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EUROPEAN COMMITTEE under the Government of the Republic of Lithuania

**RESEARCH ON THE EVALUATION
OF THE OUTCOMES OF
IMPLEMENTATION OF
DIRECTIVE 95/46/EC AND
CONVENTION ETS NO.108**

SUMMARY REPORT

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EKT GROUP
Smolensko g. 6, LT-2006 Vilnius
Tel: (5) 23 33 990, Faks.: (5) 21 35 006
El.p.: ekt@ekt.lt; [http:// www.ekt.lt](http://www.ekt.lt)

Personal data protection in Lithuania

Personal data protection in the Republic of Lithuania is regulated by the Law on Legal Protection of Personal data (January 22, 2002, No. IX-719) and State registers law (August 13, 1996, No. I-1490). These legal acts are not fully harmonized with the European Union Directive 95/46/EC yet; nevertheless, constant amendments are being made.

Convention ETS No.108 has already been ratified on February 20, 2001 by the Parliament of Lithuania and came into force on October 1, 2001. Whereas, the implementation of Directive is to be completed by January 1, 2004, the date Lithuania is preparing to be accepted to EU.

Now, State data protection inspectorate, established by the ruling of Government of the Republic of Lithuania on October 10, 1996 and operating since February 3, 1997, administrates personal data protection in Lithuania. Since October 1, 2001 the Inspectorate has been reformed into independent institution operating by the Government, as it is required by the Personal data legal protection act, Convention ETS No.108 and Directive 95/46/EC.

The fundamental objectives of the State data protection inspectorate are to:

- Develop personal data protection,
- Supervise the data controllers' activities concerning personal data processing,
- Control the validity of personal data processing,
- Contend with violations of data processing,
- Safeguard the protection of data subject's rights.

The basic goals of the Inspectorate are to supervise and control the realization of Personal data legal protection act, and to implement the provisions of the Convention ETS No.108.

According to the report of the State data protection inspectorate, the inspection carried out eight scheduled and nine unplanned inspections in 2001. In pursuance of informing the society on the right of personal data protection, the inspectorate: has launched and constantly updates the website www.ada.lt, constantly provides mass media with the information on personal data protection, prepared and has executed the society information campaign *Domėkis (Be interested)*, commissioned a brochure about personal data protection.

Moreover, the inspectorate manages the Register of personal data controllers and publicizes its content. 1269 data controllers were registered by the January 1, 2002, almost half (574) whereof had been registered only in 2001. According to the register, 89% of all organizations registered in 2001 were education institutions.

Evaluation of Lithuanian legal acts compatibility with EU norms, regulating personal data protection

Lithuanian legal acts, regulating personal data protection are fully harmonized with Convention ETS No. 108. The main legal act, regulating personal data protection in Lithuania – Law on legal protection of personal data is in the process of harmonization with Directive 95/46/EC. Majority of the norms in this law are harmonized with the Directive, but some norms of the law are not fully harmonized with the Directive.

Evaluating Lithuanian legal acts compatibility with Directive 95/46/EC, following issues of inadequacy could be noticed (detailed analysis of compatibility is presented further in the report – table 6):

- Some of the Directive 95/46/EC norms are still missing in Lithuanian legal acts, regulating personal data protection; several clauses of the law on legal protection of personal are not completely matching the norms of Directive 95/46/EC.
- Several exceptions of the Law on legal protection of personal data are not compatible with the Directive 95/46/EC.
- Several norms of the Law on legal protection of personal data are stricter comparing with the norms of Directive; Exceptions, allowed in the Directive 95/46/EC are not included in the Law on legal protection.

Data controllers in Lithuania

The personal data legal protection act in Lithuania is applicable to both legal and natural persons, processing personal data in the territory of the Republic of Lithuania. These persons can automatically process such data only after registering in the State data protection inspectorate, with the exception of cases, listed in the article 22 of Lithuanian Republic Law on legal protection of personal data.

With reference to secondary sources and information on enterprises and companies in Lithuania, groups of potential and existing data controllers were set. In pursuance of evaluating the effect of analyzed acts on data controllers, estimating positive and negative impact and costs, a survey of organizations was carried out.

Basic results of a survey of organizations

In pursuance of evaluating the effect of EU personal data protection acts on specific groups of data controllers, a survey of organizations, representing particular groups of data controllers, was carried out (1-6 institutions from each group were interviewed).

Conclusions drawn from the survey:

- Majority of respondents is familiar with Lithuanian acts on personal data protection.
- The larger half of companies and institutions that have business contacts with EU is familiar with Convention ETS No.108 and Directive 95/46/EC. Awareness of Directive 95/46/EC among all respondents is less than 40 %, Convention ETS No.108 – more than 50 %.
- Minor part of respondents complains about problems of personal data collection and performance of data protection inspectorate.

- The biggest part of organizations representatives believe that analyzed acts will not directly benefit their companies.
- Quite a number of respondents state that they have no costs related with personal data protection. The main reason of this fact is the insubstantial attention to personal data protection within the organization.
- The implementation of legal acts in Lithuania, according to the organization representatives, will have no indirect impact on their organization.
- According to the survey on IT and internet market carried out by *SIC rinkos tyrimai* on September-November in 2001, almost a half of questioned companies still had not ensured data protection in the company. This shows the same results as the results of survey on personal data protection.

Evaluation of impact on data controllers

During analysis of survey data, several problems were faced, which complicated the precise evaluation of costs related with the implementation of personal data protection acts (low awareness of legal acts among companies and organizations, limited possibilities to separate costs of personal data protection from overall data protection costs, similarity of onetime and recurring costs evaluation among companies and organizations). Therefore, the impact on data controllers by personal data protection acts was evaluated in two methods:

- Costs evaluation according to the survey results;
- Costs evaluation based on IT companies, providing data security solutions, methodology.

- Average onetime costs, related with the implementation of personal data protection legal acts in Lithuania accounts for more than 2000 Litas, average recurring costs – almost 350 Litas.
- Almost 6500 Lithuanian companies and organizations will face the costs of above mentioned legal acts implementation.
- The total costs of Lithuanian companies and organizations amount for 19 mil. Litas during 2002-2006. Total onetime costs amount for more than 13 mil. Litas, recurring – more than 5,5 mil. Litas.
- The sum of onetime and recurring costs is increasing every year, starting from 2,5 mil. Litas in 2002 and amount for almost 4 mil. litas in 2006.
- 40 % of all costs will fell on the state sector, the rest – private sector.
- According to the results of data controllers' survey, less than a half of data controllers state that these costs will increase the prices of their products/services. Therefore, the lesser part of yearly business costs will be covered by consumers, while the residual – by data controllers.

Evaluation of impact on data subjects

On the initiative of the researchers, Market and opinion research center *Vilmorus* carried out a representative survey of Lithuanian population on February 7-10, 2002. 1113 inhabitants over 15 years old were questioned. The interview took place in the respondent's home.

General conclusions of the survey are:

- The awareness of personal data managing conditions and related rights amongst the inhabitants of Lithuania is bigger than average – 61.5% respondents are informed of this fact.
- Lithuanian companies underinform people about the purposes of collected personal data – 71% respondents had been informed. Public utility companies, hotels and restaurants, transport companies and travel agencies are amongst the least informing businesses.
- The confidence in data controllers by Lithuanian inhabitants is less than average. Only 40% of respondents are confident that their personal data are not managed without permission.
- Though 80% of respondents consider being important the way their personal data are managed, only 60% find out how and for what purposes that data would be used.
- Considering the social-demographic indicators, it is noticeable that respondents with lowest education know the least about the problem of personal data security and are the least interested in it.
- Inhabitants of Vilnius and other biggest cities are the most skeptical about the data controllers – they are certain that their personal data are managed without the permission and are least informed about the purposes of data usage. Meanwhile, although the population of smaller towns and villages are more informed about the intentions of their data usage, the majority believes that their personal data are managed without the permission as well.
- The most active inhabitants are those of 26-35 and 46-55 years old. They are the most concerned about the way their personal data are handled and they most often find out the aims of data management.

Evaluation of impact on data protection inspectorate

Main conclusions from the evaluation of impact on data protection inspectorate are:

- The independence of State data protection inspectorate, required by EU Directive and Convention, is guaranteed and adequate.
- Planned number of employees (22) in Inspection is sufficient. During next 3 years the number of employees should increase, as at present only 17,5 out of 22 positions are occupied because of lack of financial resources.
- The material provision of Inspection, necessary for fulfilling its functions required by Directive and Convention, is sufficient and, after moving to new premises in the near future, should not be expanded or updated.
- On an increasing span of work in next three years basis, a larger demand of means from the state budget is anticipated. In total approximately 3 million litas will be needed in 2002-2004.
- Moreover, because of planned emphasis on information function and employees' training, these activities are intended to be funded from PHARE.

Conclusions and suggestions

Personal data protection in the Republic of Lithuania is clinched by the Constitution of the Republic of Lithuania, and regulated by Personal data legal protection act (January 22, 2002, No. IX-719). This act is not yet fully harmonized with EU Directive 95/46/EC. Meanwhile, Convention ETS No.108 is already ratified by the Parliament of the Republic of Lithuania in February 20, 2001 and has come into force on October 1, 2001.

Though the greater part of provisions regulated in the act are prepared in accordance with the provisions of Directive 95/46/EC, it should be noted that some norms are regulated more strictly than in Directive (criteria of legal personal data management, registration of data controllers, transfer of personal data to data receivers in foreign countries). Some exceptions related to the registration of data controllers and personal data transfers to foreign countries are not provided in the data protection acts. Therefore, the conclusions can be drawn that though the act has been recently improved on purpose of harmonizing it with the European Union legal standards, some provisions' inaccuracies still remain.

On January 1, 2002, there were 1269 data controllers registered. The estimated number of data controllers in 2006 will reach 6000.

The majority of data controllers, those registered or warned by Inspectorate, are well familiar with legal acts regulating personal data protection in Lithuania and EU. According to the representatives of such companies, these legal acts will not provide them with any direct benefit, while one of the mostly mentioned indirect benefits is the improvement of product and service quality. Due to the implementation of mentioned legal acts, costs incur, and the most important of them are connected with the update of IT. However, one should be aware that big part of companies state that they will not incur costs, showing the fact of underconcern of personal data protection.

The total costs of Lithuanian companies and organizations amount for 19 mil. Litas during 2002-2006. Total onetime costs amount for more than 13 mil. Litas, recurring – more than 5,5 mil. Litas. The sum of onetime and recurring costs is increasing every year, starting from 2,5 mil. Litas in 2002 and amount for almost 4 mil. litas in 2006. 40 % of all costs – 7,5 mil. Litas will fell on the state sector, the rest – private sector.

Lithuanian society is well informed about the circumstances of personal data management and related rights; however, trust in data controllers is not substantial, especially due to the lack of information about the purposes of data collection. As a result, the essential outcome of the implementation of above mentioned legal acts on people will be the increase of reliance on such organizations that control personal data.

Since the number of data controllers and the number of inhabitants' inquiries are affected by the development of information technologies, also considering the results of surveys of organizations and people, and the experience of adequate European supervisory bodies, it can be stated that State data protection inspectorate will have to process more people inquiries (telephone, e-mail, etc.), register more data controllers in the future. In addition, greater attention will have to be paid to informing the society and data controllers. Consequently, due to the implementation of personal data protection acts, the Inspectorate will have to increase the span of work for the carriage of their functions. The demand of means from the state budget will total approximately 3 million litas in 2002-2004.

In addition, the State data protection inspectorate is suggested to: continually monitor the development of IT, related to data security, and provide recommendations to data controllers; pay more attention to the briefing of data controllers and society; organize the work of Inspectorate in a more flexible way, considering the needs, problems and proposals of registering and registered data controllers; perform prior checking function.