved by case law.

• **Issue 8: Automated decisions**

The organization mentioned that it expects to adopt expert systems in the future to determine eligibility for social benefits of applicants.

4. Wider economic issues for the organization

None were identified, although the organization expects that the proposed Directive may provide a better instrument to control fraud and misuse of social benefits.

5. Summary

The organization claimed that significant costs would arise from the need to inform data subjects and meet revised security requirements in respect of manual files.

The study team believes that informing existing clients will not be required (Article 12(b)) and that existing Dutch law already requires that manual files containing sensitive personal data be secure. As a result it is our view that the impact of the proposed Directive will be marginal, with any costs largely being absorbed within existing levels.

6.9 Summary of findings from the Dutch case studies

The major findings to have emerged for the Dutch case study organizations are as follows:

- The financial impacts of the proposed Directive will be moderate and, after some initial adjustments, will be mostly absorbed in existing costs.
- The overall impact of the proposed Directive is most significant for the bank; there will also be significant, though much smaller, impacts on the mail order company and credit reference agency (Table 6.1).

Table 6.1: Total costs (fm) by Organization in the Netherlands

Case studies	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
Mail Order Business	1.532	2.146	0.632	0.254
Credit Reference Agency	6.800	13.320	0.800	0.060
Bank	295.910	34.000	5.060	4.873
Small/ Medium Sized Enterprise	0.008	0.024	0.008	0.004
Major Manufacturing Company	0.350	0.022	0.050	0.012
Hospital	0.000	0.000	0.015	0.008
Social Services Department	0.220	0.080	0.008	0.004

- The major cost concerns of organizations in the Netherlands largely reflected those in the UK, with the exception of automated individual decisions (Table 6.2).
- The additional costs for the bank arise from its direct marketing of products which extend beyond its 'traditional' activity. In the UK this form of trading is restricted by existing codes of practice.
- Only the social services organization of the seven case studies saw benefits resulting from the proposed Directive.
- Organizations, particularly the bank, considerably overestimate the costs of compliance with the proposed Directive.

Table 6.2: Total costs (fm) by Issue in the Netherlands

Issues	Organization		Study Team	
	Set-up	Recurring	Set-up	Recurring
1. Notification	1.495	13.010	0.155	0.013
2. Informing data subjects	24.615	0.180	6.138	0.026
3. Data subjects' access	0.180	0.652	0.180	0.136
4. Data subjects' consent	137.410	33.240	0.000	4.840
5. Processing personal data	140.000	0.480	0.000	0.000
6. Transfer to third countries	0.000	0.000	0.000	0.000
7. Security	0.120	0.030	0.000	0.000
8. Automated decisions	1.000	2.000	0.100	0.200
9. Other	0.000	0.000	0.000	0.000
Total	304.820	49.592	6.573	5.215

- Only two areas of cost concern appear to be justified (both mainly relating to the bank):
 - informing data subjects;
 - data subjects' consent.
- Subsequent changes to Article 15(b) may reduce or eliminate the second of these.
- The enormous divergence between the organizations' and study team's estimates are almost entirely attributable to the bank case study and arises from differences in the interpretation of possible exemptions, and derogations and how expressions such as "disproportionate effort" and "legitimate interests" will be applied in practice.
- Since manual records are already largely covered by data protection legislation in the Netherlands there was no reason to distinguish between manual and automatic processing as the proposed Directive does not, in the study team's view, affect the scope of personal data processing. However, some costs are attributable to manual processing as the information to be provided to data subjects is more extensive than under the present law.
- Concern was expressed by some organisations that, when the proposed Directive is transposed into national legislation and subsequently interpreted by the supervising authorities, more restrictive standards may be imposed than those assumed by the study team.
- The length of time since the proposed Directive was initially drafted and the lack of precision and clarity in early drafts have resulted in considerable concern and uncertainty for some of the organisations interviewed.

Chapter Seven: Wider economic impacts

7.1 Introduction

The purpose of this chapter is to examine the potential impacts of the proposed Directive in a wider context than individual organizations. In particular it:

- assesses the impacts of the proposed Directive upon different sectors of the UK and Dutch economies;
- contrasts these findings with those in previous studies;
- considers the likely strategic response of organizations;
- examines the part which the proposed Directive will play in supporting the development of an information society.

7.2 Sector wide impacts

The findings of the case studies provide a basis for assessing the wider impacts of the proposed Directive in the sectors which they form part. Such estimates must, necessarily, be regarded as indicative, since it is assumed that the case study organizations are 'representative' of their sector and that the costs arising can be transposed to all organizations in the same sector. In some sectors, for example SMEs, there are many thousands of companies, with quite variable characteristics. Conversely, the number of credit reference agencies in the UK and the Netherlands is small. Estimates have been made in both countries on the basis of extrapolating from the costs per employee, as derived in the case studies.

The estimated costs relating to the representative sectors in the UK and the Netherlands are set out in summary form in Tables 7.1 and 7.2. In the UK the most substantial set up costs arise in the manufacturing and banking sectors and amongst the credit reference agencies. The largest recurring costs are associated with manufacturing. In the Netherlands the largest set up and recurrent costs are in the 'other services and government' and banking sectors. In the case of the Dutch 'other services and government' sector the estimates must be treated with particular caution given the reliance which the case study organization places upon the use of personal data. For this reason the estimates should be regarded as rather high.

Table 7.1: Total costs for representative economic sectors (UK)
(Estimates derived from costs per employee in case studies)

Sector	Set-up costs (£m)	Recurring costs (£m)	Employment (m)
Mail order retailing	7.360	5.090	0.021
Credit reference agencies	38.080	0.400	0.008
Banking	64.740	6.940	0.578
Manufacturing: small	39.380	9.850	2.107
Manufacturing: large	88.670	49.490	2.182
Health services	8.260	0.324	1.620
Education/social services (local authority)	8.820	0.000	2.698
Business services	23.840	4.270	1.506

Source: Annual abstract of statistics 1994, Table 6.2, p. 108, Central Statistical Office, HMSO.

Table 7.2: Total costs for representative economic sector (Netherlands) (Estimates derived from costs per employee in case studies)

Sector	Set-up costs (fm)	Recurring costs (fm)	Employment (m)
Mail order retailing	1.972	0.793	0.004
Credit reference agencies	0.800	0.060	<0.001
Banking	61.180	58.919	0.133
Business services	16.727	8.364	0.460
Manufacturing	15.415	3.699	1.072
Health services	3.672	1.958	0.481
Other services and government	56.185	28.092	1.531

Source: Enquete Beroepsberolking 1993, CBS 1994, Table 33, pp. 110-111.

7.3 Previous impact studies

Whilst each of these estimates must be treated with caution they may be contrasted with the findings of previous studies in the UK and the Netherlands into the costs of the proposed Directive in particular economic sectors. Thus, the UK Department of Health recently suggested that merely to inform National Health Service patients and gain their written consent to processing could cost in excess of £1bn. On the basis of the investigation of the hospital group selected for the present study it is concluded that the overall set-up and recurrent costs to the UK health service will be £8.3m and £0.3m respectively. A similar study undertaken by the Home Office indicated that the total set-up and recurrent costs for the UK banking sector will each be as high as £100m. This study concludes that on the basis of estimates derived from a major UK bank the

total set-up and recurrent costs will be £64.7m and £6.9m.

In the Netherlands a recent study by EIM into the costs of meeting the requirements of the proposed Directive for the Dutch banking sector suggested that set-up costs, alone, could be f242m/f700m. Table 7.2 shows that the set-up and recurrent costs for the Dutch banking sector will be f61.2m and f58.9m respectively.

A number of factors may account for the substantial differences in costs between this and previous studies. The case studies provided the opportunity for the study team to undertake quite lengthy and detailed discussions with representatives of organizations and this provided the opportunity for aspects of the proposed Directive to be rigorously discussed. Secondly, the study team was able to take account of recent changes to the text of the proposed Directive, explain these to the respondents and assess their potential implications. Thirdly, there is some evidence to suggest that some previous respondents may have exaggerated the cost implications.

7.4 Strategic responses

In addition to providing base line cost estimates the case studies also enabled the study team to investigate how organizations might respond to the increased costs. There were indications that some of the sectors would respond by adjusting the mix of businesses which they undertake or by changing the quality of service which they provide or by passing on certain cost increase to their customers. In general, these changes were likely to be very small and, in most cases, would be expected to reduce the cost implications to the sectors concerned but would, by the same token, either reduce the attractiveness of their products or their turnover or reduce costs in other sectors. This was especially likely to be the case for credit reference agencies, mail order firms and all organizations which engage in significant levels of direct marketing. Whilst the overall effects of such adjustments on GDP are likely to be very small, there could be a small increase in costs to the consumer, offsetting any benefits arising from the protection afforded by the proposed Directive. In the other sectors studied the overall effects of the cost changes discussed above are not likely to be discernible at the level of national aggregates.

The majority of case study organizations perceived few short term financial benefits. However, for a number of organizations and sectors, the proposed Directive may well stimulate the adoption of more sophisticated customer processing operations which, in the short term, will give rise to additional costs but may in the longer term produce significant efficiency gains.

7.5 Benefits

Benefits from legislation in the field of data protection are, by nature, less tangible and longer term than the short term costs attached to the need for organizations to adjust existing practices. Moreover, individual organizations have tended to view the proposed Directive in a relatively narrow context. These factors, together, have made precise quantification of the benefits in financial terms, impossible. Nevertheless, there is some evidence from this and other studies that the proposed Directive will confer benefits upon organizations, individuals and society as a whole.

The proposed Directive will enable the achievement of a high level of personal data protection across the Community and will, therefore, enhance public confidence in the processing of personal data. Evidence from the UK underlines the weight which individual citizens place on this form of protection. The UK Data Protection Registrar has recently reported that 66% of individuals consider protecting people's rights to personal privacy is important, placing it above other issues such as inflation. In the Netherlands, too, there is evidence from studies undertaken by the Dutch Registrar that personal data protection is regarded by the public as an issue comparable in importance with crime.

The harmonization of data protection law is also important to the development of the Single Market, and individual Member States should not be seen to either gain or lose because of the application of different levels of personal data protection across the Community. Moreover, the creation of a clear legal framework should help the free flow of personal data between Member States. The adoption of rules ensuring that only one national legislative framework is applicable to any set of processing operations will provide data controllers who transfer personal data within the Community with certainty as to which law applies to their processing operations. Furthermore, the proposed Directive will enable procedures to be adopted which will formalize the transfer of data flows outside the Community.

The creation of an appropriate framework of legislation within the Community which balances the needs of data processors with the rights of individual citizens with respect to the processing of their personal data is crucial, given the rapid developments which are currently taking place in information technology and the establishment of an 'information society'. The emergence of new information based services, including the construction of 'information superhighways' is already promising major benefits in terms of competitiveness and efficiency; in particular by offering private and public organizations the

opportunity to be more responsive to the needs of customers and clients. The growth in information society services is likely to be rapid and will be accompanied by growing investment and employment opportunities.

This investment involves an element of risk partly because the regulatory framework affecting the information society is a key factor in making such investment decisions. Legal uncertainty, reflecting the diverse arrangements currently surrounding data protection law in individual Member States, is not conducive to encouraging investment in infrastructure or the growth of information society services. Indeed, this was an important conclusion of the recent report of the group chaired by Martin Bangemann on 'Europe and the global information society'.

The argument which emerges is that failure to adopt an appropriate legal framework to protect privacy within the Community will discourage individual citizens from making full use of information infrastructures and the new services available. The wider economic and social benefits to be derived from the new technologies may not, therefore, be fully realized.

Chapter Eight: Summary of findings and conclusions

- (i) The financial impact of the proposed Directive will be very small for the majority of organizations studied in both public and private sectors in the UK and the Netherlands.
- (ii) For most organizations, after initial adjustment, new procedures will fall within existing cost levels.
- (iii) The impact will be most significant for organizations having a large personal customer base, including banks, direct mailing organizations and some sectors of retailing.
- (iv) The cost impacts are significantly lower than in previous studies conducted in the UK and the Netherlands. A recent study by the UK Department of Health has suggested expenditure in excess of £1bn may be required, merely to inform National Health Service patients and gain their written consent to processing. This study has demonstrated that such costs are overstated and that the total set-up costs and recurrent costs for the UK health sector will be £8.3m and £0.32m respectively. A Home Office study into the total costs for the UK banking sector indicated that set up and recurrent costs will each be as high as £100m. This study concludes that the set up and recurrent costs for this sector will be £64.7m and £6.9m, respectively.
- (v) In the Netherlands the case studies demonstrate that the banking sector will experience some increases in costs. In total it is estimated that the set up costs for the Dutch banking sector will be f61.2m, with recurrent costs of f58.9m. However, this is significantly lower than the earlier cost estimates produced by EIM which suggested that set up costs, alone, could be between f242m and f700m.
- (vi) The financial impacts are also substantially less than those initial estimates made by the case study organizations both in the current and previous studies; this is attributable to four main causes:
 - the study team believes that some previous respondents have exaggerated cost implications;
 - the length of time since the proposed Directive was initially drafted and the lack of precision and clarity in the early drafts have resulted in considerable concern and uncertainty, particularly in terms of the potential cost implications;
- (vii) Further revisions to the text of the proposed Directive introduced in September 1994 in respect of Article 15(b) are likely to reduce or eliminate the costs arising from organizations having to give data subjects the opportunity to have their data blocked prior to disclosure for marketing purposes. This has particular implications for the credit reference agencies and the Dutch banking sector.
 - the study team has, as a result of careful discussions, been able to clarify some of the points of interpretation in the proposed Directive and thereby reassure respondents;
 - changes have been made to the text of the proposed Directive which have removed some of the previously perceived problems.
- (viii) There is little evidence to suggest that the proposed Directive will have any significant short term effect on the quality of services offered by organizations, their turnover or employment levels. The only sectors in which significant impacts might occur would be mail order retailing, direct marketing operations and credit reference agencies.
- (ix) The major cost concerns for organizations emerging from the UK and Netherlands case studies related to notification, informing data subjects, data subjects' access, data subjects' consent and, in the UK only, automated individual decisions:
 - *notification*: organizations tended to overestimate the complexity of the notification process and underestimate the likely extent of exemptions;
 - *informing data subjects*: organizations took a pessimistic view of the exemptions available on the ground of disproportionate effort (Article 12(2));
 - *data subjects' access*: organizations assumed a level of data subject access requests which the study team considers unrealistic in the light of previous experience;
 - *data subjects' consent*: organizations construed the various alternatives available

under Article 7 very narrowly, unlike the study team;

- *automated individual decisions*: in the UK, the main concern has stemmed from complete misunderstanding of the expression "personality profiling", as related to data processing operations, and the level of detail which organizations will need to provide in response to data subjects' requests regarding the logic of automated decisions.

(x) The study team has assumed that Member States will transpose the proposed Directive in a reasonable manner, making appropriate use of all the exemptions which are available to them. There is concern in both the UK and the Netherlands that when the proposed Directive is transposed into national legislation and subsequently interpreted by the supervising authorities, more restrictive standards may be imposed leading to additional costs.

(xi) In the UK particular concern has been expressed about the inclusion of manual records within data protection law. In the case study organizations just over half of the costs of meeting the proposed Directive were associated with manual records. However, the bulk of these costs arose from the unique practices of the mail order company and the requirement that the bank put in place systems for data subject access.

(xii) Some organizations in the UK, including the health services and local government are already required to provide access to client records, stored manually. There is little evidence that this has added significantly to their processing costs and this reflects the wider experience of organizations in both the UK and the Netherlands following the introduction of legislation to enable individual citizens the right to scrutinise their personal records.

(xiii) The transitional arrangements provided under Article 35 will ease the costs arising from the proposed Directive for many organizations in the UK which currently rely upon manual data processing.

(xiv) There was some evidence that the proposed Directive will encourage organizations to take stock of their data processing activities, giving rise to some efficiency gains. There was also evidence that manual processing will continue to decline, encouraged by developments in information technology, leading to long term costs savings for many organizations. However, this is unlikely to be attributable solely to the proposed Directive.

(xv) The wider benefits of the proposed Directive in terms of encouraging investment in new information infrastructure and engendering consumer trust in new services in the developing information society may be substantial.

(xvi) It may also be anticipated that the proposed Directive will secure wider and longer term benefits because it will:

- strengthen the rights of individual citizens with respect to the protection of their personal data in both the UK and the Netherlands and will enable harmonization, at a high level, of data protection laws in all Member States;
- provide a regulatory framework which will ensure that the increased flows of personal data between Member States arising from the Single Market are not impeded;
- clarify the position of data controllers with respect to cross-border information transfers;
- enable a framework of procedures to be adopted for the transfer of personal data outside the Community.