EUROPEAN UNION
THE COUNCIL

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"I/A" ITEM NOTE

from: Secretariat
dated: 7 February 1995
to: Permanent Representatives Committee and ECOFIN Council meeting on 20 February 1995

No. prev. doc.: 4649/92 ECO 15
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. At its meeting on General Affairs on 6 February 1995 the Council:

   – reached agreement on the above common position; the United Kingdom delegation abstained and the Swedish delegation entered a parliamentary scrutiny reservation;

   – nevertheless agreed to postpone formal adoption as an "A" item to the ECOFIN Council's meeting on 20 February so that the Finnish and Swedish delegations, which had received the Finnish and Swedish versions only a short time before the meeting, would have a reasonable time within which to carry out their checks (1).

(1) The Finnish delegation indicated there and then that the Finnish version would have to be revised.
2. At its meeting on 15 February the Permanent Representatives Committee could therefore agree, after ascertaining the outcome of the checks on the Finnish and Swedish versions of the common position, to suggest that the Council

– adopt the common position as set out in 12003/1/94 REV 1 ECO 291 CODEC 92 and the Council's reasons (12003/1/94 REV 1 ADD 1 COR 1) as an "A" item at its meeting on 20 February next with a view to forwarding them to the European Parliament;

– enter the statements set out in annex hereto in the minutes of that meeting.
ANNEX I

Statements

for entry in the minutes

Re the twelfth recital

1. "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. "France believes that the additional statement regarding the twelfth recital concerning processing by institutions or bodies of the European Union does not cover processing carried out pursuant to Title VI of the Treaty on European Union."

Re the thirty-fourth recital

3. "The Council and the Commission note that the elements set out in the thirty-fourth recital 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."

Re Article 1(1)

4. "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."

Re Article 2(a)

5. "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."
6. "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."

Re Article 2(c)

7. "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."

Re Article 3(2)

8. "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."

Re Article 7(f)

9. "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."

Re Article 7(f)

10. "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."
Re Article 8(1)

11. "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."

Re Article 8(2)(b)

12. "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."

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

13. "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."

Re Article 8(4)

14. "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)."

Re Article 9

15. "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."

16. "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".
17. "France states that the inclusion in the scope of this Directive of the data referred to in Article 9 for the purposes of protecting individuals with regard to the processing of personal data does not prejudice the inclusion of such data in the scope of other Directives on data."

18. "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."

19. "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."

Re Article 11

20. "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 does 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."

21. "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."

Re Article 13

22. "The United Kingdom, supported by Spain, 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 of financial supervisory functions under Council Directives 77/780/EEC, 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC (\(^2\)).

\(^2\) The Directives referred to above are:

- 85/611/EEC: the UCITS Directive
23. "The Commission concurs with the interpretation given in the statements on political canvassing (Statement No 20) and the supervision of financial services (Statement No 22)."

24. "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."

Re Article 18(2)

25. "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)."

Re Article 18(4)

26. "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."

Re Article 21

27. "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."

Re Article 23

28. "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."

Re Article 28

29. "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.

Re Article 32

30. "The Council and the Commission consider that, regarding the specific circumstances where personal data held in manual filing systems 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 32 of this Directive contains an obligation on controllers to take, at the end of the twelve-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, having regard to the role of the supervisory authority referred to in Article 28 of this Directive."

31. "Belgium and Luxembourg do not believe that the above Council and Commission statement (Statement No 30) in any way affects the application of the Directive, in particular Articles 6, 7, 8 and 32, to manual data or gives a controller any discretion to decide whether to apply the Directive to manual data or not; they believe that in any event the processing of manual data must be carried out under conditions that have no adverse effect on the rights or liberties of natural persons."