GENERAL CONSIDERATION OF THE BELGIAN DATA PROTECTION BILL OF MAY 1991

Frank ROBBEN

1. INTRODUCTION

1. Belgium has a long history in developing draft bills on the subject of the protection of privacy with regard to data processing[1]. All these initiatives have this in common : none of them have ever been the subject of an in-depth debate in Parliament.

This is the reason why Belgium is one of the last Western European countries which still lacks general regulation regarding the protection of privacy with regard to the processing of personal data. As a result of international developments in this field and comprehensive regulations applying to certain specific sectors, the Government has woken up to the need for such legislation. As a result the government parties spent a year and a half discussing the subject and this resulted in a bill about which the discussion has startes in Parliament. Since this date, an election has been called but it appears likely that this bill will be exempt from lapsing with the dissolution and that it will be carried forward for debate by the new Parliament.

What follows is a discussion of the area of application and the main thrust of the bill based on a description of the available documents : the bill, the explanatory memorandum and the advice of the State Council.

2. AREA OF APPLICATION

2.1. The area of application ratione materiae

2. The rights and obligations included in the bill aim at the protection of privacy with regard to the processing of personal data in the form of a file.

By virtue of article 1, § 1, "processing" is taken to mean "processing by automatic means or the retention of a manual file". Both aspects are further discussed under § § 2 to 5.

---

[1] The following list of the drafts and bills promoted is given by way of proof : the Vanderpoorten bill of April 8th 1976 on the protection of certain aspects of personal privacy (Parl. Doc., Senat, 1975-76, 846); the Gol bill of November 10th 1983 regarding the protection of certain aspects of personal privacy (Parl. Doc., House, 1983-84, 778); later subdivided into the Gol bill of May 30th 1985 regarding the protection of personal privacy against monitoring and espionage (Parl. Doc., House, 1984-85, 1227) and the Gol Bill of July 17th 1985 regarding the protection of personal privacy with regard to the automatic registrations of individuals (Parl. Doc., House, 1984-85, 1330); the Van den Bossche bill of February 16th 1987 regarding information technology and the protection of privacy (Parl. Doc., House, 1985-86, 274); the Verhaegen draft of June 16th 1989 regarding the protection of personal privacy with regard to data bases (Parl. Doc., Senat, 1988-89, 734); the Michel draft of December 13th 1989 regarding the protection of personal data on natural persons in data files and data bases and regarding the creation of a national commission on information technology and civil liberties (Parl. Doc., House, 198-90, 1029).

The term "**automatic processing**" is taken to mean "any group of operations which are, in whole or in part, carried out by automatic methods and which are concerned with the registration and retention of personal data in the form of a file and the amendment, erasure, consultation or publication of such data". The term "**file**" has to refer to "a collection of personal data (...), compiled and retained in a logical and structured manner (the introduced structure, FR) in order to enable systematic consultation hereof". "**Personal data**" is understood to mean "data which refer to a natural person who is or could be identified".

The term "**retention of a manual file**" is described as "the compilation and retention of a file within a non-automatic system".

3. Nevertheless, this bill does not apply to every form of personal data processing that meets the above mentioned requirements. Cause 3, § 2, for example excludes 2 types of processing on the bases of their contents and nature. It concerns on the one hand, "the processing of personal data, held by natural persons and which, by its nature, is intended solely for personal, family or domestic use" (point 1°) and on the other hand, "the processing of data in which the sole items of personal data which are used are those which are required to be made public by law of Statutory Instruments or where the person to whom the items of data refer releases the information or causes it to be released" (point 3).

4. Each of the above mentioned definitions requires additional explanation.

The definition of the term "**personal data**" given in the bill is quite similar to the one phrased in treaty n° 108 of the European Council and in the Dutch bill, so that the commentary on these texts may be used for inspire any further interpretation.

In any case, personal data have to bear upon a natural person. Data on legal persons cannot be considered personal data.

Moreover, the natural person to whom the data refer has to be identified or, at least, has to be identifiable. Analogously to the commentary of treaty n° 108 of the Council of Europe and the Dutch bill, it may be assumed that a natural person is not identifiable when the process of identification requires unreasonable efforts or costs which are non-proportional with its usefulness[2].

For data to bear on an identified or identifiable person in order to be considered personal data, does not necessarily imply as such that it must lead to the identification of the person involved. It is sufficient for the data to be associated with an identified or identifiable person.

5. The area of application of this bill does not cover all types of personal data processing. The personal data have to be stored in a **file**. In principle it is irrelevant whether the file is

[2] CONSEIL D'EUROPE, Rapport explicatif concernant la Convention pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel, 1981, 14, n° 28; Regels ter bescherming van de persoonlijke levenssfeer in verband met persoonsregistraties (Bill on the registration of people), Explanatory memorandum, Lower Chamber, year of assembly 1984-1985, 19095, N) 3, 35.

retained by automatic means or whether it is manually retained. The protective regulation applies to both cases, nevertheless, in former the case a preliminary declaration will have to be issued.

The definition of the term "file" distinguishes 2 essential requirements.

First and foremost it has to concern the **collection of personal data**, a term which has already been discussed. A set of data bearing on legal persons or on ad hoc associations will as a consequence not be protected. A set of mixed data, comprising both personal data and other data, is covered by the regulation in so far as the personal data are concerned.

Secondly **the personal data need to be organized in a logical way, so as to simplify the systematic consultation of the data**. With this condition we wish to avoid the protective regulation from being applied to collections of data having little structure and which are not accessible via a specific system.

Of course, non-organized collections of data can sometimes comprise sensitive data, so that when managing and processing the data, one has to respect certain rules. However, the authors of the present bill were of the view that other, more satisfactory and more specific, methods of legal protection should be provided to cover such circumstances and that these fall outside the scope of this bill.

The example of an unorganized data collections of referred to in the explanatory memorandum and which, within the framework of the bill can not be considered as a file, is an alphabetically and arithmetically organised[3] collection of files, regardless whether these are automatic files or not. A simple file, with ordinary notes and with more or less chronologically organized documents of different kinds, will not meet the requirement of systematic accessibility. Things are different where the controller of the file collection, knows exactly per file, where to find whatever he is looking for or when there is an automated or non-automated index. More examples given by the explanatory memorandum with regard to data collections which can not be considered as files, are written publications such as the telephone directory or an electronic mailbox.

6. The protective regulation described in the bill is not only intended to bear upon the creation and retention of personal data files, but is also intended to apply to other stages of data processing, such as references, erasures, consultations and distributions of the data.

The legal definition distinguishes 2 types of processing : on the one hand, automatic processing and on the other hand, the retention of a manual file. In principle, the protective regulation applies to both types of processing, nevertheless some rules (as for example the obligation of advance notice of processing which has to be furnished to the Commission for the Protection of Privacy) only refer to upon automatic processing. In this context, a clear distinction between both categories is essential. The legal definition shows that "the retention of a manual file" is described in a more residual way as opposed to the "automatic processing" activity.

---

[3] Explanatory Memorandum, 5.

7. In order for have **automatic processing** to exist, 5 essential features must be met simultaneously. These are as follows :

a. a group of connected processings
b. which will be treated entirely or partially by automatic means
c. and which is concerned with the registration, the retention, the modification, the consultation and the distribution
d. of personal data (cfr. point 4.)
e. in the form of a file (cfr. point 5.)

In order for automatic processing to exist, it is not necessary for all treatments which are part of it to be executed by automatic means. It is sufficient that some of them are executed in an automatic way, this is sufficient. However, this supposes that the file which is being processed is stored on a support which is automatically accessible[4]. It is obvious that an electronic support is automatically accessible. Whether a microfiche or paper filing cards are automatically accessible depends on the automatic processing means the user has at his disposal. Nevertheless, "in an automatic way" does not as such mean computer-assisted, but covers all techniques where one or more treatments are not immediately executed by hand[5]. Since retention is considered a form of processing, it is irrelevant whether the data are actually used. It is sufficient for the data subject to automatic processing to be kept available or that the possibility exists to do so.

And finally, note that collecting data is not considered as a processing activity.

8. The term "**retention of a manual file**" constitutes some kind of residual category. As soon as personal data are stored in a file, without keeping them on an automatically accessible support and without processing them (partially) in an automatic way, this constitutes the retention of a manual file.

9. As has already been mentioned, some forms of processing have been explicitly banned from the area of application. First and foremost this is the case for the processing of personal data held by natural persons and which is intended for personal, family and domestic use, and only for that use.

According to the explanatory memorandum[6], it would be excessive to issue, on the ground of the protection of privacy, a regulation applying to the processing of personal data, regardless whether it concerns automatic or non-automatic processing, this is intended for personal use by a natural person. Such mems would include directories, diaries, etc., regardless of whether they are kept on paper or on a home computer.

Nevertheless, two stringent rules have to be met. First and foremost the processed personal data

---

[4] Where the file is not stored on an automatically accessible support, this constitutes the retention of a manual file (clause 2, § 4).

[5] GEERTS, G., HEESTERMANS, H., Van Dale Groot Woordenboek van de Nederlandse Taal, Van Dale Lexicografie, 1984, 221.

[6] Explanatory memorandum, 8.

have to be managed by a natural person. The processing of personal data managed by ad hoc associations or legal bodies is consequently not exempt. Moreover, due to their nature, the processed personal data must be used solely for personal, family or domestic use, and only for purpose that. Personal data stored by an employee or a member of an association at home on behalf of the company or the association, do not qualify. Since the bill refers to the intended use of the personal data, and not to their real use, the sporadic and casual use of personal data for exclusively personal purposes (for example, sending an invitation to friends for a event organized by an association of which one is a member) will not entail the application of the regulation. The situation changes of course, where the data are used systematically for that purpose, so that it may be considered that the file is kept for this specific purpose among others.

10. The protective regulation will not be applied where all processed data are considered public, either because they are covered by a legal or regulatory rule with regard to disclosure, or because the person involved discloses himself or has it disclosed. Disclosure by or requested by the person involved implies his explicit desire to do so. The explanatory memorandum gives the example of a commercial advertisement. From the public behaviour of a person, one can deduce certain personal data, but this does not imply that the processing of these data is not submitted to the protective regulation.

2.2. The area of application ratione personae

11. The protective regulation applies regardless whether the data processing body is a natural person, a legal body or an association. No distinction is made whether the data processing body comes under private law or public law. Certain rules[7] do not bear apply to the data processing performed by the Directorate for State Security within the Ministry of Justice and by the General Security and Intelligence Department of the Ministry of Defence (article 3, § 3) although these services as such are not excluded from the bill's area of application. The public authorities charged with the tasks of the administrative police are exempt from certain obligations[8] (articles 4, paragraph 2, 12, 2° to 4°, and 13, § 4). Finally the protective regulation does not apply at all to personal data processing performed by institutions of international public law of which Belgium is a member (article 3, §, 2°) or to processing by the National Institute for Statistics from which personalised data can be inferred[9] (article 3, § 2, 4°).

12. In order to indicate who has the ultimate responsibility for compliance with the obligations, regardless of the actual way in which personal data are processed, article 1, § 6 and 7 defines two important notions : the term "controller of the file" and the term "processor". The term

---

[7] These concern the provisions with regard to the right to information during the data collection and the first registration in a file, the special protective rules with regard to sensitive data, the direct execution of access rights, correction and non-utilization by the data user, the right of redress before a judge and before the Commission for the Protection of Personal Privacy and the obligation of prior notice for automatic data processing.

[8] These concern the obligation to provide information to the person involved of the data collection and the first registration in a file and the possibility of direct rights of access, and the correction and non-utilization of data by the data user.

[9] Cfr. clause 2, c, second paragraph of the bill of July 2nd 1962 on public statistics and all other laws referring thereto.

"controller of the file" (article 1 § 6) includes any natural or legal person or institution not having legal personality having the right to decide on the purposes of processing and the types of data to be contained within the file. Where the purposes of the processing and the types of data to be contained within the file are determined by law, at the controller of the file, is the natural or legal person designated by law to keep the file. Where the controller of the file is a natural person who has no place of residence in Belgium and in order for the rights laid down under articles 11 - 12 - right of access, rectification, erasure and utilization prohibition - shall be required to nominate a place of residence in Belgium. Where the controller of the file is a legal person or an institution not having legal personality and its registered offices are located abroad, it will be required to nominate a representative in Belgium against whom the rights laid down under articles 11 and 12 may be enforced. The term "processor" shall include any natural or legal person or institution not having legal personality which is responsible for the organisation and performance of processing".

2.3. The area of application ratione loci

13. The bill applies to "the retention of a manual file in Belgium and any automatic processing, even where such processing may, in part, take place abroad, but where such processing is directly accessible in Belgium by those items of equipment used for the processing itself" (article 3, § 1).

The obligation of to provide information to the person that is subjet of the data collection (article 4) applies moreover "to all collection of items of personal data carried out within Belgian jurisdiction and which are intended to be processed, even where such processing will not take place within Belgian jurisdiction" (article 5, first paragraph).

And finally it shall be prohibited to collect items of personal data within Belgian jurisdiction for the purpose of processing outside the jurisdiction where the processing in Belgium of such items of data is not permitted (article 5, second paragraph).

14. The text of article 3, § 1, 2° intends to bring the processing, even where one or more treatments[10] may take place in Belgium, within the area of application of the bill. Since the consultation of data is considered as a treatment, it also comprises the interactive consultation, from an endstation in Belgium, of data processed entirely abroad.

It is nevertheless important that the operations performed abroad, allowing the processed data to be consulted in Belgium, are covered by the area of application to the extent that the data are directly accessible through the characteristic processing means. The example of direct access in the explanatory memorandum concerns the consultation of data via a terminal. As a consequence, the interactive consultation of electronic files comprising personal data managed abroad, are covered by the area of application of the bill. One can wonder whether the bill also applies when via a terminal massive processing is started up abroad, the result being transmitted subsequently on paper or via file transfer without the user having interactive access to the data. This type of processing is in fact not covered by the area of application of the bill, on condition

[10] The term treatment means, one of the operations enumerated in clause 1, § 3 (registration, retention, amendment, deletion, consultation or publication of personal data).

that the resulting data does not undergo any further processing which is covered by the material area of application in Belgium.

2.4. The area of application ratione temporis

15. Article 50 assigns to the King the authority to fix the date of commencement of the different provisions of the bill at the lastest on the first day of the thirteenth month following publication of this bill in the Belgian Official Gazette. For the different provisions, different dates of commencement can be fixed.

The King shall lay down the time limits within which persons shall be required to comply with the provisions of the bill for those data processing systems already in existence at the time the bill came into effect.

3. PROTECTIVE TECHNIQUES

16. Like most laws on the protection of privacy with regard to data processing which have been passed during the last two decades, the present bill has been drawn up along the fourfold lines, used for the first time in the German federal state of Hessen on October 7th 1970. First and foremost, certain obligations are imposed on personal controller of the files with regard to quality requirements and certain restrictions are determined with regard to their use. Secondly it grants the registered persons the right of respect with regard to their privacy and the right of co-management of their data. Thirdly, it establishes an independent body, the Commission for the Protection of Privacy. And finally it provides for penalties when the legal standards have been breached.

3.1. Obligations and restrictions imposed on the personal controller of the file

The principle of permitted purposes

17. Personal data may only be processed for clearly described and justified purposes and may not be used in a manner which conflicts with these purposes. Moreover, the data, in accordance with the above mentioned purposes, have to be sufficient, useful and not excessive in relation to this purposes (article 6). As a consequence it is prohibited to process data without having defined specific purposes. In the event of automatic processing the purposes have to be transmitted to the Commission for the Protection of Privacy before the processing actually takes place (article 18, § 3).

Of course the purposes may be altered during data processing. In the event of automatic data processing, each alteration has to be transmitted in advance to the afore-mentioned Commission (article 18, § 6).

Quality requirements

18. Each controller of the file must respect a certain number of minimum quality requirements when processing personal data. These obligations must effectively protect and control the data processing internally.

As a result the controller of the file must compile a summary of all processing stating the nature of the data, the cross references, cross references for information and the persons to whom the personal data are being communicated. He must also ensure that the automatic processing does not conflict with the advance statement to the Privacy Commission, he must inform his fellow workers about all applicable regulations and has to see to it that the quality requirements with regard to the data are met and that they are processed legitimately. Moreover the controller of the file must ensure that access to the data is restricted to competent persons and that the competent persons can only perform those operations which they have been autorised. And finally must ensure that the data cannot be communicated to people who are not entitled to receive them (article 17).

The explanatory memorandum explicitly states that these obligations are only best effort commitments, so that in the event of an assessment of the controller of the file's potential liability the efforts made will have to be balanced against the protective result intended and achieved protective result.

Additional rules with regard to certain types of sensitive data

19. With regard to certain types of sensitive data, the bill lays down additional protective rules.

These rules refer to data with regard to race, ethnic origins, sexual orientation, beliefs or activities connected with political, social or religious opinions, membership of a trade union or health insurance organisation (article 7) and upon certain data with regard to issues submitted to courts and tribunals, to crimes, penalties, imposed detentions and deprivations of all kind (article 9). These data may only be processed for those purposes laid down by law. Moreover, special protective rules can be issued by means of a royal decree agreed in cabinet following receipt of the advice of the Commission for the Protection of Privacy. With regard to legal data, the bill describes a certain number of authorized processings. It stipulates for example what data can be recorded in the central and municipal criminal records and what conditions lawyers must comply with when safeguarding the interests of their clients (article 9, §§ 3 to 6). These data have to be deleted as soon as their retention is no longer justified (article 9, § 7).

20. A second type of data for which additional conditions must be complied with, are medical data. Are considered as medical data, personal data "which refer to the state of general health, medical examinations, medical treatment and treatment for alcoholism and other forms of intoxication with the exception of simple administrative or accountancy data" (article 8). These data may only be processed with the explicit written consent of the patient and under the supervision and the responsibility of a doctor. Persons involved with processing data or who have access to them must be recorded by name in a register specifying what kind of processing they may perform. Medical data may only be passed on to third parties where provided by law. Nevertheless, these data may be communicated to a doctor or the members of a medical team in order to permit treatment or with the consent of the patient.

Advance notice of automatic processing

21. Before any automatic processing of personal data may start the controller of the file must make a declaration to the effect that such processing is about to commence the Commission for the Protection of Privacy. With regard to a manual file, in principle no advance notice need be given. Acting in its official capacity or at the request of the data subject, the Commission may require the controller of the file to transmit the information laid down in the declaration, if it thinks the file violates privacy (article 20).

This declaration must contain information with regard to the processing, such as the identity of the controller of the file and his staff, the purpose of the processing, the categories of processed personal data with particular the reference to above mentioned sensitive data, the sources of the data, the form of automatic technology used, the processing time, the categories of people who have access to the data, the way in which to exercise the right to access by the people involved and, where applicable, the categories of data transmitted abroad (article 18, §§ 2 to 5). When one of these elements is altered substantially or where a processing ceases, the declaration must be resubmitted (article 18, § 6). Certain types of automatic processing which present no danger, can be exempted from the duty to submit a declaration or will only have to submit a limited declaration (article 18 § 7). In general where a specific law already provides for a register, processing can be exempt from the obligation of declaration on the condition that the register is permanently held at the disposal of the Commission (article 21).

When submitting his declaration, the controller of the file must pay a fee which will be used to defray the Commission's administrative expenses.

Certain elements of information from the declaration will be entered by the Commission into a public register which will be accessible to the public (article 19).

Compliance with additional rules issued by means of statutory instrument

22. The bill offers considerable scope to elaborate further rules with regard to some areas, agreed in cabinet following the advice of the Commission for the Protection of Privacy. For example cross referencing personal data (article 22) and transferring data abroad (article 23) can be regulated so as to anchor the principles of the bill within the framework of some social sectors, such as social security, tax law, the financial sector, etc. (article 43).

3.2. The rights of data subjects

The right to respect for privacy

23. In general terms, the bill states that every natural person is entitled to respect for his privacy when personal data referring to him are processed (article 2). This provides the citizen with a general legal foundation for the protection of his privacy. All other provisions are in fact instruments to enforce this fundamental right.

The right to information

24. The first enactment of the general right to respect for privacy, entitles every person to know

when data referring to him are being processed. This right to know is guaranteed by a certain number of compulsory measures to put the basic information at the disposal of the data subject, either directly, or indirectly, via the Commission for the Protection of Privacy.

Where personal data referring to him are collected from a person with a view to their processing, the data subject must informed of the identity of the controller of the file or the file processor, the purposes for which the collected information will be used, the right of access to, and of rectification and erasure of the data, the existence of a public register containing all automatic processings and, where applicable, the legal grounds for the data collection (article 4). This also applies where the data are collected in Belgium with a view to processing abroad (article 5, first paragraph). It does not apply when the data are collected by the administrative or judicial police (article 4, in fine).

The obligation to provide information when collecting data does not apply when the data are collected from a person who is not the person to which the data refer. In that case, the data subject doesn't have to be informed about the moment of collection but about the moment of the first registration of the data in a file (article 10). The information obligation with regard to the first registration is a general obligation, except where the first registration falls within the framework of a contractual or legal relationship between the data subject and the controller of the file. In this case the data subject is assumed to be aware of the processing. Neither the administrative police nor the judicial police have to inform the data subject about the first registration (article 12). Other exceptions may be permitted after discussion in the cabinet and following reeceipt of the advice of the Commission for the Protection of Privacy.

The same procedure may be adopted to allow collective information distribution, such as a publication in the Offical Gazette or an advertisement in a membership magazine.

And finally everyone has the right to consult the public register of the automatic processings retained by the Commission for the Protection of Privacy (article 19 in fine).

The right of access

25. Every person has the right to be informed about the data which refer to him kept in a file. For this purpose he must address a dated and signed letter with proof of identity to the controller of the file. A Statutory Instrument will lay down further provisions with regard to the enforcement of this right, and the fee which will be payable but which may only be used to cover administrative expenses.

The information must be transmitted to the controller of the file within sixty days of reception of the request. On the occasion of the communication, the data subject has to be informed about his right to rectification, erasure and non-utilization of the data and his right to consultation of the public register holding all automatic processings (article 11, § 1).

In order to avoid all frivolous requests for information, the bill states that no answer needs to be given to any request which is sent within a year of the last request either at the demand of the data subject involved, or on the initiative of the controller of the file. The Commission for the Protection of Privacy may in exceptional circumstances order that a period of less than a year shall apply (article 11, § 2).

No direct access can be granted to certain categories of data. This is the case for medical data, which may only be communicated via a doctor chosen by the data subject (article 11 § 3). No direct access is granted to data processed by the administrative and judicial police, State security and Military security. Nevertheless, anyone may ask the Commission for the Protection of Privacy to exercice the right of access. Along lines which still have to be defined, the Commission will perform all necessary checks and inform the data subject about the checks. The subject will not be informed about the recorded data or whether the data which refer to him will or will not be processed (article 15). This procedure attempts to find some kind of equilibrium between the rights of the citizens to data protection and the necessity to detect and pursue infringements and the prevention of breaches of State security.

The right of rectification, erasure and non-utilization

Along the same lines and following on from the right of access, the data subject is granted several rights enabling him to act when he detects irregularities when informed about processed data referring to him. For example, he has the right to require that all incorrect data concerning himself are corrected or that data which are incomplete, not relevant, processed unlawfully or retained beyond the limit, are removed free of charge. Instead of exercising his right of erasure, the data subject may also choose to forbid the use of the data. In this case, the controller of the file may not remove the data physically, in order to circumvent the disadvantages of erasure (for example argumentation problems) but he cannot use them any further (article 13, § 1).

The controller of the file who has corrected or deleted data at the request of the data subject, is required to inform the people to whom he had transmitted the data involved of these rectifications and erasures. But of course, to the extent that he still knows who he transmitted them to. By means of a Statutory Instrument agreed in Cabinet and following the advice of the Commission for the Protection of Privacy a time limit may be laid down for the minimum retention period for addressees.

The procedures for exercising the rights of rectification, erasure and non-utilization are identical to those for the right of access, except for the fact that they are free of charge and that there is no waiting period for a renewed exercise of the right.

As far as the data processed by the administrative and the judicial police, State security and Military security are concerned, the rights of rectification, erasure and non-utilization may only be exercised via the Commission for the Protection of Privacy (article 15).

The right of redress

27. Where the controller of the file offers no satisfaction to the subject of the data with regard to the exercise of the rights of access, rectification, erasure or non-utilization, the bill provides for a double possibility of redress.

First of all the data subject may call upon the Commission for the Protection of Privacy. This Commission can investigate any complaint "notwithstanding any recourse available at law

through courts and unless the law otherwise provides[11]" (article 30, § 4). People who think they have been treated unfairly, do not have to call upon the Commission first before applying to a court. For the Commission has no jurisprudential competence. It only offers advice which is not binding on the persons involved nor upon the courts. The courts preserve their full competence when handling the individuals' retain rights.

The advice formulated by the Commission has nevertheless great moral value. Moreover, the procedure for filing a complaint with the Commission is very simple and is free of charge and the Commission has an important mediatory role with the sole purpose of setting things by agreement covered by a official report.

In principle the Commission will investigate the validity of the complaint and inform the complainant of the result, within two months of receipt of the complaint.

28. Instead of, in addition to or even subsequent to the ability to seek redress from the Commission for the Protection of Privacy, the aggrieved party may also apply to a judge. The bill considers the right of respect of privacy with respect to data processing as a civil right. The president of the court of first instance, sitting as for summary proceedings is granted competence (article 15, § 1). The claim will be made by means of a petition in a defended action and will only be accepted after a successful attempt to exercise the rights with the controller of the file (article 15, § 5). The provisions are immediately enforceable notwithstanding any defence or right of appeal (article 15, § 2).

There exist provisions which permit the judge, upon receipt of evidence, to take action to prevent the concealment or destruction of evidence (article 15, 7) and whech guarantee that any recipient of personal data which is the subject of a dispute shall be informed of this fact by the person providing it (article 16).

3.3. The Commission for the Protection of Privacy

29. In 1983, Belgium established within the Ministry of Justice an Advisory Commission for the Protection of Privacy composed of members appointed by different Ministers and having limited areas of competence[12].

When drafting the present bill, which has general application for privacy in case of data processing, the existing Commission was abolished and replaced by a new one with increased competence and which was this time composed of members who were directly appointed by

---

[11] In certain social sectors, as is the case with the social security sector, a specific Supervisory Board has been established, organising the basic procedure of complaints with regard to data protection for this sector. In this respect the Commission is granted a right to oversee the cases dealt with, in order to guarantee consistent application of the general principles of data processing in all sectors. For a further description of the relationship between the Commission and the Supervisory Board qualified in the social security sector, ROBBEN, F., "De werking van de Kruispuntbank van de Sociale Zekerheid", B.T.S.Z., 42.

[12] The Advisory Commission only had authority with regard to problems on the protection of personal privacy with respect to the functioning of the two public data bases : the national register and the data base on public sector personnel (which in fact never really got off the ground).

Parliament, in order to guarantee maximum independence.

The new Commission for the Protection of Privacy[13] consists of eight members, appointed for a renewable term of six years by Parliament on the basis of double lists presented by the cabinet. There is an acting and a deputy representative for each seat (article 25, § 1). The Commission is composed in such a way that all socio-economic groups are equally represented, comprising at least one magistrate, one lawyer, one computer scientist, one person with experience in public sector data processing and one person with experience in private sector data processing. Members must provide full guarantees of their ability to carry out their duties in an independent manner and be fully conversant in the field of information technology systems (article 25, § 3).

In addition, a maximum of eight members of the special Supervisory Committee organised in certain sectors, are ex officio member of the Commission[14] (article 25, § 1).

The Commission is presided over by a member-magistrate who is full-time. The other members are part-time.

Special guarantees are provided in order for the members of the Commission to perform their duties independently (articles 25, §§ 4 to 6, 27 and 28).

The Commission's operating costs are borne by the Ministery of Justice (article 32).

30. The bill assigns four tasks to the Commission. First of all, the Commission must retain a public register of all automatic processings, including the information referred to above which the controller of the file has to provide (article 19). Where it considers that a manual file breaches privacy, it can collect information regarding such a file (article 20).

Secondly the Commission must provide advice with regard to certain draft decisions implementing the bill (articles 7, 9, §§ 2 and 5, 10, 12, 13, § 3, 14, 18, § 7, 22 and 23) and can, on its own initiative or at the request of certain bodies, formulate advice or recommendations on all matters affecting the basic principles of the protection of privacy (article 30, § 1).

Thirdly the Commission acts at the request of individuals, either as an intermediary with regard to the respect of the right of access, rectification, erasure and non-utilization of data with regard to data processing by the administrative and the judicial police, State security and the Military security service (article 14), or following a complaint filing redress against a controller of the file (article 30, § 4).

And finally the Commission has the authority in certain cases to shorten the period available to a controller of the file to answer a request from a person to obtain data which refer to him (article

[13] Notwithstanding the fact that the Commission can only become fully competent once the bill has been passed by Parliament, it was established on October 17th under the provisions of clause 92 of the Cross Roads Bank Bill. At the moment the Commission has restricted competence, which was granted by that bill, the National Register Bill and the powers decision n° 141 on the data base of civil service personnel.

[14] At the moment the Cross Roads Bank bill provides for the president and one member of the Supervisory Committee to be member ex officio of the Commission.

11, § 2).

When during the execution of its tasks, the Commission detects breaches of penalty clauses, it is required to inform in principle the prosecution service (article 30, § 6). In addition it must submit an annual report of its activities to Parliament (article 30, § 7).

3.4. Penalties

31. The bill provides for elaborate penalties in the event of breaches of most provisions. In addition to the traditional penalties such as imprisonment and fines, it also provides for specific penalties such as the publication of the conviction in one or more newspapers, the seizure of the personal data support, the erasure of data and a ban on managing any personal data processing for a maximum period of two years.

4. CONCLUSION

32. Since there is up till now no regulation with regard to the protection of privacy in Belgium, this bill is obviously a step in the right direction. The protection offered is quite comprehensive: it affects every personal data processing, regardless of the support used and, in principle, regardless of the body performing the processing. By describing a certain number of basic principles, serious efforts have been made to define the area of application clearly and to avoid the regulation being applied to situations where its application would offer few guarantees for the protection of privacy and needlessly complicate efficient data processing. Nevertheless some principles must be refined and specified at the occasion of a parliamentary debate. Necessarily some decriptions will maintain their general character, and need to be defined more precisely by the courts and tribunals and the Commission for the Protection of Privacy.

The protective techniques are rather traditional and have already proven their value in neighbouring countries. The bill describes them in general terms. A lot of scope is left to the King to define the principles and exceptions more exactly, following the advice of the Commission for the Protection of Privacy. It is obvious that a general bill can not take into account the many different particularities of every data processing environment. The comprehensive delegation of powers to the King could nevertheless be abused to undermine the basic principles. It would be better for the bill to provide for fewer exceptions and rather opt for a system of controlled self-regulation when defining the principles, thus stimulating the sense of responsability of the data processing bodies as this would present fewer dangers of undermining the basic principles.

Finally with regard to the obligations imposed on a certain number of data processing bodies, one can wonder whether the red tape they will create is in proportion to the additional protective value they offer. This issue will no doubt be thoroughly debated in Parliament.