



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Directorate C : Fundamental Rights and Citizenship
Unit C3 : Data Protection

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Dr C.N.M. Pounder
30 Aylesbury Street
London EC1R 0ER
United Kingdom

Dear Dr Pounder,

Subject: United Kingdom – Implementation of Directive 95/46/EC

Following the decision of the European Ombudsman, please find below a summary information on the infringement proceedings against the United Kingdom.

This case concerns an alleged failure of the UK Legislation to implement various provisions of the Directive 95/46/EC on data protection. As we have already informed you, the provisions concerned are Articles 2, 3, 8, 10, 11, 12, 13, 22, 23, 25 and 28 of that Directive.

The issue regarding Article 2 concerns the definition of "filing system", and the interpretation of this definition in the judgment in the *Durant* case, which appeared to be narrower than that in the Directive.

The issue regarding Article 3 relates to the inclusion, in the UK Data Protection Act, of the expression *including recreational purposes*, which appeared to be broader than mere household activities.

The issue regarding Article 8, is whether or not the UK Data Protection Act treated data relating to criminal offences differently to other categories of sensitive data.

Articles 10 and 11 of the Directive specify the information that data controllers should provide to data subjects, depending on whether this information was initially obtained from the data subject, or collected elsewhere. The Data Protection Act appeared to exempt from this requirement data which the data controller is obliged to make public.

Article 12 of the Directive gives data subjects the right to check the accuracy of their data, ensure that the data are being kept up-to-date, and have their data rectified, erased or blocked if necessary. The Data Protection Act, however, appears to confer upon the courts a discretion to grant or refuse applications made by data subjects in this regard.

The issue regarding Article 13 relates to the exemption from the right of access of the data subject in the Data Protection Act to confidential references.

Article 22 of the Directive provides for judicial remedies, and Article 23 requires that Member States ensure compensation for any person who has suffered damage as a result of an unlawful data processing operation. The Data Protection Act appears to narrow the scope of non-material damage.

The issue regarding Article 25 concerns the extent to which UK data controllers are monitored as to their assessment of adequacy of the level of protection in third countries to which they transferred personal data.

The issue regarding Article 28 concerns the sufficiency of the investigative powers of the supervisory authority.

We hope that the information thus provided, summarising the questions at stake in this infringement case against the UK, is clear and replies to all your questions.

Yours sincerely,



Marie-Hélène BOULANGER
Head of Unit