REPORT

from: Working Party on Economic Questions (Date Protection)

to: Permanent Representatives Committee

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

I. INTRODUCTION

On 20 February 1995, acting in accordance with the procedure laid down in Article 189b of the Treaty, the Council adopted a common position with a view to the adoption of the above Directive. (1)

The European Parliament stated its position on second reading on 15 June and proposed seven amendments to the Council's common position (see PE 192.036).

(1) The common position was published in OJ No C 93 of 13 April 1995; the statements for the minutes are contained in 4730/95.
II. WORKING PARTY DISCUSSIONS


The Working Party noted that, on the face of it, none of the amendments raised any major difficulties for the delegations. At this stage there was still one scrutiny reservation from the UK delegation on Amendment No 7 (committee procedure) (2).

Nevertheless, the Working Party took the view that because of their questionable wording, Amendments Nos 1, 3 and 6 might be misinterpreted when the Directive was applied. It requested that for each of these amendments the Commission representative should prepare – for examination by COREPER – a draft Commission statement (with which the Council could associate itself where appropriate) designed to clarify their implications.

The Working Party's interpretation here is as follows (and in line with the European Parliament's intentions, according to the Commission):

– re Recital 41 (Amendment No 1)

Business confidentiality, like the protection of intellectual property on software, is a possible restriction on the specific right to know the logic involved in automatic processing.

The F and I delegations (which said the expression "business confidentiality" had no legal significance in their national law) were reminded that, under the

(2) The Commission representative said that the Commission's opinion, confirming its approval of the amendments, would be sent to the Council in the near future.
Court's case law, the Member States were not bound, when incorporating a Community act into national law, to reproduce the terminology of the act, the main aim being to ensure an equivalent result.

- re Article 2(d) (Amendment No 3)
  Where several persons jointly determine the purposes and means of the processing of personal data, they may all be regarded as being the controller.

- re Article 26(1), point 4 (Amendment No 6)
  Within the meaning of this provision, a simple contractual agreement cannot result in a transfer of personal data made on important public interest grounds becoming legally required. (1)

The Working Party found mistranslations in some versions which will have to be corrected by the Legal/Linguistic Experts (mention was made of the first indent of Article 3(2) in the Greek and English versions, Article 9 in the Danish version, Article 26(4), point 4, and the 41st recital).

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III. MISCELLANEOUS

The delegation, supported by the delegation, requested that the proposed Directive on the protection of personal data and privacy in connection with digital

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(1) The Commission representative assured the UK delegation that the first indent of Article 3(2) as amended by the EP (Amendment No 4) continued to cover the examples mentioned by the delegation, i.e. defence of a currency and supplies of a country's vital raw materials.
telecommunications networks should be examined by the same Council Working Party that examined the framework Directive.

The Presidency noted their request but pointed out that this was a matter for COREPER.