



PHARE PROGRAMME TWINNING PROJECT NO. LV/2002/IB/OT-01
DATA STATE INSPECTION

Document 2

Activity 1.1

**Data protection in data processing concerning public
security and the activities of the State in areas of criminal law**

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December 2004



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Mandated Body**



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Data protection in data processing concerning public security and the activities of the State in areas of criminal law

This evaluation includes the Personal Data Protection Law, the Investigatory Operations Law, the Law on Police, the Law On Official Secrets, and the Law on Detective Activity. There is neither an English translation of the Criminal Procedure Law nor a translation of the draft of a new Criminal Procedure Law available in the moment.

The Directive 95/46/EC shall not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union and in any case to processing operations concerning public security, defence, State security and the activities of the State in areas of criminal law.

The following regulations of the laws mentioned above concern personal data processing in the areas of public security and criminal law.

Personal Data Protection Law

Section 4

Protection of personal data declared to be official secret matters shall be regulated by the present Law with exceptions specified in the Law on Official Secrets.

Section 15 paragraph 1

In addition to the rights mentioned in Sections 8 and 9 of this Law (the obligation to give notice of processing personal data to the data subject), a data subject has the right to obtain all information that has been collected concerning himself in any system for personal data processing, unless the disclosure of such information is prohibited by law in the sphere of national security, defence and criminal law.

Section 15 paragraph 2

A data subject has the right to obtain information concerning those natural or legal persons who within a prescribed time period have received information from a system controller concerning this data subject. In the information to be provided to the data subject, it is prohibited to include State institutions which administer criminal procedures,

investigating operations authorities or other institutions concerning which the disclosure of such information is prohibited by law.

Section 15 paragraph 3 number 4

A data subject also has the right to request the source from which the personal data were obtained unless the disclosure of such information is prohibited by law.

Section 13

A system controller is obliged to disclose personal data in cases provided for by law to officials of State and local government institutions. The system controller shall disclose the personal data only to such officials as he or she has identified prior to the disclosure of such data.

Personal data may be disclosed on the basis of a written application or agreement, stating the purpose for using the data, if not prescribed otherwise by law. The application for personal data shall set out information as will allow identification of the applicant for the data and the data subject, as well as the scope of the personal data requested.

The personal data received may be used only for the purposes for which they are intended.

The Investigatory Operations Law

Section 1 Concept of Investigatory Operations

Investigatory operations are the overt and covert legal activities, of specially authorised – pursuant to the procedures prescribed in this Law, and by law – officials of State authorities, the objectives of which are the protection of the life and health, rights and freedoms, honour, dignity and property of persons and the safeguarding of the Constitution, the political system, national independence and territorial integrity, the capabilities of the State regarding defence, the economy, science and technology, and State official secrets, against external and internal threats.

Section 5. Protection of Rights and Freedoms of Persons

If a person believes that a body performing investigatory operations has through its actions infringed the lawful rights and freedoms of the person, such person is entitled to submit a complaint to a prosecutor who, after conducting an examination, shall provide an opinion with respect to the conformity to law of the actions of the officials of the body performing the investigatory operations, or the person may bring an action in court.

Section 22 paragraph 2

Investigatory process shall be initiated by taking a decision regarding such, which decision shall be approved by the head or deputy head of the institution performing investigatory operations. A prosecutor shall be informed thereof.

Section 23. Investigatory Records

(1) Investigatory operations institutions are entitled to collect, systematise, analyse, store and record official legal and secret information with respect to persons, facts, events and things (in the form of passive records) that are necessary and are significant for the performing of their functions with respect to investigatory operations and criminal procedure.

(2) The inclusion of persons in investigatory records (active form of records) is permitted only if investigatory process is being conducted with respect to them.

(3) The rights and freedoms of persons included in investigatory records may be restricted only in the cases and in accordance with the procedures prescribed by the Criminal Procedure Code of Latvia or by other laws.

(4) If information on the basis of which a person is included in an investigatory record is not confirmed, such person shall be removed from the record. Investigatory records matters (investigatory examination and investigatory process matters) shall be terminated if:

- 1) the fact to be examined has not been confirmed;
- 2) the crime and the persons who committed the crime have been determined; or
- 3) other investigatory operations functions have been completed.

(5) Investigatory records files, after completion of a matter, shall be stored in accordance with procedures and terms prescribed by law and the body performing investigatory operations.

Section 24. Legal Significance and Utilisation of Information Collected

(1) Information obtained in the course of investigatory operations activities is a service secret and shall be utilised only in accordance with procedures prescribed by law. Such information may be utilised as evidence in a criminal case only after it has been verified in accordance with the requirements of the Criminal Procedure Code of Latvia.

(2) The materials and information obtained may also be utilised in the preparation and performing of investigative activities in criminal proceedings as provided for by law, in planning and conducting investigative operations activities, in analysing situations tending to promote crime and developing measures for ameliorating the situation, in

discovering factors and sources of real or potential threats, in performing activities to forecast, avert or neutralise a crisis situation in the State and the consequences of such, and in developing a State security and defence strategy and preparing and realising its complex programme.

(3) The heads of State authorities and administrative bodies, officials authorised by them or by the law, and, in cases and according to procedures prescribed by law, officials of bodies performing investigatory operations for whom such information is necessary in order to perform their official duties, if the content thereof is related to the fulfilling of duties entrusted to such officials, shall be informed of the information obtained as a result of investigatory operations activities.

(4) Where investigatory operations are performed in a criminal matter, the performer of procedures shall be informed of all the information obtained in such matter in the course of proceeding with investigatory operations.

(5) It is prohibited to purposefully obtain, through investigatory operations activities, information at the time professional assistance is being provided by sworn advocates, sworn notaries, doctors, teachers, psychologists and clergy, except in cases when the persons mentioned are themselves being subjected to an investigatory process.

Section 35. Monitoring of Investigatory Operations

(1) Monitoring regarding the conformity to law of investigatory operations shall be performed by the Prosecutor General and by prosecutors specially authorised by the Prosecutor General. In performing monitoring they are entitled to acquaint themselves with documents, materials and information at any stage of investigatory operations as is available to the investigatory operations institution. Covert information and its sources shall be revealed only to the Prosecutor General, but to the prosecutors specially authorised by the Prosecutor General – only with the permission of the head of the investigatory operations institution.

(2) In order to take a decision with respect to investigatory operations activities mentioned in this Law the performance of which requires approval by a judge, the judge is entitled to acquaint himself or herself with those documents, materials and information available to the investigatory operations institution, upon which the necessity for the specific investigatory operations activities is based. The covert information and the sources of such shall be revealed to the judge only with the permission of the head of the investigatory operations institution.

The Law on Police

Section 6. Transparency of Police Operations

The police, in the interests of the service, shall inform State and local government institutions as well as the public regarding police operations.

The police are prohibited from disclosing information that is an official secret or other secret specifically protected by law and which contains commercial secrets or patent secrets. It is prohibited to disclose data from a pre-trial investigation without the permission of the prosecutor or the head of the investigative institution, as well as materials that are contrary to the presumption of innocence.

The police are prohibited from disclosing information, which infringes on the privacy of persons or violates the honour and dignity of natural or legal persons, if such activity does not occur in the interests of securing lawful order or conducting an investigation.

The police shall retract information that it has disseminated with respect to persons, undertakings, institutions and organisations if it is not true. The retraction shall be disseminated within one month in the same manner that the false information was disseminated.

Section 7. Co-operation of the Police with State and Local Government Institutions, Undertakings and Organisations

State and local government institutions, undertakings and organisations and their officials shall provide assistance to the police in the performance of its duties.

The police shall co-operate with undertakings that perform security functions, with the civil security services of undertakings, institutions and organisations (fire fighting, traffic safety and other services), as well as with health services, social support and charity services of local government institutions, and shall support them in crime prevention.

Section 12. General Rights of Police Officers

Police officers, in performing duties assigned to them in conformity with the competence of the service, have the right:

...

13) to maintain records of persons who have committed criminal offences or administrative violations and of persons declared as wanted, and maintain records of such items and information as are necessary in order to carry out the tasks of the police;

14) to register, to take fingerprints, to obtain other data necessary for identification of persons, to obtain audio recordings, to photograph and to film persons who have been detained, accused of committing a criminal offence, are under administrative arrest, as

well as persons who have committed other violations of the law, if such persons knowingly resist identification.

The Law on Official Secrets

Section 1. Purpose of this Law

The purpose of the Law is to formulate the concept of an official secret, to prescribe the procedures for the keeping and use of official secrets and the protection thereof.

Section 9 paragraph 1

Access to official secrets shall only be permitted to those persons who in accordance with the official (service) duties or a specific work (service) task are required to perform work related to the use or protection of official secrets and who in accordance with this Law have received special permits.

Section 12 paragraph 1

The right to utilise official secrets for each specific person shall be restricted by the term of validity for which the special permit has been issued to him or her, as well as the cancelling of the special permit.

Section 12 paragraph 5

The performer of criminal procedures (inquiry performer, prosecutor, judge) shall have access to official secrets and the right to use them within his or her competence when performing a pre-trial investigation and proceedings in a specific criminal matter which is related to an official secret.

The Law on Detective Activity

Section 1

The purpose of this Law is to determine the legal basis and range of subjects of detective activity as a special type of commercial activity and to regulate the rights and duties thereof.

Section 10 paragraph 3

The duty of a detective is to hand over for the disposal of law-enforcement institutions all information obtained during the detective activity process regarding intended or committed criminal offences, as well as the persons related thereto.

Conclusions

Regulations concerning the protection of rights and freedoms of the data subject can only be found in the Personal Data Protection Law. If the Personal Data Protection Law is applied to the investigatory operation authorities, to the police and on private sector to detective undertakings, the data subject has the rights mentioned in this Law. There are few specific regulations in the specific laws above mentioned. But there is a need for specific regulations especially in the field of public security, investigatory operations and criminal law.

The processing of personal data may have significant effects on the life of the data subject. Even in this sector the basic principle of reasonableness (suitability, necessity of data and data processing, minimum encroachment in human rights) is to be noticed.

To ensure a lawful procedure and to supervise it, the procedure must be comprehensible. The decisions made by the authorities or by the single official must be stored on record (data subjects concerned, purpose of operation, technical means used, and duration of operation). In that way the rights of a data subject may be protected by legal procedures. Investigatory operations infringe the right of privacy; often the institutions performing investigatory operations obtain sensitive data about the data subject by utilisation of secret methods, special means and instruments. In this respect the authorities infringe the basic principle of overt obtaining of data. This infringement has to be justified by legal regulations.

In most cases not only the rights of one person are infringed, but the environment of the data subject is affected, too. The legal protection of rights and freedoms has to cover the protection of the persons which are affected indirectly.

In cases where the data subject is not able to notice the administrative processing of its personal data, legal procedures for the protection of the constitutional right of the data subject are required.

The protection of rights and freedoms of the data subject by legal procedures includes the approval of a judge for special methods of obtaining information, e.g. the monitoring of non-public conversations. The approval of a judge is already required in several cases mentioned in the Investigatory Operations Law (Chapter 2, Section 7). Significant violations of the rights and freedoms of the data subject through special methods require an approval by a judge before they are done. Exceptions are possible in cases where immediate action is required to avert a sudden threat to important interests of the State,

or where the lives or health of persons are actually in danger. In those cases a judge must be informed as soon as possible.

The laws mentioned above do not contain regulations about terms of storage of personal data. The basic principle of processing as few data as possible is not only useful for the data subjects, but for the data processing institution, too. The performance of an institution will be eased and more effective, when the amount of data is clearly arranged. Specific regulations in the specific laws are advisable because of the different classification of personal data and the different purposes of processing. Personal data should be stored only as long as necessary for the fulfilment of the duties of the institution.

Regulations regarding the data subject's right of access to data can only be found in the Personal Data Protection Law. Exceptions from the right of access should be allowed in as few cases as possible. The access to data may be refused in cases where it probably disturbs the performance of duties of the institution.

The knowledge of the data processed by State authorities is a compelling assumption to exercise the right to object or to use remedies.

If the secrecy of processing personal data is not required anymore, there is no reason not to inform the data subject about processing its personal data. The obligation to inform the data subject is an advisable instrument not only for the data subject but for a lawful and effective administration, too, because the institution has to control itself while the whole term of processing.

Several European treaties require a certain level of data protection in the member states, e.g. the Europol Convention or the Schengen Agreement (according to Article 114 paragraph 2 of the Convention Implementing the Schengen Agreement any person shall have the right to ask the [national] supervisory authorities to check data entered in the Schengen Information System which concern them and the use made of such data. That right shall be governed by the national law of the Contracting Party to which the request is made). Latvia still is no Contracting Party of the Schengen Agreement, but in the case of intended membership there must be fulfilled the conditions mentioned in the Convention. A certain level of data protection is not only necessary regarding to international treaties, but with reference to Article 96 of the Constitution of Latvia, too.