



Privacy & Data Protection

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EU investigates UK data laws

The European Commission has written to the UK to request information relating to its implementation of the Data Protection Directive (95/46/EC). One potential outcome of an investigation by the Commission is that the UK could be forced to amend its data protection laws.

The impetus for the move by Europe apparently stems from a complaint made to the European Commission by Mr Durant following his unsuccessful subject access legal case that went through the British courts system in 2003.

Following the unsuccessful attempt by Mr Durant

to extract information from the UK Financial Services Authority under the subject access provisions of the Data Protection Act 1998, and his subsequent complaint to the European Commission about inadequate UK compliance with the EU Data Protection Directive, the Commission has indicted its disquiet with the UK's implementation of the Directive by sending the government a request for further information on its national data protection laws.

In the *Durant* case, the Court of Appeal found that Mr Durant was not entitled to many of the documents he was seeking from the Financial

Services Authority—in doing so, the court found that both the terms 'personal data' and 'relevant filing system' had a restricted meaning under the UK Data Protection Act. For further detail on the case and the court's view of the definitions of the above terms, see *Privacy & Data Protection*, Volume 4, Issue 3, page 4.

Many are also commenting that the UK has inadequately implemented the Electronic Privacy Directive (2002/58/EC), resulting in too lenient a treatment of persons who send unsolicited commercial email ('spam') in the UK.

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Offshore outsourcing set to be attacked by Unions

In a last-ditch attempt to stem the flow of jobs from Europe to Asia, unions are set to attempt to use data protection laws to mount an attack on EU employers.

Unions are desperate to rein in what they see as the most significant threat to European jobs in many years. They have seized on EU data export laws as a possible method to halt the job drain.

Transferring employee and customer data to outsourcing companies located outside Europe is unlawful

under the European Data Protection Directive. Article 25 of the Directive provides that "*the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if ... the third country in question ensures an adequate level of protection.*"

In the case of outsourcing, the requirement for 'adequacy' is commonly interpreted as requiring either the consent of the relevant individuals who

are the subject of the data being transferred (impractical and, hence, rare), for the third country to have adequate data protection laws that are recognised by the European Commission (most third countries, including India, do not), or for the export to take place on the Commission's 'model' data processor clauses. The latter is the preferred method, but very many employers in the EU have recklessly disregarded this requirement when making their

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