



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

**Document 27**

## **Activity 4.4**

**Creation of material for an awareness campaign among the general public (in particular respect if a development of an awareness strategy for data protection in social welfare administrations)**

**Final Report**

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**August 2005**



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Mandated Body**



*This publication has been produced with the assistance of the European Union. The contents of this publication can in no way be taken to reflect the views of the European Union.*

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## **Introductory remarks on available legal and structural information**

The task of the assigned activity as laid down in the covenant was to draft material for awareness raising campaigns in the field of social welfare and social security.

Upon arrival it soon became clear that further basic information was needed in order to cope with the specific Latvian situation: the production of awareness material specifically focusing on social welfare presupposes a minimum amount of material both on the national de facto situation and the specific legal regulations. The actual situation of social welfare activities could only partly be developed by collecting information from the web pages of the responsible ministry and its agencies. Also the legal situation could only partly be reflected by concentrating on three social sector laws which were available in English translation. Altogether the situation had to be qualified as not meeting the requirements for immediately being able to draft an awareness program on behalf of the Latvian citizens respectively data protection authorities. This unanimously taken assessment was essentially confirmed by the contact officer of the beneficiary, Mr. Alers. Unfortunately it was not possible, except for a meeting held on Thursday with the Office of the Human Rights Ombudsman, to organize early information meetings with officials from social welfare institutions (ministry/agencies).

## **Degree of implementation of the data protection directive 46/95/EC into Latvian Law**

In addition to the above mentioned organisational challenges for the assigned activity an important legal aspect proved to be in the way:

The legal guidelines as laid down in the EC directive 46/95, especially Article 8 in connection with recital No.34 oblige the member states to take additional safeguards supplementing the likewise existing legal requirements when sensitive data are being processed. Numerous tasks in the social welfare sector typically include the processing of sensitive data thus requiring certain sector specific rules. Since it could not be verified that corresponding rules had been enacted by Latvia so far, there remains a particularly unclear legal situation concerning all those parts of the social welfare sector where processing of sensitive data is an essential part of processing applications for funding.

Furthermore, awareness raising for data protection issues within the population must be based on the existence of procedural and organisational provisions in order to enable the citizen to address his/her individual complaint both to the controller and to the supervisory authority. As mentioned in the SWOT analysis of the Latvian Data State Inspectorate Strategy of public relations and awareness<sup>1</sup>, one of the factors threatening the future rise of awareness is that the existing “disbelief of the society in the possibility to ensure adequate data protection and freedom of information is not diminishing.”

Providing appropriate procedural and organisational instruments for citizens seeking practical assistance in the application of their legal right to privacy are thus a vital prerequisite for future awareness raising.

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<sup>1</sup> Strategy of public relations and awareness 2004-2007, p7<sup>1</sup>

During the analysis of two Latvian legal acts of social policy, namely the “Law On Social Services and Social Assistance” and the “Support for Unemployed Persons and Persons Seeking Employment Law” with regard to social data processing operations, it became clear that these laws lack any reference to data protection issues. The governmental bodies and agencies set up by these laws fulfill the requirements of “controllers” as defined by the data protection directive. Yet, no reference to data protection requirements is made in the catalogues of their tasks and obligations.

On a merely organisational level, customer service points within their organisational structure must be prepared to deal with the claims of a data subject on the grounds of Art.10 and Art 12 of the data protection directive.

Likewise, the Latvian State Data Inspectorate is responsible for dealing with claims lodged by natural persons or associations in case the controller’s performance did not prove to be satisfactory.

### **Direct effect of the Data Protection Directive:**

According to European Law, the individual’s rights as laid down by a Directive cannot be compromised by insufficient implementation by the Member State. The European Court of Justice has thus developed the doctrine of the direct effect of EC Directives granting individual rights in case of insufficient or incorrect implementation of Directives by Member States. The “Francovich”<sup>2</sup> decision of the European Court of Justice must be taken into account when applying the EC Data Protection Directive to data procession operations in the Latvian Welfare System.

Therefore, it might happen that a Latvian citizen despite the lack of sufficient national procedural rules of data protection refers to the rights granted by the Data Protection Directive.

*“The right of a Member State to which a directive is addressed to choose among several possible means of achieving the result required by it does not preclude the possibility for individuals of enforcing before the national courts rights whose content can be determined sufficiently precisely on the basis of the provisions of the directive alone<sup>3</sup>.”*

As a consequence, Latvia could be held liable for the damages occurred to the individual infringed in his/her right to data protection:

*“It follows that the principle whereby a State must be liable for loss and damage caused to individuals by breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty.*

*A further basis for the obligation of Member States to make good such loss and damage is to be found in Article 5 of the Treaty, under which they are required to take all appropriate measures, whether general or particular, to ensure the implementation of*

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<sup>2</sup> Judgment of the Court of 19 November 1991. - Andrea Francovich and Danila Bonifaci and others v Italian Republic. - References for a preliminary ruling: Pretura di Vicenza and Pretura di Bassano del Grappa - Italy. - Failure to implement a directive - Liability of the Member State. - Joined cases C-6/90 and C-9/90.

<sup>3</sup> Quotes from the reasoning of the “Francovich Case”:

*Community law, and consequently to nullify the unlawful consequences of a breach of Community law<sup>4</sup>.”*

### **Chosen approach as to the creation of material:**

Taking into account the situation as described above, a pragmatic approach had to be taken in order to meet the goal of activity 4.4: The activity's focus was shifted from one to two different points: on the one hand the requirement of the covenant (Awareness) will be met by providing basic material which at least should serve as a starting point for further supplements by the local data protection authority and/or responsible data controllers themselves.

On the other hand the basic prerequisites for understanding, shaping and effectively enforcing data protection measurements on a *EU acquis level* are brought together in an information brochure.

### **Aim of the brochure:**

The brochure is intended to both inform responsible future staff and further interested citizens on EU legal demands in the area of data protection as much as it may serve as a legal guideline for responsible authorities in reviewing the current legal situation and possibly further future data protection legislation.

### **Aim of the leaflet:**

The attached leaflet is meant to be a master version which can be adapted to the specific needs of the different authorities, governmental bodies or agencies responsible for the implementation of welfare policy in Latvia. As an example, the leaflet was designed for the clients of the State Social Services Agency. Yet, it can be adapted for the use of other welfare institutions in Latvia.

The definition of social data protection, as it will be given in the brochure also marks the scope of application of the leaflet. Thus, the leaflet concentrates on the core issues of awareness raising with the individual citizen who is the bearer of the rights of the "data subject".

Agencies or governmental bodies which could use the leaflet are for example the State Social Services Agency, the Local Governments, the State Employment Agency, the Medical Commission for expert-examination of health and working ability or the VSAA (State Social Insurance Agency).

**Finally, the Latvian "Law On Social Services and Social Assistance" and the "Support for Unemployed Persons and Persons Seeking Employment Law" were screened with regard to social data processing operations. Suggestions and**

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<sup>4</sup> Quotes from the reasoning of the "Frankovich Case":

recommendations are included as to what articles of the EU directive require further observance by the legislator when working with these legal provisions.