REPORT

from: Permanent Representatives Committee

on: 10 January 1995

to: COUNCIL meeting (General Affairs) on 6 and 7 February 1995

No. prev. doc.: 4127/95 ECO 2
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


(1) OJ No C 277, 5.11.1990, p. 3.
the Permanent Representatives Committee to finalize the common position without delay with a view to its formal adoption.

3. On 21 December 1994 the Permanent Representatives Committee reached agreement by a very broad majority on the text of the common position, confirming that agreement on 10 January 1995 by deciding to submit the text to the General Affairs Council on 6 and 7 February with a view to its adoption.

4. At its meeting on 1 February 1995 in the context of preparation for the meeting on 6 and 7 February, without amending the text of the common position, the Committee considered entering in the Council minutes the three additional statements given in Annex 2 hereto, to take account of the objections that the United Kingdom delegation was continuing to raise.

5. There was a broad consensus on those statements, subject to the following points:

   – the UK delegation stated that if the Commission could endorse the statements concerning political canvassing and supervision of financial services, it would no longer oppose the adoption of the common position. The Commission representative stated his willingness to meet that delegation's wishes. The E delegation stated that it wished to support the United Kingdom with regard to the statement on supervision of financial services;

   – the B delegation maintained reservations at this stage on the joint Council and Commission statement on manual data, with the Commission representative still reserving his position while stating that he was prepared to recommend that the Commission agree to it.

6. With regard to adoption of the common position, the FIN and S delegations, which did not yet have texts in Finnish and Swedish, entered linguistic reservations, the S delegation having in particular requested that formal adoption be postponed.
to enable it to check the Swedish version.

7. Drawing conclusions from the discussion, the Presidency stated that, to achieve a consensus at the Council meeting on 6 and 7 February, it proposed that the Council:

- agree to the text of the common position resulting from 12003/1/94 REV 1 (text finalized by Legal/Linguistic Experts);

- confirm the statements in Annex 1 for entry in the Council minutes, supplemented by the three statements set out in Annex 2 (the Commission being invited to support statements (ii) and (iii)) and make public statement No 1 concerning the 12th recital (NL request) and the three additional statements;

- approve the statement of the Council reasons set out in 12003/1/94 REV 1 ADD 1.

With regard to formal adoption of the common position, the Presidency undertook to give thought to a solution to the difficulties raised by the FIN and S delegations (see paragraph 6 above) should these persist.
ANNEX 1

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 covers only 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(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."

11. **Re Article 8(4)**

"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(4)."

12. **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."
13. 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."

14. Re Article 13(1)(g)

"The Council and the Commission state that the derogation in Article 13(1)(g) does not refer to rights such as the right to carry out data processing."

15. 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)."

16. 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."

17. 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."

18. 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."
19. 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."
(i) **Manual data**

"The Council and the Commission consider that, regarding personal data held in manual filing systems that are not actively processed after the date on which the national provisions adopted in implementation of this Directive come into force but are justifiably retained in view of a foreseeable future use, Article 33 of this Directive contains an obligation on controllers, to take, at the end of the 12-year period referred to in Article 33, all reasonable steps relating to the requirements of Articles 6, 7 and 8 that do not prove impossible or involve a disproportionate effort in terms of costs, while bearing in mind the necessity to ensure protection of the rights and freedoms of individuals."

(ii) **Political canvassing**

"The United Kingdom considers regarding the application of Article 11 of this Directive to situations, particularly in the context of political canvassing activities where data are not collected directly from the data subject, that the controller's obligation to provide information may not necessitate direct contact with the data subject but may be discharged by providing the information, for example in the form of a leaflet, via the member of the data subject's household from whom the data are collected."

(iii) **Supervision of financial services**

"The United Kingdom declares that Articles 13(1)(d), (e) and (f) shall, in particular, have the effect that the right of access provided for in Article 12 may be made subject to restrictions or special conditions in cases where this is necessary for the performance

(4) The Directives referred to above are:

77/780/EEC : the 1st Banking Coordination Directive as amended by the 2nd Banking Coordination Directive
85/611/EEC : the UCITS Directive
92/96/EEC : the Third Life Directive
93/22/EEC : the Investment Services Directive".