REPORT

from: Permanent Representatives Committee

on: 10 January 1995

to: COUNCIL meeting on Foreign Affairs on 6 and 7 February 1995

No. prev. doc.: 12148/94 ECO 295
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. 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 Committee to finalize the common position without delay with a view to

(1) OJ No C 277, 5.11.1990, p. 3.
3. At its meeting on 21 December 1994 the Permanent Representatives Committee reached broad consensus on the text of the common position, in particular on the question of the committee procedure; only the United Kingdom delegation, supported by the Swedish delegation, felt that the discussions should be continued in order to improve the text.

4. At its meeting on 10 January 1995 the Committee confirmed that result, noted the agreement of a very large majority to the adoption of the common position at the earliest opportunity and agreed to enter this item in part "B" of the agenda for the Council meeting on Foreign Affairs on 6 and 7 February 1995 so that the Swedish and United Kingdom delegations could clarify their positions.

Accordingly at that meeting the Council could:

– adopt the common position on the above Directive, the text of which is set out in 12003/94 + COR 1 + COR 2(en) ECO 291 CODEC 92 (the text finalized by Legal/Linguistic Experts), pursuant to Article 189b(2) of the Treaty;

– approve the entry in the minutes of its meeting of the statements set out in the annex hereto, together with any statements the Swedish and United Kingdom delegations may make;

– agree to the statement of the Council's reasons set out in Addendum 1 COR 1 to the aforementioned 12003/94.
ANNEX

Statements

for entry in the minutes

1. Re the 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 the 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. **Re 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. **Re 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. **Re 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 REPORT

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When the common position is adopted, the Austrian delegation wishes to make the following unilateral statement:

Re Article 8(2)(e) and Article 26(1)(4)

"It is Austria's understanding that the processing of data for the establishment, exercise or defence of legal claims" includes the use of data in proceedings before other State authorities insofar as such proceedings take place prior to judicial proceedings.