

Summary

The Act

The Personal Data Protection Act (hereafter: Wbp) came into force on September 1, 2001. The Wbp is the successor of the Personal Data Files Act. The Wbp implements the European Directive on Privacy (hereafter: the Privacy Directive).¹

The Wbp regulates the most important rules for the registration and use of personal data. The aim of the act is to arrange for safeguards, so that a balance between privacy protection and other interests is realized. Furthermore, the act strengthens the position of individual persons by assigning rights when their data are being processed. In correspondence with these rights, controllers (the organisations determining the purpose and means of the data processing) are confronted with obligations. Strengthening the position of the individuals concerned is also arranged for by notification and the assignment of an inspector (hereafter: Cbp).

Research framework

Article 80 of the Wbp is the basis of this evaluation. This article implies that both the Ministers of Justice and of Home Affairs within five years after the coming into force of the Wbp send a report on the effectiveness and efficiency of the functioning of the act to the Houses of Parliament. In this report possible bottlenecks in the functioning of the act must be addressed, as well as the degree into which the act serves the privacy of individual persons. The evaluation started with a research of possible bottlenecks about which a report was issued in 2007. Different from that study this research, that focuses on the question whether or not the supposed bottlenecks do occur in practice, is an empirical research.

Research question

The central question is:

To which degree meets the functioning of the Wbp in practice the standards of the act, in particular related to the bottlenecks formulated in literature, and which adjustments are possible and desirable within the framework of the Directive on Privacy?

When elaborating this central question 18 different specific questions were formulated and answered, distributed over three categories: regulation, information and inspection and legal protection.

Research plan

Different research methods were used. Next to the study of relevant literature, three questionnaires were send out. The first survey was executed under a sample of public authorities and organisations enlisted in the commercial register. The second questionnaire was mailed at organisations selected by means of a sample drawn from the notification register at the Cbp. The third questionnaire was send to all officials for data protection (hereafter: FG's). The questionnaires are based on the description frame of the research, presented in chapter 3. This description frame was established

¹ Directive 95/46/EG, PbEG L 281, p. 0031-0050.

on the basis of some pilot interviews and literature study. The results of the surveys were interpreted with the help of several experts, gathered in a few expert meetings. Also, a few in-depth interviews were undertaken with privacy officers, legal experts and the president of the Cbp. To understand more of the consequences of the act on data exchange in case of cooperation between several organisations, two case studies were carried out. Finally we spoke to several civilians and legal aid officers who brought a conflict over a case concerning the processing of personal data to a court or to the Cbp.

Results

When interpreting the results of this study it is important to stress that the response of one of the surveys (the FG's survey) was sufficient, while at the same time the response of another survey (send to a sample of organisations enlisted in the notification register) was moderate and the response of the third survey (send to a sample of organisations enlisted in the commercial register) was insufficient. This induces some caution while presenting and generalising the results. On the other hand, through the combination of the results of the surveys and the comparison with the information gathered with qualitative research methods, a fairly consistent picture appears.

The general conclusion of the evaluation research is that the standards of the Wbp, safeguarding the balance between privacy interests and other fundamental rights and strengthening the position of persons whose data are processed, are not fully realised. The research findings indicate that the Wbp is not yet a very significant act in legal practise. The act seems to be relatively hard to handle. Until now a clear-cut community of privacy experts did not yet develop. Neither did a pronounced privacy culture originate.

Because of the open standards of the Wbp, development of standards in lower regulation is desirable in sectors and organisations. The research shows that on the one hand more than half of the organisations do have a privacy code. At the same time a lot of organisations do not have such codes and regulations. Next to that the surveys and the results of the interviews and expert meetings, do point out that the knowledge different target-groups have of the act must increase. Not all the controllers and individuals concerned are aware of the importance of privacy interest. This is illustrated by the very limited use the individuals concerned make of their rights to inspect, correct, complement and remove the information concerning them. The limited awareness of the importance of privacy can also appear from the very minimal number of conflicts brought to courts and the Cbp concerning privacy issues. Privacy is an important topic for individuals, but the sensitive spot is not easily touched. Individuals do make a distinction between privacy in general, which can be subordinate to other interests, such as safety, and their own privacy. When the processing concerns more personal data, privacy is considered a much more delicate matter by the individuals involved.

Organisations have the authority to appoint a FG. This official seems to contribute to a greater awareness in the processing of personal data within the organisation. But only 0,3 promille of all organisations in The Netherlands did appoint a FG. For many organisations the appointment of such an official would not be a proportionate mean to safeguard privacy protection. Therefore, appointing FG's in sectors, together with

other organisations (according art. 62 of the Wbp), should be stimulated. The status of the position can also increase through the assessment of requirements concerning quality, education and skills. The requirement to notify the processing of personal data is meant to strengthen the awareness of the privacy interest, to improve the check of the proportionality of the processing of personal data and to inform the individual concerned about the identity of the controller. The research findings do show a certain reservation in using personal data. The notification procedure indeed seems to have a preventive effect, but the registration of a notification at the Cbp does not seem to contribute to that. Interviews with individuals concerned and their legal aid officers seem to point out that the register is not very known. The interviews also indicate that the register is not very transparent.

A central result of the research is that the further development of standards, enlightenment, and specific advice need attention. Intensifying the inspection as the Cbp announced in 2007 can be helpful, but needs to be supported by compliance assistance. Individuals concerned can be activated to promote their privacy interests. The need for the further development of standards and specific interpretation of the Wbp can be understood against the background of the relatively short existence of the Wbp. The Wbp is an act with open standards, which needs to be interpreted. That takes up a great deal of time. And – as a continuous thread which runs through this findings – development of sectoral standards and jurisprudence asks for specific knowledge (sector, technology) which is not yet available on the whole.