

**OFFICE OF THE DATA PROTECTION OMBUDSMAN**      **May 2010**  
Finland

Data Protection Directive/Article 29 Working Party  
Annual Report 2009

**A. Implementation of Directives 95/46/EC and 2002/58/EC**

The Directive of the European Parliament, and of the Council, on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) was enacted in Finland with the Personal Data Act (523/1999), which entered into force on 1 June 1999. The Act was revised on 1 December 2000, when provisions on the Commission's decision-making, as well as how binding these decisions are in matters concerning the transfer of personal data to countries outside the Union under the Data Protection Directive were incorporated into it.

Protection of privacy has been a basic right in Finland since 1 August 1995. Under the Finnish Constitution, protection of personal data is regulated by a separate act.

The Act on Data Protection in Electronic Communications (516/2004), which entered into force on 1 September 2004, implemented the Directive on Privacy and Electronic Communications (2002/58/EC). The purpose of the law is to ensure confidentiality and protection of privacy in electronic communications and to promote information security in electronic communications and the balanced development of a wide range of electronic communications services.

The responsibility for enforcing the law was divided so that the mandate of the Office of the Data Protection Ombudsman includes: regulations on processing location data, direct marketing regulations, regulations on cataloguing services, and regulations on users' specific right to obtain information.

In this connection, it should be noted that according to the Penal Code, the prosecutor is obliged to consult the Data Protection Ombudsman before pressing charges in a matter concerning a violation of the secrecy of electronic communication.

*Amendments*

During the year under review, there were no actual amendments to the Personal Data Act (523/1999).

The amendment to Act on the Protection of Privacy in Electronic Communications ( entered into force on 1 June 2009. The amendment gives association subscribers the right to process identification data in order to prevent and detect illegal use of fee-based information society service, communications network or communications service or business espionage as referred to in the Criminal Code (Rikoslaki 39/1889).

Illegal use of a communications network or service can be, for example, installation of a device, software or service on the communications network of the association subscriber, opening illegal

access to the association subscriber's communications network or service to a third party or other comparable use of the communications network or service if it infringes instructions of use. The right referred to above does not apply to identification data of fixed or mobile phone network services.

The amendments required by this so-called LexNokia were entered in the sections 2 and 21 of the Act on the Protection of Privacy in Working Life (Laki yksityisyyden suojasta työelämässä 759/2004) and they entered into force on 1 June 2009.

During the year under review, the amendments required by the directive (2006/24/EC) were entered in the Act on the Protection of Privacy in Electronic Communications (516/2004). The legal obligation to store telecommunications identification data entered into force on 15 March 2009.

In 2006, the Finnish Parliament demanded that the Government begin preparation of legislation on the general protection of personal data in biometric identification. According to the Ministry of Justice, which is responsible for preparing the Act, the general provisions on the processing of biometric identification will be prepared in conjunction with the general review of the Personal Data Act (95/46/EC 8 art 7 paragraph) to be commenced later. However, the Act on Strong Electronic Identification and Electronic Signatures (Laki vahvasta sähköisestä tunnistamisesta ja sähköisistä allekirjoituksista 617/2009) entered into force on 1 September 2009. It sets considerable quality obligations to providers of identification services. According to the Act, biometric identification can also be used as strong identification.

## **B. Major case law**

The Court of Justice of the European Communities (the Grand Chamber) gave its ruling on the publication of data on earned income on 16 December 2008. The matter pertained to the scope of application of Directive 95/46/EC, the processing and mobility of personal data on taxation, protection of individuals and freedom of speech. The Court left the definition of the journalistic processing as referred to in Article 9 of Directive 95/46/EC to be done by a national court. On the other hand, according to the ruling, the Data Protection Directive must be applied to the processing of personal data derived from public data sources and the use of previously published lists or services. The Supreme Administrative Court gave its judgement on 23rd September 2009, KHO:2009:82. The Court sent the case back to the Data Protection Board, obligating the Board to send a refusal to Satamedia on their continued publishing of the data. The refusal covered both the publications and the SMS service. The Court stated in its judgement that Article 2.4 of the Finnish Personal Data Act is not in line with the directive in the way the ECJ has interpreted the scope of application of the directive. The Court reached its resolution through two considerations: the balance between freedom of speech, and protection of private life. The Court pointed out that the balance requires that for the part of freedom of speech, information provided to the audience has to have importance in society and not only serve the needs of curiosity. For the part of the purpose of journalism, the Court paid attention to the actual manner of producing these "newspapers". Since the database (register) was printed as such, it couldn't be created only for journalistic purpose. The court's decision was that Veropörssi had no legal basis to process personal data and thus the text message service was also illegal. The Court did not tackle the issues of the taxation data as such or the question of the balance between freedom of speech and privacy. The service provider of the SMS service notified the DPA on 28.9.2009 that they would stop the service on 30.9.2009 on the

basis of evident illegality. In practice, Finnish newspapers will, in the future, also publish this kind of personal data about persons who have the capacity for social importance.

Future amendments to the Finnish Personal Data Act on the inconsistency of Article 2.4. will be prepared by the Ministry of Justice, which has recently published a future work plan which also includes updating of the Personal Data Act.

The Data Protection Board has, in its decision dated 26 November 2009, prohibited Satakunnan Markkinapörssi Oy from processing data pertaining to earned and capital income and assets of natural persons to the extent and in the manner that took place in connection to 2001 tax records. Moreover, the Data Protection Board has prohibited Satakunnan Markkinapörssi from submitting data they have collected and stored pertaining to earned and capital income and assets of natural persons through an SMS service or for any other purpose. The Data Protection Board has also prohibited Satamedia Oy, due to infringement of the Personal Data Act (Henkilötietolaki 523/1999), from collecting, storing and submitting further data pertaining to earned and capital income and assets of taxpayers received from Satakunnan Markkinapörssi Oy register and published in printed form in a publication entitled Veropörssi. According to information received from the Helsinki Administrative Court, the decision of the Data Protection Board (communicated 12 Jan 2010) has been appealed. The matter has been transferred to Turku Administrative Court since the domicile of the company has changed.

The competent Data Protection Board gave its decision on the matter initiated by the Office of the Data Protection Ombudsman on the authentication of quick loan applicants via mobile phone. In its decision, the Data Protection Board ruled that the practice whereby the creditor identifies the loan applicants solely on the basis of the name, social security number, address and telephone number data provided via a text message that is accepted as a loan application, cannot be considered as a sufficiently reliable practice. Therefore, the Board prohibited the respondent, who followed an authentication process commonly used in the sector, from processing personal data in the aforementioned manner. The respondent complained about the decision of the Data Protection Board to the relevant appeal court. Partly due to this case, a proposal to enact a general law on authentication was put forward in Finland. The overall reform of legislation on consumer credit was implemented with the amendment of the chapter 7 of the Consumer Protection Act (Kuluttajansuojalaki 38/1978) which entered into force on 1 February 2010.

### **C. Specific issues**

#### *Attention on special laws*

According to section 10 of the Finnish Constitution, the data protection of personal data must be enacted in law. Due to this provision, there are currently up to 650 special laws legislating on the protection of personal data. With regard to the transfer of data between authorities, the general law to be applied alongside the Data Protection Act is the Act on the Openness of Government Activities.

As examples of the principle of accountability, there is a requirement of a data balance sheet in special laws and statutes. For example, according to subsection 1 of section 2 of the government decree on ICT Agency (HALTIK) (Valtioneuvoston asetus Hallinnon tietotekniikkakeskuksesta 810/2007), the ICT Agency must annually report significant issues pertaining to processing of data within its mandate to the Ministry of the Interior and the Office of the Data Protection Ombudsman, by the end of April. The decree entered into force on 1 March 2008.

According to the section 60, the Act on the Population Information System and the Identification Services of the Population Register Centre (Laki väestötietojärjestelmästä ja Väestörekisterikeskuksen varmennepalveluista 661/2009), the Population Register Centre must provide a detailed report on the processing of data and event information stored in the log register at least once a year. The act entered into force on 1 March 2010.

### *Surveys conducted*

During the year under review, the Office of the Data Protection Ombudsman conducted several surveys.

During summer 2009, the Office of the Data Protection Ombudsman implemented a sector-wide survey on market and opinion polls. Questionnaires sent to a hundred companies charted procedures pertaining to polls and the extent of personal data processing. Particular attention was paid to the upholding of civil rights. The sector survey showed that some of market and opinion poll makers know the requirements of the data protection legislation, and take them into account in their activities. However, some of the answers demonstrated a degree of ignorance with regard to data protection competence. Citizens' names and contact information are acquired for research purposes, especially from electronic directory and directory inquiry services, as well as official registers.

The Office of the Data Protection Ombudsman conducted a large inspection which focused on the national register of the Employment and Economic Development Offices. The Employment and Economic Development Offices have 200 outlets all over Finland. Individual clients are offered services in the areas of job seeking, career planning, occupational rehabilitation and entrepreneurship. The Employment and Economic Development Office also gives advice also on applying for unemployment benefits and supports access to employment in different ways. The purpose of the inspection was to see if the processing of personal data in the national register was done according to the legislation. The inspection showed a number of conclusions, which were notified to the Ministry of Employment and the Economy. The Ministry initiated several amendments and other measures on the basis of the inspection.

Since in Finland it is possible for the Data Protection Board to issue a permit to process personal data and set special conditions for the processing, the Office of the Data Protection Ombudsman conducted a survey on how well permit recipients followed permit decisions and their conditions. The survey results showed that permit conditions are followed well.