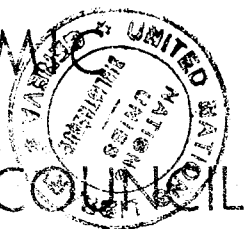


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COMMISSION ON HUMAN RIGHTS

Thirty-second session

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Information received from Governments pursuant to  
paragraph 2 of General Assembly resolution 3268 (XXIX)  
of 10 December 1974

Note by the Secretary-General

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## I. INTRODUCTION

1. Paragraph 2 of General Assembly resolution 3268 (XXIX) of 10 December 1974, on human rights and scientific and technological developments, reads as follows:

"The General Assembly

....

2. Draws the attention of States to the advantages which may be derived from the elaboration and adoption by the competent national authorities of measures designed to adapt national legislation and practices, where appropriate, not only to take account of new technology but also to safeguard the fundamental rights of the individual and of groups or organizations in all sectors of social life, and invites Governments which already have experience in this field to transmit to the Secretary-General the information available to them."

2. The Commission on Human Rights, in paragraph 2(b) of resolution 11 (XXXI) of 5 March 1975, decided to draw up a programme of work pursuant to paragraph 5 of the above-mentioned General Assembly resolution 1/ taking into account, inter alia, the replies of Governments; the programme was to relate "in particular to the definition of standards in areas which might appear to have been sufficiently analysed."

3. On 21 March 1975, the Secretary-General accordingly brought to the attention of Governments paragraphs 2 and 5 of the General Assembly resolution and invited them to transmit relevant information, if possible before 31 August 1975.

4. Substantive replies have been received by the Secretary-General from the Governments of Barbados, Byelorussian SSR, Federal Republic of Germany, Israel, Italy, Japan, Netherlands, New Zealand, Philippines and Sweden. These replies are reproduced below. Any further substantive replies received will be circulated in addenda to the present document.

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1/ Paragraph 5 of General Assembly resolution 3268 (XXIX) reads:

"5. Requests the Commission on Human Rights to draw up a programme of work taking into account the reports of the Secretary-General, the replies of Governments and other relevant sources, with a view to undertaking in particular the formulation of standards in the areas which would appear to be sufficiently analysed, without prejudice to other activities carried out pursuant to the above-mentioned resolutions, and to transmit that programme to the Economic and Social Council at its sixtieth session;"

## II. INFORMATION RECEIVED FROM GOVERNMENTS

### BARBADOS

[Original: English]

[12 May 1975]

Barbados has not yet found it necessary to elaborate and/or adopt any specific measures designed to adapt our national legislation and practices to take account of new technology.

With regard to safeguards for the fundamental rights of the individual and of groups or organizations in all sectors of social life, the preamble to the Barbados Constitution is quite clear on the matter. It consists of an unequivocal declaration of the firm faith of the people of Barbados in the principles of human rights and fundamental freedoms. It also extols and focuses on the position of the family in a society of free men and free institutions.

The Constitution is the supreme law of Barbados and section II of that instrument affirms the fundamental right of every person in Barbados to protection for the privacy of his home and property.

### BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[21 July 1975]

In the opinion of the Byelorussian SSR, the task of the United Nations in the context of scientific and technological progress should be to formulate basic principles and standards governing the use of scientific and technological achievements exclusively in the interests of strengthening peace and international security and for the purpose of the economic and social development of peoples and the realization of human rights and freedoms.

The purpose of the clear and specific document submitted by a number of countries in the Third Committee of the United Nations General Assembly at the latter's twenty-ninth session - namely, the draft Declaration on the use of scientific and technological progress in the interests of peace and for the benefit of mankind - is to assist in the fulfilment of this task of the United Nations. This document encompasses the whole range of important questions connected with the implementation of fundamental human rights and freedoms in the context of scientific and technological progress. At the present time, when the achievements of science and technology are having an ever increasing impact in all spheres of human life, there is, in the opinion of the Byelorussian SSR, an urgent need for a specific document of this kind, which, based on recognition of the indisputable fact that scientific and technological progress is one of the most important factors in the development of human society, raises the vital problems of the effects of such progress on the fate of the world and of mankind and on respect for fundamental human rights and freedoms.

The draft Declaration points convincingly both to the enormous benefits which scientific and technological progress can confer upon mankind if it is correctly used, and to the negative consequences which may arise if the achievements of science and technology are used to intensify the arms race and to perfect terrible weapons of destruction for the purpose of waging aggressive wars, suppressing national liberation movements or depriving the peoples of their fundamental rights, and also to the detriment of human rights and freedoms. It was precisely to these consequences of the use of the achievements of science and technology - consequences which would be disastrous for all mankind - that the General Secretary of the Central Committee of the Communist Party of the Soviet Union, L. I. Brezhnev, was drawing the attention of the world public opinion when, on 13 June 1975, at a pre-election meeting of the voters of Moscow's Baumann ward, he said that: "The level of contemporary science and technology is such that there is a serious danger that a weapon even more terrible than nuclear weapons may be developed. The wisdom and conscience of mankind dictate that an insuperable barrier should be placed in the way of the emergence of such a weapon". In this connexion, a proposal has been made that States, and above all the major Powers, should conclude an agreement on the prohibition of the development of new types of weapons of mass destruction and new systems of these weapons.

In the draft Declaration, the use of scientific and technological progress for such purposes is rightly described not only as a flagrant violation of the Charter of the United Nations and the principles of international law, but also as an inadmissible distortion of the purposes which should underly scientific and technological progress and its use for the benefit of mankind.

The comprehensive analysis of the fundamental problems which is contained in the draft Declaration on the use of scientific and technological progress in the interests of peace and for the benefit of mankind defines the basic measures which must be taken by States in order to ensure that scientific and technological achievements serve the interests of peace and the well-being of mankind. In the opinion of the Byelorussian SSR, the appeal contained in the draft Declaration to the effect that all States should promote international co-operation to ensure that the results of scientific and technological progress are used in solving the vital problems of our age is of the greatest urgency and reflects the interests of broad sectors of the population in various parts of the world.

Of great importance also are those provisions of the draft Declaration in which it is proposed that States should take the necessary measures to ensure that scientific and technological progress promotes the full realization of fundamental human rights and freedoms without any discrimination whatsoever on grounds of race, sex, language or religious beliefs. The document draws special attention to the need for all States to adopt effective legislative measures to those ends.

In the opinion of the Byelorussian SSR, the draft Declaration is a document of great significance and is entirely consistent with the fundamental principles which are proclaimed in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and which reflect current international practice. It constitutes a sound basis for further consideration of all aspects of the problem of the implementation of human rights

in the context of scientific and technological progress. Adoption of this document would constitute an important step forward in the efforts to promote the strengthening and implementation of fundamental human rights and freedoms.

For the foregoing reasons, the Byelorussian SSR considers that the draft Declaration on the use of scientific and technological progress in the interests of peace and for the benefit of mankind should be accorded priority in the consideration of the question of human rights and scientific and technological developments at the thirtieth session of the United Nations General Assembly.

With regard to the amendments submitted during the consideration of the draft Declaration by the Third Committee at the twenty-ninth session of the United Nations General Assembly, the Byelorussian SSR considers that they can hardly be said to contribute to the improvement of the text. For the Byelorussian SSR, the draft Declaration is entirely acceptable in the form in which it was submitted at the last session of the General Assembly.

FEDERAL REPUBLIC OF GERMANY

[Original: French]

[18 November 1975]

I. Having regard to the use of new technology, the Federal Government attaches increasing importance to the protection of the individual and of groups and organizations in all sectors of social life. As new technical processes are introduced and refined - for instance in the areas of data protection, transmission of information and medical and biological research - there is an increasing danger that the freedom of the individual will be unduly restricted or impaired. The Federal Government therefore welcomes the initiative taken by the United Nations in General Assembly resolution 3268 (XXIX) towards formulating in particular areas, standards which are designed to safeguard human rights from the possible effects of scientific and technological developments, and which are to be the subject of consultations at the forthcoming sessions of the Commission on Human Rights and the Economic and Social Council. In addition the Federal Government wishes to refer, in particular, to the statement of its position on particular aspects of the topic "Human rights and scientific and technological developments" which was transmitted to the Secretary-General of the United Nations in December 1974. Among other things, this document gives details of the measures taken in the Federal Republic of Germany to safeguard human rights in the areas of data processing, the application of science and technology to maintain employment and improve working conditions, the humanization of working life, standardization, the use of computers and the use of audio-visual monitoring equipment at the work place.

II. Further to that statement and in response to the point raised in paragraph 2 of General Assembly resolution 3268 (XXIX), the Federal Government endeavours below to pass in review a whole series of additional measures which have been adopted, or whose introduction is contemplated, in the Federal Republic of Germany in order to safeguard the fundamental rights of the individual and of groups and organizations from the possible effects of scientific and technological developments.

(1) Research policy in the interests of health and adequate, wholesome food

The Federal Government applies its research policy largely in the interests of health and adequate, wholesome food. It is thereby meeting the commitment which it made under articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 with the object of safeguarding the physical and mental health of its citizens and ensuring that they have suitable food. In this connexion it stated the following in the Fifth Federal Report on Research, which was submitted to Parliament in May 1975:

- (a) Behaviour, attitudes and influences encountered in working life and in the environment which are harmful to health, and similarly an unbalanced diet, are hazardous to human health. Prevention, early detection and cure of cancer and heart disease, of conditions of the circulatory system and the basal metabolism, of rheumatic diseases and of neurological and mental disorders help to safeguard human health. In many cases our knowledge of these diseases and of behaviour and attitudes harmful to health is still

inadequate. The same applies to methods of detection and prevention. Preventive medicine covers important fields of research such as social and occupational medicine, the toxicology of the working environment, harmful environmental influences in general, diet and foodstuffs.

In order to improve prevention, it is necessary:

Systematically to pursue medical research, particularly into the so-called "diseases of civilization", including research and development in the areas of medical technique and technology, in order to improve the processes and equipment needed for diagnosis and therapy;

To promote research in the fields of social and occupational medicine and systematically to develop new methods of detecting contaminants so that they can be examined individually;

To promote scientific research into food, firstly at the national level, in order to produce high-quality foodstuffs which are completely harmless from the health point of view and which contain a minimum of residues; and secondly at the international level, in order to expand the production of cheap food, bearing particularly in mind requirements of biologically important proteins.

- (b) Cancer is a central problem of preventive medicine. The Federal Administration and the Land of Baden-Württemberg are continuing to develop the German Cancer Research Centre (DKFZ) at Heidelberg into a major research institute. The Centre's programme will extend to new fields such as tumour genetics and immunology. It is planned to establish closer links between this institution and clinics and dispensaries in order to ensure that the results of research are more rapidly applied to cancer detection and treatment. As part of the "research and technology in the service of health" component of the health promotion programme, efforts are being made to devise automatic instruments for the detection of particular cancerous diseases and improved isotopic procedures for cancer diagnosis. It is also planned to intensify co-operation between the Centre and other national and international agencies such as WHO.

Research in the fields of social and occupational medicine includes, among other things, the study of the effects of the working environment (noise, vibration, fumes and dust) on workers' health. Knowledge of the relationship between work and the origin of certain diseases is a prerequisite for humanization of the work place.

A survey on psychiatry is at present in progress in the Federal Republic of Germany in order to assess the situation of the mentally ill and to improve psychiatric consultation and treatment. Prevention will necessarily extend to the early detection and identification of behavioural disorders and mental illnesses. Scientific study of the effectiveness of methods of treatment will play an essential role when the costs of public health come to be examined.

The Government's draft bill to reform the law on medicaments requires that every medicament should be proved effective and harmless before approval is granted. This will entail intensified fundamental research in the pharmaceutical field.

- (c) The work of physicians in the areas of diagnosis, therapy and intensive care can be assisted and facilitated by the use of data processing equipment. Such equipment can help to resolve problems of public health organization and management both within and outside the enterprise. The Federation, the Länder, independent administrative bodies and the scientific community are endeavouring to work out new solutions. One example is the Kulmbach EDP demonstration project, in which a pilot system adaptable to a medium-sized general hospital is being devised. Another is the demonstration project to develop a joint information centre for various public health institutions (DOMINIG), which is being carried out by the Minister for Social Affairs of the Land of Hesse, the Senator for the Environment and Public Health of Berlin and the Medical Welfare Centre of the sickness insurance schemes.
- (d) Rehabilitation of the handicapped is an important area of concern. Artificial limbs and organs, technical aids for the handicapped (heart and circulation support systems, artificial kidneys, reading devices for the blind) and materials tolerated by neighbouring tissues, for use in bone and articular surgery, have been developed. The Federal Government is now engaged in setting up an extensive network of medical and vocational retraining centres, designed particularly for handicapped children and adolescents, wage-earners whose work has impaired their health, and old people.

Technical aids to retraining have been developed, and sociological surveys are also being made.

- (e) Agriculture and fishing produce enough to feed the population. Agricultural research is laying the scientific foundation for the structural adaptation and technical development of agriculture with a view to ensuring that food production meets human requirements. In the interests of the consumer, research into agricultural production techniques gives the production of high-quality foodstuffs precedence over expansion of production on purely economic grounds. The term "quality" covers assessment of exact composition from the point of view of nutritional physiology, the absence - if possible, the total absence - of residues, a high level of hygiene and a flavour suited to consumer taste. The cultivation of useful plants and animal husbandry should be improved in the interests of the consumers; the techniques of cultivation and stock-farming should be developed. Plant protection research will have to focus increasingly on the hygienic aspects of the use of various agents and the effects of plant protection on the environment, over and above the efficiency of the particular cultivation technique. In addition, the traditional methods and processes of food and fodder production will have to be supplemented by fresh alternatives. Biologically important foods and feeding stuffs will have to be produced on an industrial scale from cheap raw materials or waste which is suitable for recycling. Moreover, in order to improve world food production, new methods of producing non-pollutant pest-killers and weed-killers are being developed, and the cultivation of high-yield and disease-resistant species and useful plants is being encouraged.



Fishery research is making it possible to discover new and hitherto unexploited schools and species of aquatic fauna, to improve fishing techniques and to give marine biological resources better protection.

- (f) Food research is no longer geared mainly to technological progress. It studies the effects of industrial and household preparation and processing on the quality of food. Current research is largely concerned with the effects of technical processes, including storage, transport and packing, upon nutritionally important food components, food flavour and food preservation. Food preparation and processing techniques have been improved in order to limit still further the use of additives and the residue content.

Food research is laying a scientific foundation for protection of the consumer from the possible risks presented by food products which are not fully satisfactory from the standpoint of hygiene and toxicology. It affords a means of determining the hygienic and physiological characteristics of food-product components, additives and residues, and of identifying the toxins in certain micro-organisms. It devises methods of analysis for use by inspectorates. The aim of veterinary research is to improve the hygiene of foodstuffs of animal origin. Researchers in this field are preparing documents for use in the official veterinary inspection of meat and the analysis of residues.

The Federal Minister of Food, Agriculture and Forestry and the Federal Minister of Youth, the Family and Health have made a survey of food research in the Federal Republic of Germany, and on that basis, have drawn up a list of gaps in research. This list identifies 45 questions in the areas of food technology, chemistry, microbiology, hygiene and toxicology, nutritional medicine and nutritional physiology on which research should be stepped up; this is particularly important in the case of food toxicology, nutritional medicine and nutritional physiology.

(2) Measures for the humanization of working life

Under article 7 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, the States Parties recognize the right of everyone to the enjoyment of just and favourable conditions of work. The Federal Government has taken full account of this provision in its programme of action entitled "Research for the humanization of working life".

- (a) Human health, satisfaction and self-fulfilment depend very largely on conditions of work. As is shown, for instance, by statistics on occupational accidents, there has been no reduction in the dangers to which man is exposed by the equipment, environment and processes met with at his place of employment. On the contrary: in our highly developed society, dominated by industry and services, many new burdens have been added to the old; and these burdens, either in isolation or in combination with others, could jeopardize our health and lead to physical attrition and mental disorders. The humanization of working conditions will have a beneficial effect both on the economically active population and on the productive capacity of the economy. This can be achieved only by reducing the burdens and offering each individual greater opportunities to develop his abilities.

- (b) Through its action programme of "Research for the humanization of working life", the Federal Government is pursuing the following aims:

Preparation of safety data, indicative values and minimum requirements for machinery, equipment and the individual work station;

Development of working techniques suited to human requirements;

Preparation of proposals and pilot models for the organization of work and the layout of work stations;

Dissemination and practical application of scientific knowledge and occupational experience.

Matters relating to the humanization of work stations are increasing in importance in all research activities, even those not included in the programme of action mentioned above.

- (c) The relationship between humanization and the expansion of production is a special problem in this field of research, and one for which there is no universal solution. Any conflict arising with regard to aims must be resolved on the merits of the individual case. The division of labour, of which the flow-line is an extreme example, has substantially increased productivity, but there is now a danger that monotony, leading to sharp fluctuations in output, high absenteeism through sickness and a fall in quality, may cause productivity to decline. Industry in the Federal Republic of Germany and other industrialized countries such as Sweden, Italy and the United States is endeavouring to avert this danger by adopting other forms of organization for mass production. In practice the only way to impart a sense of purpose to individually meaningless activities in industry and the tertiary sector is to give each wage-earner more responsibility and a better overall picture of the work process.
- (d) Research into labour protection and occupational accidents is concerned with devising methods to determine the circumstances in which accidents occur and the safety conditions prevailing in enterprises, schools and homes and at recreation. The main task of the Federal Office of Labour Protection and Accident Research is to intensify and co-ordinate research into accidents. New techniques should help to eliminate or reduce harmful environmental influences (e.g. dangerous substances, noise, vibration, extremes of temperature) and unduly low or high levels of physical or mental effort. Processes and equipment less harmful to the working environment, and the introduction of automatic handling devices (robots) and automatic sorting and monitoring equipment, should relieve the worker of dangerous, arduous and monotonous tasks. New working implements, such as control and monitoring equipment, machinery or means of transport, are being developed in order to humanize work stations. In this connexion, special attention is being paid to particular groups such as young people, women, the handicapped and old people.

- (e) The humanization of work stations necessarily depends on the organization and structure of the enterprise. Encouragement is therefore being given to the launching and execution of demonstration projects, e.g. the introduction and trial of team work instead of work in fast-moving flow-lines, particularly in assembly shops.

The restructuring of working procedures should make for the gradual elimination of monotonous tasks, the promotion of a sense of individual achievement and responsibility, and experiments with new patterns of decision-making and workers' participation. For each major pilot project, provision has been made for parallel research into sociological aspects and into scientifically planned organization of work. Demonstration projects are selected, assistance is rendered and promotional measures are carried out in close co-operation with representatives of the trade unions, employers' associations and research workers.

- (f) The dissemination and application of scientific and industrial experience is another important area of activity, since conditions of work cannot be humanized without innovations. Hence project applications should, as a general rule, take account of previous results. Those responsible for implementing projects should submit their results in a form which is comprehensible and capable of practical application.

(3) Environmental protection

The protection of every citizen against the unfavourable effects of industrialization is another area of activity to which the Federal Government attaches great importance.

- (a) Man's interference with nature has often produced adverse effects. Industrialization and urbanization are so harmful to the environment that countryside and towns are seriously endangered. Economic development based on modern technology threatens to impair the self-purifying capacity of the soil, water and air. In certain urban areas the pollution load is already approaching a critical level.

Many country areas still lack a workable system of amenities. The infrastructure must be laid out and equipped in such a way that our towns and communities remain viable; the water and energy supply must work; refuse and waste water must be disposed of without being a nuisance to anyone; and the population needs roads, trains, transport and telephone systems adequate to maintain the supply of goods, individual mobility and intercommunication. Town life requires common social and cultural institutions.

- (b) In order to safeguard man's living space, the environment must be properly protected in accordance with a clearly defined environmental policy. This policy has undergone a fundamental change in recent years. Previously, environmental protection was merely a matter of reacting in urgent cases. The Federal Republic now has a long-term planning approach that is fully in keeping with its liberal social and economic system. Defensive protection of the environment has given way to a far-ranging preventive policy on the subject. The principles of this environmental policy are as follows:

Protection of the dignity of man, which is threatened if his health and well-being are placed in jeopardy now or in the future;

Keeping the environment as man needs it for his health and dignity;

Protection of the soil, air, water, flora and fauna against the adverse effects of human interference;

Making good the damage or disadvantages caused by human interference;

The conservation of raw materials, mineral resources, clean air and fresh water for future generations.

This new approach was reflected in the basic objectives laid down in the environmental programme submitted by the Federal Government in 1971 and adopted by all parties represented in the Sixth Parliament of the Federal Republic, as follows:

(aa) Long-term environmental planning, particularly through:

The creation of a body of environmental law which makes the protection and development of man's natural surroundings a priority task among the welfare measures taken by the State, and which is continually updated to keep pace with the advance of science and technology;

Effective guidance, before the adoption of all major legislative, administrative and judicial decisions bearing on the environment, to ensure that the latest scientific and technological developments are taken into account;

Provision for environmental protection in all measures of structural policy and physical planning;

(bb) The development of non-pollutant technology:

Technological development must take environmental effects into account;

Public authorities and economic decision-makers must pay heed to environmental considerations;

(cc) Arousing and sharpening environment-consciousness in all strata of the population by:

Including topics concerned with environmental planning and protection in educational curricula and training programmes;

Encouraging groups to take the initiative in fostering public awareness of environmental issues.

The Federal Government's environmental programme has now been supplemented by a new programme of action with new focal points of attention.

A number of extremely important laws designed to implement the 1971 environmental programme have been enacted or are in preparation:

The thirtieth Act amending the Basic Law (art. 74), dated 12 April 1972, delimited the legal competence of the Federation with regard to clean air maintenance, noise abatement and waste disposal.

The Act on Protection against Aircraft Noise, dated 30 March 1971, provides for the designation by ordinance of protected areas for some 50 civil and military airports, the prohibition of some building, reimbursement for specified soundproofing measures taken in the protected areas, and improvements in the law governing aircraft noise abatement at the source.

An Act has been passed to protect the population from the effects of lead compounds in petrol by restricting the lead content of motor spirit to 0.40 g/l from 1 January 1972 and 0.15 g/l from 1 January 1976 onwards.

The Waste Disposal Act of 7 June 1972 is the first measure adopted on **the subject** in the Federal Republic of Germany to be based on the principle of removing waste harmlessly, without interfering with human or animal health and without contaminating food, animal fodder or water. An Act amending the Waste Disposal Act is to fill the gaps which have come to light since the Act came into force on 11 June 1972. The main purpose of the amendments proposed by the Federal Government is to tighten control over dangerous waste.

The Federal Act of 15 March 1974 on Protection against Emissions makes sweeping changes, at the Federal level, in the law on clean air maintenance and noise abatement. The Act is designed to protect man, animals, plants and real property against airborne impurities, noise, vibration, light, heat, radiation and similar environmental influences which may present an appreciable danger, nuisance or source of discomfort. The Act also makes provision for certain specific products and substances and for protected areas. In order to make this Act fully effective, provision has been made for the issue of enabling ordinances and general administrative regulations.

- (c) The aforementioned Acts and measures to prevent emissions and water pollution, to **eliminate** or dispose of dangerous waste or to ensure economy in the use of vital basic and raw materials can only be adopted and applied:

If science provides adequate information on the pollution load capacity of ecosystems and man, and if the effects of interference can be accurately assessed;

If efficient and economic techniques are available to prevent, eliminate and control the environmental pollution load;

If new information, planning and monitoring systems are introduced to provide long-term safeguards for the environment and to convey a better idea of what the environment means.

Research and development can provide the necessary scientific and technological basis for attaining the objectives of environmental policy; research and development projects have been launched in particular subject areas to meet the needs of the Federal Government's environmental programme.

In addition, the establishment of the Committee of Experts on Environmental Questions has provided the Federal Government with the services of a group of qualified advisers. Twelve eminent experts in various environmental specialities have been appointed. The Committee's main task is to prepare ecological balance sheets. To date it has drawn up three expert reports: one on motor vehicles and the environment; one on discharge of waste water; and the first survey of the environment, 1974.

The system of information on environmental planning is an important factor in scientific exploration of environmental problems. The Federal Government and other authorized users will be able to identify immediately the source of necessary information on the environment as a whole, and the means of obtaining it. This information system will also enable the Federal Republic of Germany to participate in appropriate international information systems, particularly the one planned by the United Nations.

- (d) The necessary expansion of domestic energy production from coal will further increase the pollution load on the environment, since combustion releases sulphur oxides and other pollutants.

In order to produce non-pollutant energy on economic terms, techniques are being devised and pilot plants constructed to desulphurize fuel or prevent emissions of sulphur oxides. The heat released by electric power stations is to be reduced by introducing new cooling systems (dry cooling towers) and, if possible, is to be used for heating purposes.

The growing use of nuclear power stations reduces air pollution but necessitates increased protection against radioactive emissions. Processes to reduce the amount of radio-active substances leaving nuclear plants are currently being developed.

- (e) The protection, conservation and upkeep of the countryside, plants, animals, soil yield and tillage capacity, the improvement of non-pollutant techniques of agricultural production, and the reduction of environmental damage caused by phytosanitary products are among the essential tasks involved in protecting man from the injurious effects of new technology and growing industrialization. For instance, encouragement is given to the systematic development of detection procedures and toxicity tests, and to monitoring the carcinogenic or genetic effects of chemicals. The aim is to identify the effects of chemicals so that the necessary precautions can be taken in time against, for instance, the damage caused by dish-washing detergents or phytosanitary products. Nature and the countryside, the vital basis of human coexistence, do not stop at national boundaries. The Federal Government has supplied material on the structural and functional analysis of ecosystems in terms of the harmful effects of technology for the United Nations "Man and the Biosphere" Programme.

III. The aim of research into means of improving man's living conditions, which is conducted and promoted both by the Federal Government and by the Länder is to obviate the adverse effects of research and technological development on man's civil and political rights. The guiding principles of the Federal Government's research policy were laid down in its reply to a major question tabled in Parliament (Parliamentary Paper No. 7/1279 of 23 November 1973). The reply shows that the Federal Republic of Germany is aware of the danger which any abuse of scientific discoveries and their applications might present for certain fundamental rights. In order to prevent any misconceived developments in this area, this aspect of scientific and technological progress is, for the common good, kept under continuous review in the Federal Republic of Germany.

## ISRAEL

[Original: English]

[3 November 1975]

As to date there is no organic legislation in the State of Israel for the protection of Human Rights from infringements due to technological or scientific developments. Such a basic law is being considered by the Knesset, (Israeli Parliament) as "Proposed Basic Law: On Human Rights".

The Knesset has also under study an amendment to Criminal Law Ordinance, concerning secret bugging.

An indirect safeguard of the privacy of individuals is provided by the Israeli Law on "Private Investigators and Watchmen Services, 1972-5732", which, although it does not deal directly with checking the illegal use of electronic gadgets, opens the possibility for such a check.

Lastly, it should be noted that a special committee is now working on the study of proposed legislation concerning the use of hypnosis.

## ITALY

[Original: Italian]

[16 September 1975]

1. This Note supplements the information furnished on 24 June 1973<sup>1/</sup> in reply to the request of 8 December 1972 bearing the same number and on the same subject, and contains information on legislative provisions intended to avoid the negative impact which developments in science and technology could have on the enjoyment of human rights. Further information on administrative provisions and other measures will be furnished as soon as it is available.

2. Among the most recent legislative provisions on the subject, attention is drawn to the following:

- (a) Act No. 300 of 20 May 1970, containing the "Statute of the Workers", under article 4 of which, in defence of the worker's dignity, employers are prohibited, save in exceptional circumstances, from using audio-visual equipment for the purpose of keeping an eye on the employees from a distance;
- (b) Act No. 98 of 8 April 1974, which, in defence of the privacy and freedom of communication, introduced various rules in the penal code and code of penal procedure.

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<sup>1/</sup> Note by the Secretariat: This information was taken into account in the preparation of documents E/CN.4/1142 and addenda 1-2.

3. The Italian Government considers it particularly useful that the Commission on Human Rights should develop standards on measures designed to safeguard the rights and fundamental freedoms of the individual in sectors which have been sufficiently analysed, since the standards would be defined on the basis of experience already acquired, and the exchange of information on such experience may serve as an incentive, at national levels, to try out methods already applied in other countries and thus establish the bases for broader legislative regulation.

#### JAPAN

[Original: English]

[25 August 1975]

[The Government of Japan transmits an] interim report on the measures to be taken to protect privacy in relation to the utilization of computers in government agencies.

#### I. INTRODUCTION

On 12 June, 1974, the Director-General of the Administrative Management Agency submitted an inquiry to the Commission for Administrative Management and Inspection on "the measures to be taken to protect privacy in relation to the utilization of computers in government agencies." The Commission subsequently deliberated on the matter, but found it difficult to reach an immediate conclusion, as (1) the question involved a wide range of related issues requiring further study, (2) little information was available on the practices under the privacy laws enacted in Sweden and the United States, neither of which had been implemented on a full scale, and (3) further observation of the trends in public opinion with respect to the balancing of the individual's interest against that of the society was deemed necessary. Accordingly, the Commission decided to submit an interim report in lieu of final recommendations, clarifying the issues and examining possible measures to be taken.

#### II. IDENTIFICATION OF THE PROBLEM

The computers with diverse capabilities and high efficiency have come into wide use in recent years. This, in turn, has given rise to a growing concern that the utilization of computers, or more specifically, computer-based personal information systems, involves a serious danger of invasion of personal privacy; and the necessity for the study of appropriate safeguards have been called for from all quarters.

Although the general concept of privacy has come to receive public attention in recent years, it is difficult to define its nature and scope as a legal right, since an individual's subjective judgement or sentiment largely defines his own conception of what is privacy. An individual's claim to privacy, meanwhile, will have to be limited when the interest of the society is at stake.

There is no hard evidence indicating that invasions of privacy are actually happening. However, possible threats to personal privacy caused by the utilization of computers have been identified as follows:

1. Matching of records about individuals may be made to cause adverse effects on such individuals



2. Separate files containing information about individuals may be merged into a comprehensive central file, or the items of information in the files may be widely transferred to other agencies for purposes other than the ones for which they were originally collected; and consequently individuals may be subject to adverse judgement about their characters and the like
3. Erroneous or obsolete information about an individual contained in a file may cause adverse effects on him
4. Unauthorized persons may willfully obtain or process information through remote-access facilities; or the personnel involved in the handling of information about individuals may process or divulge such information with malicious intent

The possibilities for threats to personal privacy in relation to computer-based personal information systems exist not only in the public sector but in the private sector. However, government agencies are by far the largest collector of personal information, and such information, once mishandled, would have far greater consequences upon much greater part of the population than would be the case with private organizations. Furthermore, much of the public concern about the problem has been directed to the operation of public sector systems. Therefore, it was decided that the scope of the Commission's inquiry this time should be limited to the privacy protection measures with respect to the government agencies (the agencies of the national government as well as the local public entities and the government corporations).

### III. PRIVACY PROTECTION IN FOREIGN COUNTRIES AND THE CONDITIONS IN JAPAN

#### A. Privacy Protection Abroad

The measures for the protection of privacy in relation to the utilization of computers have been seriously studied in a number of foreign countries; some of them already have legislations dealing with the problem, while many others have proposals before legislative bodies. They should serve as a good reference in developing privacy protection measures in this country.

In the United States, the Fair Credit Reporting Act governing the activities of credit bureaus was enacted in 1970. In December, 1974, the Privacy Act of 1974 was enacted to control systems of records in the Federal Government. The Act created the Privacy Protection Study Commission whose major task is to make a study of information systems of the governmental as well as private organizations in order to determine the standards and procedures to be adopted for the protection of personal information.

In Sweden, the Data Act was enacted in 1973, which created the Data Inspection Board charged with the responsibility of overseeing the operation of computer-based personal information systems of both public and private organizations. The Board started its work in July, 1974.

In the Federal Republic of Germany (hereinafter referred to as West Germany), the Federal Data Protection Bill is under deliberation by the Parliament. The Bill would regulate personal information systems in both public and private sector. Also in the States of Hessen and Rheinland-Pfalz, data protection laws are in effect, governing personal information systems of public authorities.

In other countries including the United Kingdom, Canada, France, Norway and Denmark, similar privacy protection measures are reported to be under consideration. Studies on the subject have also been made in the United Nations and the Organization for Economic Co-operation and Development.

#### B. The Conditions in Japan

It has been suggested that any proposal to establish privacy safeguards should take due account of the particular conditions that exist in each country. In certain respects, the conditions in Japan differ conspicuously from those in other countries.

First of all, in countries such as Sweden and the United States, the principle of openness of public documents has been established by law; and free access to public documents is granted to the public with few exceptions. In this system, personal information in government files has frequently been used by private companies for commercial purposes. This, among other things, has been the major source of concern over privacy in these countries. In Japan, on the other hand, public documents are not open to the public unless their disclosure is required specifically by law. In addition, public officials have a legal obligation to observe official secrets. Accordingly, the use by private organizations of the personal information in government files is confined within very narrow limits.

Secondly, considerable difficulties exist in Japan in obtaining public consensus on specific matters involving the reconciliation of the rights of individuals with the interests of the society since there is an extreme diversification of values among citizens resulting from the postwar reform in social system as well as the changes in the economic and social environment of these years.

### IV. REVIEW OF THE POSSIBLE PROTECTION MEASURES

#### A. Major Alternatives

Two basic approaches can be identified as the alternatives of the safeguard measures against the threats to personal privacy in relation to computer-based processing of personal information in government agencies.

First approach, adopted in Sweden, is to establish a special authority to regulate the operation of the personal information systems including the establishment of the system, the maintenance of files, and the disclosures of information, while granting individuals access to their own files.

Second approach, adopted in West Germany, is to leave government agencies free to establish and maintain personal information systems to the extent that it is within the scope of the authorized functions of the agencies. The agencies are only required to publish notices about the systems when they are established and to grant individuals access to their own files. The United States takes a similar approach.

The selection between the two approaches requires careful consideration taking due account of the aforementioned conditions in Japan.

In many of the privacy legislations abroad, provisions are found to exempt such categories of information as are open to the public or related to public security, national defense or foreign relations from the requirements of the law. Such exemptions would also be required in the case of Japan. However, careful consideration is due in establishing the categories of information or system to be exempted.

#### B. Specific Measures and Points at Issue

##### 1. Regulation of the establishment of personal information systems and the entry of information

With regard to the regulation of the establishment of personal information systems or the entry of personal information into the systems, the first question is whether to place any restriction upon the categories of information to be put in a system. Specifically, there is a choice between the following two alternatives.

- (A) prohibiting or restricting by law the maintenance of certain categories of information which, if maintained in a system, may cause invasion of personal privacy (e.g., records about political or religious belief of an individual), except where special reasons exist (as in the United States or Sweden)
- (B) placing no restriction upon the categories of information to be maintained in a system, if the system is established within the purview of the functions of the agency (as in West Germany)

A second question is whether to make the establishment of personal information systems by agencies subject to the licensing by a special authority (as in Sweden) or to leave it to the decision by individual agency within the constraints imposed by the law (as in West Germany).

##### Points at issue

- (a) In countries where the maintenance of certain categories of information is prohibited or restricted, various exemptions from the requirement are provided at the same time. In that event, the discussion of the choice between the measures (A) and (B) appears to become only theoretical.
- (b) The lack of clarity in the concept of privacy might make it impossible to specify categories of information whose maintenance is to be prohibited on the ground of threats to personal privacy. Similarly, the lack of full agreement among citizenry on what constitutes public interest might make it difficult to determine the scope of exemption from the requirement of the law.
- (c) The licensing system has an advantage in that it is readily applicable as a measure for possible regulation of the personal information systems in the private sector in the future. However, it should be examined whether there is any possibility that the licensing requirement would hinder efficient operation of the government as a whole. It should also be examined whether a smooth operation of the special authority with licensing power can be expected.

## 2. Notice of personal information systems

Public notice of personal information systems as provided for in the United States Privacy Act and in the West Germany draft bill could be required of the government agencies which maintain the systems, so that public apprehension about the operation of such systems may be eliminated. This should also serve as an instrument to give individuals knowledge about the existence of systems, which is necessary in any attempt by such individuals to exercise their right of access.

### Points at issue

- (a) The categories of systems to be exempted from the requirement on the ground of public interest should be determined.
- (b) The significance of notice about a system whose existence is known to citizens through their transactions with government agencies may be questioned. It is needless to say, however, that the real meaning of the notice should be found in making the existence of such system universally known to the public.

## 3. Regulation of the dissemination of information

Regarding the disclosure of personal information to other government agencies, possible measures can be identified as follows:

- (A) prohibiting the disclosure of certain categories of information to other agencies, while making the transfer of others subject to the specific permission by the regulatory authority (as in Sweden)
- (B) making disclosure of any information to other agencies subject to the consent of the individual to whom such information pertains (as in the United States)
- (C) prohibiting the disclosure of information for purposes other than the one for which such information has been solicited, except where the law requires that the information be made public
- (D) leaving the matter to the discretion of each agency to the extent that such disclosure is within the authorized functions of the agency (as in West Germany)

### Points at issue

- (a) As for the measure (A), it is questionable whether the licensing is additionally necessitated in view of the fact that under current practice, sensitive information is not open to others and that public officials are under legal obligation to observe secrecy.
- (b) The measure (B) would impose enormous costs and administrative burdens upon agencies. In this respect, the practice under the United States Privacy Act should be carefully observed.
- (c) As for the measure (C), utmost care should be taken in defining the "purpose" for which the information has initially been collected, since too narrow a definition might hinder legitimate and necessary transfer of information between agencies.

- (d) The measure (D) might be objectionable to some, for it entrusts proper execution of law, i.e., the protection of privacy, solely in the hands of government agencies. The measure, however, may be the most appropriate, taking account of the fact that each personnel of the agencies are under legal obligation to observe secrecy.

With regard to the disclosure of personal information to the private organizations, there seem to be few problems as such information, in principle, is not open to the public. However, the necessity for separate regulation in this area should be examined.

4. Regulation of the operation of systems including the maintenance of the files

A basic rule could be established in the law that the personal information files shall be maintained in a manner which would assure the accuracy, completeness, timeliness and relevance of data in the files. A requirement could be placed upon the agencies to designate one person responsible for the files. In addition, the standards for technical safeguards could be established.

It would be difficult, however, to set forth detailed rules in the law because, firstly, the diversity in the sophistication of agency systems prevents uniform regulation, and secondly, the computer technology is in the course of rapid development. Therefore, only the fundamental rules should be provided in the law.

Furthermore, the government should proceed with the consideration of possible self-regulation by each agency with respect to the matters discussed above.

5. Granting individuals the right of access, the right to have one's information corrected or deleted, and the right of appeal

It deserves serious attention to grant individuals the right to inspect or review information pertaining to them in the files, to request correction or deletion of such information, and to file an appeal against the decision by agencies with respect to such request, except where the consideration of public interest and the like warrants exemptions, so that incorrect, incomplete or obsolete information may not result in unforeseen damages upon individuals.

Points at issue

- (a) The question of the scope and the extent of exemptions on the ground of public interest requires a careful consideration.
- (b) Practices exist in many agencies to respond to the inquiries from individuals about their files. This, however, would not lessen the significance of granting the right of access, which lies in making such procedure mandatory - as a legally guaranteed right of an individual.

6. Creation of a special regulatory authority

The establishment of a special authority with regulatory functions would not be an absolute requirement when the agencies are left free to create and operate personal information systems. On the other hand, the necessity for the

establishment of such authority arises when specific licences are to be required as a necessary condition for the establishment of systems, the transfer of information to other agencies, etc. The licences could be granted either by a newly-created regulatory board (as in Sweden) or by a single-headed agency with an advisory board attached to make recommendations to the agency head on the licensing standards and related matters.

Points at issue

- (a) Even where there is no necessity for a regulatory authority, it is necessary to designate an agency responsible for the enforcement of the law.
- (b) The regulatory board approach may be most appropriate to the matter in question. However, questions remain as to whether it is practically possible to select members of the board from those persons who would be generally acceptable to the public and could contribute to the effective operation of the board as a decision-making body. It should also be carefully examined whether the expected workload would justify the establishment of the board as a permanent organ.
- (c) As for the single-headed agency approach, the question of workload will not matter much, since the regulatory function could be given to one of the existing agencies. In that event, however, the selection of the members of the advisory board might be as difficult as that of the regulatory board.
- (d) With respect to the local public entities, it appears that the principle of local self-government requires the establishment of separate regulatory authorities for each jurisdiction by local ordinance. However, it is questionable whether such authorities operate with efficiency. Moreover, if these authorities were to be given a free hand in decisions related to specific licensing, there is a possibility that discrepancies might result among the decisions by the authorities of the national government and the local public entities.

7. Regulation of government contractors

In carrying out personal information processing programs, government agencies from time to time contract out part or whole of the operation to non-governmental organizations. In such cases, the requirement of the law could be imposed upon the activities of these private contractors from the viewpoint of data security and confidentiality. Furthermore, such contractors and their employees could be placed under the same legal obligation to observe secrecy that applies to government officials.

Points at issue

- (a) Direct legal control over the activities of private contractors should be minimized, since the objective could be accomplished by including in the contracts the provisions specifying the applicability of the law to such contractors.
- (b) The appropriateness of imposing on the contractors the obligation to observe secrecy should be carefully examined from the viewpoint of the system of criminal law in general.

#### IV. CONCLUSION

As the preceding discussion shows, the Commission finds it difficult at this point to reach a definite conclusion on the appropriate measures for the protection of privacy in relation to the utilization of computers in government agencies. We recommend that the discussion on the matter be continued, paying due attention to the following points.

First of all, a clearer picture of what constitutes the invasion of personal privacy in relation to the computer-based personal information systems is needed.

Secondly, with respect to the particular instances of the invasion of privacy, it should be made clear whether they are of the type which can be found where personal information is handled through manual files, or of the type whose possibility of occurrence, while almost non-existent during manual processing era, has greatly increased as a consequence of the computer-based processing of personal information.

Thirdly, in designing safeguard requirements, the cost-effectiveness tradeoffs involved should be fully analysed.

Finally, the experiences of foreign countries where the privacy protection legislations are in full force should be further examined and taken into consideration in discussing specific measures.

It is hoped that appropriate measures for the protection of personal privacy be established as soon as possible, paying attention to the foregoing discussions and taking into consideration the trend of public opinion as well as the suggestions from all strata of society.

#### NETHERLANDS

[Original: English]

[23 September 1975]

[The Government of the Netherlands submits] a copy of a summary of the Interim Report of the Netherlands Government Committee on the Protection of Privacy in Personal Data Registration. This Committee has been entrusted with the task to give advice regarding the question which legislative or other measures are desirable to protect privacy in connexion with the use of automated personal data registration systems and on the question of the desirability to apply these measures also to other personal registrations, in particular if data contained therein are usually being made available to third parties.

[Also submitted is] a copy of the Instructions of the Netherlands Government concerning the protection of privacy vis-à-vis automated personal data registers of the central administration is being enclosed.

These instructions contain provisional measures to be taken pending the entry into force of final legislative provisions on this subject.

### Summary

1. The Government Committee on the Protection of Privacy in Personal Data Registration considered it useful to make known the views it has so far formed by issuing an interim report. In doing so it did not only want to give all interested persons the opportunity to give their comments before the final recommendation is made but it also wanted to induce further discussion on the subject it is studying.

There are two reasons why it wants more discussion. Firstly we cannot expect any statutory regulations on the registration of personal data to eliminate all the difficulties connected with the protection of privacy in one fell swoop. We are, after all, dealing with a subject which has, both in this country and abroad, only recently come to the fore and is greatly influenced by rapid technical developments. The second reason is that the Committee believes it is most important that those concerned should themselves see what can be done in the cause of safeguarding privacy, not only before statutory regulations have been introduced but also afterwards. The last chapter of the report gives examples of what can be done in anticipation of statutory regulations.

2. There are a number of considerations which led the Committee to the conclusion that it is desirable to have statutory regulations governing the registration of personal data.

It noted that our society, which is becoming more and more complex, needs more and more information, including personal data. To meet this need new techniques have already been adopted, notably computer systems. They are so useful in storing and processing data that they can themselves encourage the increasing demand for information. We must therefore take account of a progressive development towards concentrated storage of personal data and an increasing inter-relatedness of the various registration systems.

It is these very developments in the technical sphere that have given rise to concern about the dangers to the individual of large, easily accessible collections of data. The Committee considers this concern for the most part justified. While it is true that the growth of information systems is limited by technical and economic factors, the interests of the person whose particulars are registered are protected only in so far as this is practicable in view of the cost involved and other considerations. The Committee considers the dangers inherent in present developments to be so great that it would be irresponsible of legislators to ignore them.

The report cites some of the factors having an adverse influence on privacy that deserve particular attention. These factors have given the question of privacy a new slant. Safeguarding privacy will in future also have to include safeguarding personal particulars. Besides, it is not only computer storage and processing which is causing the trouble but there are also dangers inherent in the registration of personal particulars on a smaller scale. This is especially true of particulars of an intimate nature or particulars which the person concerned may wish to keep within a limited circle for other reasons. The way in which registration takes place is of secondary importance. The Committee therefore believes that any statutory regulations should not be confined to the registration of data by means of automated equipment.



The Committee also noted that there is a power aspect associated with personal data registration. While such data can be used to reach decisions important to the persons concerned, they do not always know which of the data are of use in a given decision. It may happen that information is used for a completely different purpose from that for which it was supplied either to the authority concerned or to another authority, which later passed it on. In general the individual may find himself confronted with a whole gamut of facts about himself over which he has no control. He may experience this as an anonymous force that is beyond his grasp. In formulating its measures the Committee will have to give the necessary consideration to this power aspect.

The subject of this report has not yet been systematically worked out in Dutch law. The statutory measures envisaged will therefore largely break new ground. In other countries, too, work is in full swing. The report gives an outline of this work.

3. The provisional statutory regulations outlined by the Committee are based on two principles. Firstly it is desirable to strengthen the legal position of persons whose data are registered. To this end a number of rights are proposed which those concerned can assert before an ordinary court. Secondly, the registration of personal particulars should be more directly controlled. The Committee regards this as something the government should be actively concerned with.

The report argues that everyone should have the right to take cognizance of the particulars relating to him which have been included in any particular registration system. For various reasons, which are listed in the report, it is usually preferable for the data concerned not to be furnished in writing. The Committee rejects the idea of the data systems sending copies of the data recorded to the persons concerned automatically. It does however want to ensure that in special cases the persons concerned can be notified of the fact that data concerning them have been recorded in a particular data system. An exception to the right of perusal of data would seem to be necessary for purposes of criminal investigation and state security. Nor should medical information necessarily be open to inspection.

In addition to the right to take cognizance of data, the persons concerned should also be entitled to ask that data which has been recorded about them be corrected. This right is needed not only if the particulars are incorrect but also if the purpose of the system in question does not sufficiently justify their registration. It should also be possible to ask for information that is missing to be added, provided it fits into the system.

The Committee further proposes that a public register be set up listing registration systems containing personal information. By means of this register everyone would be able to keep himself informed of the existence of systems which might include information about himself.

In addition every registration system should have rules stating in precise terms the purpose and method of the system and indicating what information may be recorded in it, so that it can be consulted by anyone. The public register would thus become an important aid to the individual in exercising his right to take cognizance of the information and correct it. It can also help to make the matter of personal data registration more intelligible so that it can be studied more easily and so that possible abuse can be avoided.

The Committee considers it very difficult to formulate general rules from which it could be deduced which personal particulars may be registered and which may not. It believes that this question can only be answered by assessing each registration system separately. The rules referred to above are particularly important in this respect.

The Committee wants a licensing system to be introduced for the registration systems which are considered to contain the greatest threat to privacy. Before issuing a licence the question of safety precautions, which are not described in the regulations of course, will also have to be considered. Persons other than the applicant for the licence must also be given an opportunity of stating their interests in the matter.

More study will be needed before it can be decided to which registration systems the licensing scheme should apply. If it is decided in principle to apply the scheme to automated registration systems, exceptions will certainly have to be made with respect to some of the more innocent ones, while on the other hand the possibility of licensing some non-automated systems must be left open.

There would have to be separate rules governing reports on persons such as those drawn up in connexion with criminal cases and child care and protection cases. Although collections of personal files cannot strictly be called registration systems, the facts contained in the files are generally of a very personal nature.

The Committee thinks that a central body should be instituted to be responsible, as far as the State is concerned, for the supervision of the registration of personal information. It proposes that a Registration Chamber be instituted for the purpose, which should be fairly independent of the government. The tasks of the Registration Chamber could include administering the public register and issuing licences to the systems needing them. The Chamber should also have certain powers with respect to systems which do not come under the licensing scheme, in particular powers to ensure that the rules are observed.

The Committee also proposes that a record, known as a protocol, be maintained in respect of automatic registration systems of any information supplied where it is not directly obvious from the rules that it has been supplied. The protocol would be kept for a certain length of time and it would be open to inspection by the individual concerned during that time. In this way he can find out where information about him has gone to, and if the information is incorrect he can take the necessary measures.

In a separate report the Committee outlines a number of criteria for defining the area in which the proposed statutory regulations should be applied.

4. In the last chapter of the interim report the Committee points out that it still has a big task ahead of it. The following matters still require attention: constitutional aspects of the protection of privacy in connexion with the registration of personal information; codification to ensure that data intended for statistical research cannot be traced back to individuals; the separation of the administration and the use of registration systems; special aspects connected with the registration of medical and psychological data; a possible special arrangement for information bureaus; registration systems with international aspects; and a transitional arrangement for registration systems which are already in operation when the new statutory regulations come into effect.

Instructions of the Netherlands Government  
concerning the protection of privacy vis-à-vis  
automated personal data registers of  
the central administration

The Prime Minister,

Acting with the approval of the Council of Ministers,

has decided:

to lay down the appended instructions concerning the protection of privacy vis-à-vis automated personal data registers of the central administration.

The Hague, 7 March 1975

The Prime Minister  
J.M. den Uyl

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INTRODUCTION

The purpose of the appended instructions is to lay down guidelines for all departments of the central administration which are to be respected when compiling, managing or using automated personal data registers. Their main aim is to provide satisfactory guarantees for the protection of privacy vis-à-vis such registers.

These instructions are based on the work of the Koopmans Commission, which was directed to give an opinion on legislative or other measures to protect privacy in the use of automated personal data registers. On 28 January 1974 the Commission submitted an interim report setting out provisional conclusions and guidelines for corresponding legislation (Privacy en personenregistratie, Staatsuitgeverij, 's-Gravenhage 1974).

In view of the complexity of the subject, however, it will take some time before final legislative provisions enter into force. In its report the Commission therefore urged all the parties concerned to examine forthwith problems arising out of the protection of privacy and, pending this legislation, to take suitable measures wherever possible (Interim report, p. 18). The Commission is, moreover, of the opinion that the legislation envisaged must take due account of rules introduced by the parties concerned.

The Council of Ministers agrees that the period before legislative measures can be introduced must be put to good use. It is important, however, not to anticipate the future provisions. The present instructions, drawn up at the proposal of the Minister of Justice and the Under Secretary of State for the Interior, must be regarded as an initial step towards provisional measures. Intrinsically they apply only to the central administrative authorities. It was also considered advisable, in view of the Commission's remarks (p. 16 of Interim report), to restrict these instructions for the time being to automated personal data registers.

These instructions were drawn up by a working party consisting of officials of the Ministry of Justice and the Ministry of the Interior and broadly follow the Commission's conclusions and proposed solutions. The Koopmans Commission has not, however, so far taken a final stand on regulations concerning statistical registers, since such registers, owing to their special character, cannot be unreservedly subjected to strict instructions. Separate regulations are accordingly being drawn up for such registers.

A further reason for these instructions is that they will make it possible to standardize rules on data processing systems. Uniformity is important to ensure equal legal rights for all persons concerned by data storage, until such time as more comprehensive provisions are introduced; it will also increase the efficiency of data processing in the central administration. It is recognized that each automated register has to some extent requirements of its own. The publication of minimum standards to be respected by data processing systems will make it possible to work out specific sets of rules for each register, adaptable to a given case. At the same time, the instructions show the need for a critical examination of the ultimate purposes and scope of existing registers; an examination which will help to increase the efficiency of data processing and safeguard the interests of the persons concerned.

The most significant implication of the present instructions is that a set of regulations will have to be drawn up for each automated personal data register of the central administration. No register may be brought into use unless such regulations have been instituted. The registers in operation on 1 January 1975 will be subject to a special transitional regime until 1 January 1976. Technical and organizational measures will also need to be introduced. Consequently, during the next few months, sets of regulations are to be drawn up, a task which will, in the first instance, be entrusted to the legal adviser of the Ministry or Department concerned, who may, where necessary, consult the Public Law Section of the Ministry of Justice. The Directorate for Organization and Automation of the Public Administration, Ministry of the Interior, may be consulted on matters relating to the organization and security of automated registers.

The instructions on organization and security which relate only indirectly to private matters, do not concern solely protection of privacy. They are necessary to ensure continuity of registration procedure. In many cases, the terms of the instructions have already been complied with. Efficient organization and a sound system of protection will ensure that the rules are respected. The instructions also concern registers already in use. Where these registers do not meet the requirements laid down therein, the necessary additional precautions must be taken without delay. Since the circumstances in which registration takes place differ, no general time-limit has been set.

The instructions on organization and security of automated systems were drafted in the light of the report on technical measures to protect computerised data drawn up by the Commission for Automation of the Central Administration. Due account was also taken of the study made by the Foundation for the Development of Data-processing in Local Government (SOAG).

Although the instructions apply in principle to all automated registers dealing with personal data, certain registers compiled for national security purposes have been exempted, in particular registers that might be used by the intelligence and security services referred to in the Royal Decree of 5 August 1972 (Stb. 437).

The main responsibility of supervising the operation of these services is exercised by the Minister concerned and the Standing Committee of the Second Chamber for the intelligence and security services. The instructions may be waived only at the joint request of several ministers. This provision is in line with Article 139a (2) 3 of the Penal Code.

## INSTRUCTIONS

### A. General

1. No automated register containing personal data may be put into use until regulations have been adopted by the competent authority. These regulations shall, in any event, cover the matters listed in Section B below.

2. The rules shall designate the person holding the register as responsible for it. The person responsible shall be required to ensure that the regulations are respected. Anyone may consult the regulations which shall be available from the person responsible for the register, the information service of the Ministry in which that person is employed or the Central Library of the Ministry of Justice.

The said Library shall keep a record of all sets of regulations deposited.

3. A register of the kind referred to in Instruction No. 1 shall contain only data essential for the purpose for which it is kept.

The data stored shall be used solely for purposes consistent with that of the register.

4. All persons about whom data have been recorded in a register of the kind specified in Instruction No. 1 shall be entitled, upon application, to ascertain what data have been stored. A provision to this effect shall be included in the regulations. Data concerning a person's physical or mental health, or any other aspect, which might cause harm to that person if disclosed directly may be communicated to a person authorized by him. The regulations shall contain provisions regarding the choice of persons with power of attorney.

5. Similarly, anyone who so wishes may, upon application, have inaccurate or irrelevant data concerning him corrected or deleted or any missing data which should have been included added to the register. The regulations shall include provisions on this matter.

6. Anyone concerned shall be entitled, upon application, to obtain information concerning data which, during a period to be specified in the rules, have been communicated to other bodies. Suitable measures to this effect shall be taken in accordance with the regulations. The first sentence of this paragraph shall not apply if the data concerned and the bodies to which they were supplied, are clear from the regulations.

7. Instructions Nos. 4, 5 and 6 do not apply where the interests of national security or the prevention or punishment of offences otherwise require.

8. With regard to the organization and protection of registers of the kind referred to in Instruction No. 1, the person responsible shall take steps to ensure that the privacy of persons about whom data have been recorded is adequately protected.

These provisions shall, in any event, cover the matters listed in section C below.

B. Content of regulations

9. The regulations shall give a precise description of the purpose for which the register is kept.

10. The rules shall also give a detailed description of the categories of persons in respect of whom data are recorded in the register, the data which may be recorded in respect of each category and the cases in which data shall be deleted.

11. Where registration activities are autonomous, the regulations shall specify the powers of the persons responsible for keeping the register. They shall also specify the persons responsible for the technical processing of the data registered.

12. The regulations shall specify the persons and bodies who may be supplied with data from the register and the data which may be communicated.

They shall also specify the categories of persons having direct access to the register.

13. Except in respect of the cases referred to in Instruction No. 7, the rules shall state when and how a person or his attorney may take cognizance of the data stored in the register.

Unless otherwise prescribed in the regulations, such communication may be made only in the form of a copy or extract of the data registered.

14. Except in respect of the cases referred to in Instruction No. 7, the regulations shall specify how a person may apply for the emendation, deletion or amplification of data concerning him in the register and who shall decide on the application and how this shall be done. When emendation, deletion or amplification of the data has been authorized, it shall be recorded in the register as soon as possible.

15. In respect of the cases referred to in the first sub-paragraph of Instruction No. 6, the regulations shall specify how and for what period a person about whom data has been entered in the register may obtain the communication provided for in this paragraph.

16. When the nature of a register makes it advisable, the regulations shall designate a body to be responsible for supervising the register and shall confer on that body the necessary authority.

In respect of the cases referred to in the first sub-paragraph, the regulations shall state how a person concerned may apply for supervision of the register.

C. Organization and protection

17. The necessary measures shall be taken to protect data against loss or damage caused by fire, floods, radiation, air pollution or other disaster.

These measures shall in any event comprise:

- (a) adequate fire extinguisher equipment;
- (b) fire alarms;
- (c) an efficient lightning-conductor for the building(s) in which the register is kept;
- (d) no smoking on the premises;
- (e) emergency contingency plan.

18. The necessary arrangements must also be made to protect data against wilful damage, negligence or misuse by the staff responsible for looking after and processing the data and against loss or damage caused by third parties.

There shall also be rules concerning:

- (a) the transport of data both inside and outside the building(s) where the registry is installed;
- (b) access to the premises on which the data are stored or processed;
- (c) in so far as the nature of the data shall require, arrangements shall be made for the safe-keeping of the data, system description and programmes in the event of the country being threatened by invasion by a hostile power and for their destruction before they can be seized by that power.

19. Measures must be taken to ensure that in the event of loss or damage data can be reconstituted.

The originals and copies of the data and documents on computer systems and programmes shall be deposited in a locked and fireproof place.

Satisfactory arrangements shall be made regarding the condition and use of data and the description of computer systems and programmes.

20. Functions shall be kept separate in order that the following tasks may, wherever possible, be carried out by different persons:

- (a) systems design;
- (b) programming;
- (c) collection of data;
- (d) recording and processing of data;
- (e) communication of data;
- (f) data storage.

A description shall be drawn up of the duties of staff responsible for the operation of the registry. Operations shall be carried out and recorded in such a way that it is possible at any time to determine who has carried out the operations referred to in the first sub-paragraph 1 above.

21. Operations concerning personal data shall be carried out solely on the basis of instructions issued within or outside the service, wherever possible in writing.

All persons responsible for the storage, processing or communication of data shall make sure that any instructions they receive come from persons or bodies authorized to issue them.

22. Operations concerning personal data shall be carried out in accordance with the relevant provisions in the description of the register system.

All descriptions of register systems shall state:

- (a) the form, volume and details of the data collected for processing purposes;
- (b) the operations to be carried out on these data;
- (c) the form, manner and frequency of communication of data;
- (d) security measures to ensure that the rules for the operation of the registry are respected.

23. The necessary arrangements to protect data shall be made in the event of equipment being used which enables third parties to have direct access to the register being used. Above all, such arrangements shall ensure that a third party cannot obtain data other than those to which he is entitled.

24. The effectiveness and observance of all the security precautions shall be the subject of periodical verification.

#### D. Conclusion

25. Automated registers already in use on 1 January 1975 shall be subject to the foregoing instructions on the understanding that the regulations referred to in Instruction No. 1 above shall have been drawn up by 1 January 1976 at the latest.

26. By joint order of the Prime Minister, the Minister of Justice and the Minister of the Interior, as well as of the other Ministers concerned, it may be decided that these instructions shall not apply to automated registers whose purpose it is to protect the security of the State.

NEW ZEALAND

[Original: English]

[15 August 1975]

In three privacy bills recently introduced into the New Zealand House of Representatives the need to safeguard human rights against the misuse of scientific and technological advances has been recognized.



The first, the Wanganui Computer Centre Bill, aims to protect the privacy of the individual from possible infringement by the law enforcement computer being established at Wanganui. A special committee is to be set up to ensure privacy. There is also to be a Commissioner whose function will be to investigate complaints and, on request, to provide individuals with computer print-out copies of their personal records.

The second bill provides for the appointment of a Privacy Commissioner with the responsibility of identifying possible threats to the privacy of the individual, including those originating in technological developments. The Commissioner will report to the Minister of Justice on any changes in law and practice that may be desirable to prevent unnecessary infringement of the right to privacy.

The third bill, the Listening Devices Bill, imposes legislative control over the surreptitious interception of private oral communication by means of a listening device. Such conduct becomes a criminal offence unless carried out by the Police or the Security Intelligence Service in the course of detecting or preventing serious crimes or activities prejudicial to State security.

As these three bills are at present before the statutes Revision Committee so that public submissions on them may be heard, the final shape of legislation is as yet uncertain. The provisions of the bills are, however, an indication that the New Zealand authorities are taking active account of recent advances in science and technology which demand adaptation of existing legislation if the rights of the individual are to be adequately protected.

#### PHILIPPINES

[Original: English]

[30 June 1975]

The Philippine Constitution, in its Bill of Rights, provides the following guarantees against the invasion of the privacy of its citizens:

- (a) Section 3, Article IV: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."
- (b) Section 4, Article IV: "The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety and order require otherwise."

Any evidence obtained in violation of this or the preceeding section shall be inadmissible for any purpose in any proceeding.

## SWEDEN

[Original: English]

[5 August 1975]

Sweden has a fairly advanced legislation to protect the integrity of human beings in different respects. The new Data Act, effective as from 1 July, 1974, is intended to protect human rights in connexion with the use of the developing data technique. However, since the right to personal integrity cannot be absolute in a society, the protection provided by the Data Act has been confined to prevent "inappropriate" violations of the personal integrity. The observation of the Data Act is supervised by a specially appointed Data Inspection Board.

The Swedish Data Act is the first piece of legislation on information about individuals stored in public or private "data banks". Even though very comprehensive, the Act still lacks a number of definitions - the term "personal integrity" for instance, has proved as difficult to define as the word "inappropriate".

Still, it was considered appropriate to promulgate the Act and to leave the many problems of definition to be solved by the Data Inspection Board in its daily work. The intention is gradually to adapt the legislation to the technical development, taking into account the growing experience of the Board. Since the data technique is still developing, its importance and also the consequences of misuse that might occur can be expected to increase. This has underlined the importance of legislation at an early stage. In this context, it should be recalled that the data technique is, and will continue to be, a convenient help when solving various problems. At the same time it can develop into a serious threat to the integrity of human beings. The individual still lacks the possibility to use and control the data technique.

Thus it is important that information on, and access to, this technique is not confined to a limited number of persons but spread more widely in society.

The problems concerning 'data and integrity' are not nationally confined. In Europe a network of communications is rapidly developing and an important flow of information is constantly being transferred from data banks in one country to those in another country or continent via telephone cables and satellites. This fact underlines the need for international agreements in this field.

Sweden is also concerned with the problem of legislation to protect individuals from the misuse of wiretapping. Already in 1970 a special government committee presented a report concerning protection against wiretapping. On the basis of this report the Government this year has proposed to the Riksdag that illicit wiretapping using different technical means be penalized. In this context the term "illicit wiretapping" should be understood to mean secret wiretapping of conversations between other people or of negotiations to which the offender is not a party or where he has been present without permission. Also, the illicit installation of technical equipment for illicit wiretapping or recording is to be punishable according to the Government proposal mentioned above. A number of amendments to the legislation with the purpose of increasing the protection of the individual in connexion with the misuse of technical equipment have also been

proposed, i.a. on the right of indemnity if a person has been put at a disadvantage following illicit wiretapping (the Law of Damages) and on the need of special permission to own and operate radio transmitters or equivalents thereof.

The Committee on the Protection of the Personal Integrity mentioned above has also published a report on "Photography and Integrity". In the report the Committee underlines the importance of legal protection of the right to personal integrity when cameras or other equipment for optic reading, for instance TV-cameras, are used. It has been proposed to amend the Penal Code to comprise also the crimes of "illicit" and "improper photography".

Finally, it should be pointed out that it is the opinion of the Swedish Government that effects on the human situation of the development of the data technique should be continually studied by the United Nations. Thereby it would be possible to make use of the positive effects of the technical development and to adapt them to the needs of humanity.