"I/A" ITEM NOTE

from: General Secretariat
to: COREPER/COUNCIL

No. prev. doc.: 11955/94 ECO 289 + COR 1(f)
No. Cion prop.: 9400/92 ECO 221 – COM(92) 422 final SYN 287

Subject: Adoption in the official languages of the Community of a common position concerning the European Parliament and Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data

1. The Commission submitted the above proposal (1) to the Council on 18 July 1990.

2. The European Parliament and the Economic and Social Committee delivered their Opinions on 11 March 1992 (2) and 24 April 1991 (3) respectively.


4. At its meeting on 8 December 1994, the Internal Market Council reached a very broad measure of agreement on the proposal and instructed the Permanent Representatives

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(1) OJ No C 277, 5.11.1990, p. 3.
Committee to finalize the common position without delay with a view to its formal adoption before the end of the year as an "A" item on the agenda for a forthcoming meeting.

5. The Permanent Representatives Committee finalized the common position at its meeting on 14 December 1994 (†) and the Working Party of Legal/Linguistic Experts has revised the text in the various official languages of the Community; the Committee could therefore suggest that, as an "A" item on the agenda for its meeting on 22 December, the Council:

- adopt the common position on the above Directive, the text of which is set out in 12003/94 ECO 291 CODEC 92, pursuant to Article 189b(2) of the Treaty;

- approve the entry in the minutes of its meeting of the statements annexed hereto.

(†) The UK however reserved its final position on the text of the common position and that the Commission, which maintains a different view regarding the committee procedure, also reserved its position.
1. **Re 12th recital**

"The Council and the Commission consider that in the interests of consistent and uniform application of the protection rules in the Union, processing carried out by European Union institutions and bodies should be subject to the same protection principles as those laid down in this Directive."

2. **Re 34th recital**

"The Council and the Commission note that the elements set out in recital 34 of the Directive, which are intended in particular to clarify the concept of public interest in Articles 7 and 8 of the Directive, derive from the purpose of the latter and thus form an integral part of this legal act, it follows that those elements are to be taken into consideration by the Member States when they adopt the laws, regulations and administrative provisions required to comply with the Directive."

3. **Re Article 1(1)**

"The Council and the Commission note that the protection of rights and freedoms, in particular of privacy, with respect to the processing of personal data, includes the protection of personal identity."

4. **Re Article 2(a)**

(i) "The Council and the Commission confirm that it is for the Member States to lay down whether and to what extent this Directive shall be applied to deceased persons."

(ii) "The Council and the Commission confirm that processing of sound and image data carried out for purposes of public security will continue to be excluded from the scope of the Directive irrespective of developments in information technology."
5. **Re Article 2(c)**

   (i) "The Council and the Commission recognize that:

   – in line with the current definition in Article 2(c), the Directive only covers filing systems, not files;

   – the criteria for determining the constituents of a structured set of personal data, and the criteria governing access to such a set, can be laid down by each Member State;

   – files and sets of files including their cover pages do not fall within the definition cited in the first indent if their content is not structured in the manner of a filing system."

   (ii) "The Council and the Commission recognize that paper documents printed by fax machine or personal computer are subject to the rules applicable to manual data and that they therefore fall outside the scope of this Directive unless they are intended to form part of a filing system."

6. **Re Article 3(2)**

   "The Council and the Commission consider that the expression – purely personal or household activity – must not make it possible to exclude from the scope of the Directive the processing of personal data by a natural person, where such data are disclosed not to one or more persons but to an indeterminate number of persons."

7. **Re Article 7(f)**

   "The Council and the Commission recognize that the legitimate interest pursued by the controller or by the third party to whom the data are disclosed may correspond to a task carried out in the general interest."

8. **Re Article 8(1)**

   "The Council and the Commission consider that Member States may, in conformity with Article 5, determine more precisely the categories of sensitive data provided in Article 8(1), considering the legal and sociological context of the country concerned,"
for example with regard to data on genetics, political membership, physical conditions, personal beliefs or habits, etc."

9. Re Article 8(2)(b)

"The Council and the Commission consider that the term "labour law obligations" also includes all kinds of agreements between the parties on the labour market."

10. Re Article 8(3)

"The German delegation states that data processing required to collect taxes intended, under the German constitution, to contribute towards the funding of churches, is thus carried out on important grounds of public interest and therefore comes under the provisions of Article 8(3)."

11. Re Article 9

1. "In its regular report on the implementation of this Directive, the Commission will pay close attention to the application by Member States of Article 9 with a view to submitting any necessary proposals."

2. "The Council and the Commission note that:

   - copyright protection of artistic or literary works will not affect this Directive;
   - literary and artistic expression is a form of expression, freedom of which is guaranteed by Article 10 of the European Convention on Human Rights".

3. "France states that it will make use of the derogations provided for in Article 9 for all the activities in the audiovisual sector which are covered by the Directive."

4. "The Kingdom of Sweden considers that artistic and literary expression refers to the means of expression rather than to the contents of the communication or its quality."

12. Article 11(2)

"The Council and the Commission consider that, in deciding whether the provision of information involves a disproportionate effort within the meaning of Article 11(2),

"..."
the importance of the public interest for which the data are processed must be taken into account."

13. **Article 13(1)(g)**

"The Council and the Commission state that the derogation in Article 14(1)(g) does not refer to rights such as the right to carry out data processing."

14. **Article 18(2)**

"Where a Member State applies both the first and second indents of Article 18(2) simultaneously, it may stipulate that the data protection official is not required to enter in his register the information concerning the processing operations covered by the first indent of Article 18(2)."

15. **Re Article 18(4)**

"The Republic of Austria considers that only processing operations which are unlikely to affect adversely the rights and freedoms of data subjects may be exempted from the notification requirement."

16. **Re Article 21**

"The Council and the Commission state that the rights referred to in Article 21(3) should not be exercised improperly, giving as an example of improper use the instance of a request made where it is common knowledge that the processing of data does not concern the person making the request."

17. **Re Article 23**

"Austria states that, concerning the question of the national law applicable to questions of liability, it starts from the principle that, as regards the liability of employees, Austrian law applies in each case where a work contract is governed by Austrian law."

18. **Re Article 28**

"The Council and the Commission consider that this Directive is without prejudice to the obligation of professional secrecy imposed on the competent authorities by
Community Directives on financial institutions, given that Article 28 authorizes the authorities responsible for monitoring data protection to have access to information held by the competent authorities in a manner which does not imply disclosure of information covered by the obligation of professional secrecy."
ADDENDUM TO "I"/"A" ITEM NOTE

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The Permanent Representatives Committee is asked to suggest to the Council that it record its agreement on the Council's statement of reasons on the above common position as set out in 12003/94 ADD 1 ECO 291 CODEC 92.