



## Data Protection: Six Steps For Your Company to Conform to the Data Protection Act

**Many companies take on data protection with a degree of reluctance that the subject does not merit: just follow the steps set out below and you will identify the chief problems and get your business to measure up to all requirements of the Data Protection Act.**

### **STEP 1: ANALYSE YOUR COMPANY'S PRACTICE OF PROCESSING AND TRANSMITTING CUSTOMER AND STAFF DATA**

Processing customer and staff data and disclosing them to a third party is permissible only under clearly (and narrowly) defined preconditions; if these are not met, you need to obtain the consent of the data subjects. Analyse which data are processed in your enterprise, what is the purpose of such processing and who will receive such data.

International companies in particular should note that (just as in other areas) they do not enjoy a "group privilege". Between group companies, data (and specifically staff data) may be disclosed only in cases of special justification or subject to the consent of those concerned. Any disclosure of staff data between group companies must be reported to the Data Processing Register, and this generally also applies to customer data. If no consent is obtained, the transmission of data beyond EU borders may

require additional approval by the Data Protection Commission. An internal data network where group companies draw on a single data base or which allows them access to each other's data may be deemed a joint information system that requires the prior approval of the Data Protection Commission. In addition, labour law aspects might have to be considered as well.

### **STEP 2: PREPARE STATEMENTS OF CONSENT**

In many cases the law will make it necessary to obtain the consent of customers, suppliers or staff members. In their wording, such forms need to comply with the stringent requirements of the Supreme Court: the form must clearly state the type of data processed, the proposed use and the recipient of the data. Thus, obtaining "consent to processing for advertising purposes" would be insufficiently transparent in the Supreme Court's view and thus inadequate if you wanted to use the data for customer mailings.



### **STEP 3: CHECK WHETHER THE WORKS COUNCIL MUST BE CONSULTED**

Under the Labour Relations Act, the works council enjoys information and co-determination rights for some types of data processing that affect staff members. It may thus be necessary to include the works council into deliberations and, in some cases, to enter into a full-scale plant agreement.

### **STEP 4: DRAW UP A SERVICE PROVIDER CONTRACT TO COVER OUTSOURC- ING**

Do you outsource your bookkeeping, payroll accounting, server operations or all of your computer processing activities to a provider, whether operating within the group or externally? In this case the Data Protection Act mandates that you enter into a service provider contract. If you outsource beyond the EU borders, it may be necessary for you to obtain the additional consent of those affected or the approval of the Data Protection Commission – even if you just use a central server in, e.g., the US for your Austrian data.

### **STEP 5: CHECK YOUR DATA SECURITY**

You will already have taken the technical steps required to obtain data security, such as access controls or passwords. Nevertheless you need to implement a number of other measures, chiefly of the organisational type as provided in the Data Protection Act, such as (without limitations): the obligation to instruct your staff on the proper handling of data, to log data movements, to train staff, to document transactions and to bind all staff members to data secrecy.

### **STEP 6: OBTAIN APPROVAL BY AND RE- PORT TO THE DATA PROTECTION COMMISSION AND DATA PROCESS- ING REGISTER**

Following an in-depth investigation of all apparently everyday activities which may nevertheless be relevant under the Data Protection Act, you need to check whether all approvals have been obtained from the Data Protection Commission and all notifications made to the Data Processing Register. The latter authority has meanwhile accepted many exemptions from notifications by way of predefined standard applications, but the transmission of data to companies within a group is still subject to mandatory notification. Many companies also tend to overlook that their notification needs to be updated from time to time. Ten or 20 year old notification formats may put a harsh light on companies considering that the Data Processing Register can be inspected by the public, some of whom may be enticed to utilise flaws in attacking companies along lines that may not be justified at a closer look.



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Over the past months, four candidate lawyers working for Preslmayr have taken the bar exam ("Rechtsanwaltsprüfung"), a licensing procedure that is part of the five-year practical training required to work as a lawyer in Austria. The result is highly satisfactory: all candidates have passed the exam, two with distinction and one even with honours.



Preslmayr members also do exceedingly well in athletic contests: We sent three teams to the Wien Energie Business Run on 1 September 2005. Team Preslmayr 1 outdistanced all other lawyer teams and placed 160<sup>th</sup> among a total of 2,390 teams of altogether 8,500 runners.