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OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)

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No. Cion prop.: 9400/92 ECO 221

Subject: Amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Beginning the third and final reading of the above proposal ⁽¹⁾, the Working Party devoted its discussions on 4 and 5 July 1994 to the examination of Articles 1, 2, 6, 7, 13 and 14 (6285/2/94 REV 2) ⁽²⁾.

The texts of those Articles as they stand following those proceedings are set out in Annex.

It should also be noted that:

- the Presidency has announced that it will submit text proposals intended to allay the concern expressed by several delegations regarding scientific research and statistics;

(1) This reading will deal mainly with technical problems as the more political problems were submitted to the Council meeting on 16 June last and remain on the table at Permanent Representatives Committee level.

(2) Representatives of Sweden, Finland and Austria attended as observers.

- the Commission has undertaken to consider the extent to which the public's right of access to administrative documents might be mentioned in the preamble to the Directive.

Draft Council Directive
on the protection of individuals
with regard to the processing of personal data
and on the free movement of such data

Article 1

Object of the Directive

1. In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons **(1)**, and in particular their right to privacy, with respect to the processing **(2)** of personal data. **(3)**

2. Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph 1.
 [(4)]

Article 2

Definitions

For the purposes of this Directive:

- (a) "personal data" shall mean any information **(5)** relating to an identified or identifiable natural person **(6)** ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one

- (1) The Working Party agreed to add the following recital to the preamble:
"Whereas the laws on the protection of legal persons regarding the processing of data relating to them are not affected by this Directive".
- (2) Detailed discussion of the question of the inclusion of manual files in the scope of the Directive highlighted the following principles:
 - manual data would come within the scope of the Directive only insofar as the conditions laid down in Article 3 were fulfilled;
 - the concept of files involves a number of cumulative criteria (see Article 2(c));
 - it is for Member States to apply those criteria, bearing in mind the requirements of individual cases.The Presidency invited the three delegations (DK/IRL/UK) that had maintained reservations on this question to reconsider their positions in the light of the outcome of that discussion.
It should also be noted that it was planned to enter a statement on this subject in the Council minutes, possibly reading as follows:
"Re Article 2(c)
The Council and the Commission note that in the field of the non-automatic processing of personal data the definition generally corresponds to a collection of files or documents relating to different persons, organized so that the personal data thus brought together are accessible according to specific criteria".
- (3) D reserved the right to return to the wording of recital 8a possibly to define more precisely the Member States' margin of manoeuvre in the application of the Directive. D also maintained a reservation on the present wording of Article 5.
- (4) D repeated its request that a new paragraph 3 be added (see 9345/93, page 2).
- (5) F again raised the question whether images and sounds as such could be considered as individuals' particulars that must accordingly be subject to the rules governing personal data. The Presidency invited F and the Commission to consider that question bilaterally; in the context of those contacts the Commission would decide, inter alia, whether it could consider carrying out a technical study of the question.
- (6) As regards deceased persons (a question raised by IRL), there was consensus that the text of the Directive should remain neutral and that Member States would themselves specify the rules to be applied in that area.

or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

- (b) "processing of personal data" ("processing") shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection **(1)**, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction; **(2)**
- (c) "personal data file" ("file") shall mean any structured set of personal data which is accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis; **(3)**
- (d) "controller" shall mean the natural or legal person, public authority, agency or any other body which determines the purposes and means of the processing of personal data. **(4)**

Where the purposes and means of processing are determined by national or Community laws or regulations, **the controller or the specific criteria for his nomination may be designated by national or Community law. (5)**

- (1) D/DK/IRL/ and UK maintained reservations on "collection".
- (2) I wanted to add "selection" to the list of operations.
- (3) I wanted to say "set of personal data structured in accordance with specific criteria".
- (4) It was pointed out that there were errors in the German and English versions.
- (5) New text reflecting the agreement of principle reached within the Working Party.

- (e) "processor" shall mean the natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;
- (f) "third party" shall mean the natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data; **(1)**
- (fa) "recipient" shall mean the natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not. However, authorities which may receive data in the framework of a one-off inquiry shall not be regarded as recipients; **(2)**
- (g) "the data subject's consent" shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.

- (1) E did not want the concept of "third party" to include subsidiaries of groups.
- (2) DK/D/IRL/NL and UK maintained reservations on this definition.

Article 6

1. Member States shall provide that personal data must be:

- (a) processed fairly and lawfully; **(1)**
- (b) collected for specified, explicit **(2)** and legitimate purposes and not further processed in a way incompatible with those purposes; **(3)**
- (c) adequate, relevant and not excessive in relation to the purposes for which they are collected **and/or** for which they are further processed;
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. [Member States shall lay down appropriate safeguards for personal data stored for longer periods for **historical, statistical or scientific use.**]

2. It shall be for the controller to ensure that paragraph 1 is complied with.

- (1) DK/D and IRL wanted this subparagraph also to cover the collection of data (IRL in particular suggested that subparagraphs (a), (b) and (c) be aligned on the text of the Strasbourg Convention).
- (2) UK maintained a reservation on "explicit".
- (3) In reply to questions put by DK it was confirmed that purposes other than the initial purposes could be pursued provided, however, that they were compatible with the latter.

Article 7

Member States shall provide that personal data may be processed only if:

(a) the data subject has given his consent unambiguously, **(1)**

or

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, **(2)**

or

(c) processing is necessary for compliance with a legal obligation to which the controller is subject, **(3)**

or

(d) processing is necessary in order to protect the vital interests of the data subject, **(4)**

or

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed,

or

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests of the data subject which require protection under **Article 1(1)** of this Directive. **(5)**

- (1) Reservations by IRL and UK on "unambiguously".
- (2) IRL wanted to delete "to which the data subject is party".
- (3) I wanted to specify in, for example, a statement in the Council minutes, that the legal obligations referred to in this subparagraph were those arising out of national law or international treaties.
- (4) IRL, with the support of DK and UK, suggested adding "and of a third party"; B felt that (f) was sufficient for that purpose. The Presidency invited the delegations to consider whether (d) should be supplemented as IRL had requested or not.
- (5) DK/D and UK wanted to add a reference to the public interest to (f); F/I and P opposed that proposal. F maintained a scrutiny reservation on the wording of the last part of this subparagraph.

Article 13

Right of access

Member States shall guarantee for every data subject the right **to obtain** from the controller:(1)

1. **without constraint**, at reasonable intervals and without excessive delay or expense:

- **confirmation** whether or not data relating to him are processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;(2)
- communication to him in an intelligible form of the data undergoing processing and of any available information as to their source;(3)
- knowledge of the logic involved in any automatic processing of data **concerning him**,

- (1) It should be noted that the wording of the introductory phrase has been slightly amended in order to take account of delegations' wishes.
- (2) DK/IRL and UK wanted to delete all the text from the second line on starting with "and information at least as to the purposes".
I preferred the text of the amended proposal.
D wanted to substitute "third parties" for "recipients".
- (3) DK/IRL and UK wanted to delete the second part of the subparagraph starting with "and of any available information".

at least in the case of the automated decisions referred to in Article 16(1); **(1)**

2. **as appropriate** the rectification, erasure or blocking of data, the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data;
3. notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with paragraph 2, unless this proves impossible or involves a disproportionate effort.

Article 14 (2)

1. Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in Articles 6(1), 11, 12(1), 13 and 21 **(3)** when such a restriction constitutes a necessary measure to safeguard:
 - (a) national security;
 - (b) defence; **(4)**
 - (c) public security;

- (1) Presidency compromise text still to be confirmed by delegations.
- (2) This Article will be moved to a new Section Va entitled "Exceptions and derogations".
- (3) Reservation by B on the reference to Article 21.
- (4) On I's initiative the Presidency proposed merging (a) and (b).

(d) the **prevention**, investigation, detection and prosecution of criminal offences;

(e) an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters;

(f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority; **(1)**

(g) the protection of the data subject and of the rights and freedoms of others;

(h) [...]

(2)

[.....] **(3)**

2. Member States may limit the right of access of the data subject when the data are kept only temporarily

(4) in personal form and are intended to be processed for the sole purpose of creating statistics, particularly for purposes of scientific research, so that the data subjects can no longer be reasonably identified.

- (1) Reservations by B and I on (f), which they wanted to connect to (c). As a compromise the Commission suggested connecting (f) to (c), (d) and (e). In addition the Presidency invited UK to explain the concept of "regulatory function".
- (2) Without prejudice to the Working Party's discussions on scientific research and statistics on the basis of the proposals promised by the Presidency, DK suggested adding the following:
"(i) Scientific research and statistics of important public interest".
- (3) The Working Party agreed to delete the last subparagraph of paragraph 1, the content of which would be included in a recital (No 14).
- (4) Reservation by IRL on "temporarily".