OUTCOME OF PROCEEDINGS

of: the Working Party on Economic Questions (Data Protection)
on: 19 September 1991

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Subject: Protection of individuals in relation to the processing of personal data in the Community and information security

1. The Working Party on Economic Questions (Data Protection) held its seventh meeting on 19 September 1991 during which it examined Chapters VII and X of the proposed Council Directive concerning the protection of individuals in relation to the processing of personal data.1

Chapter VII

2. Article 21 - Liability

General

3. (a) Principle

Discussing Article 21 in a general manner the Working Party noted agreement on the principle of having in the Directive a provision concerning the liability of the Controller.

1 The results of the Working Party's meeting on 20 September on the Council Decision in the field of information security will be set out in a separate document.
4. (b) **Scope**

As to the exact scope of the liability of the Controller opinions differed as to whether this responsibility should be objective, based on fault or whether there should be a rule based on the reversal of proof. A number of delegations advanced that a rule based on an objective responsibility would impose an unreasonable burden on the Controller. In these delegations' views a more appropriate solution would be one providing either a responsibility based on fault or a rule based on the reversal of proof.

5. (c) **Degree of precision**

Also, as regards the degree of detail of the rule on liability, it emerged from the discussions that views differed within the Working Party. Whereas certain delegations expressed the wish that the rules on liability should set out more precisely for example under which circumstances the person who had suffered damage could get compensation, other delegations felt that this was a matter for the Member States to decide and thus did not need to be regulated in the Directive.

As regards particularly the question whether the Controller in his turn could make claims against third parties (recess), the representative of the Commission explained that this was an area not to be regulated by the Directive but should be settled in accordance with national provisions.

**Detailed wording**

6. As regards the detailed wording proposed by the Commission for Article 21, note was taken of:
ad paragraph 1

- a suggestion to replace the expression "any act incompatible with this Directive" with the wording "any act incompatible with the national rules implementing the Directive";

- a proposal to reword paragraph 1 in order to cover also the collection of data.

ad paragraph 2

- to include in paragraph 2 a "reasonable care" clause.

The Working Party agreed to return to a more detailed discussion on Article 21 at some later stage.

Article 22 - Processing on behalf of the Controller of the file

General

7. From the discussion of Article 22 it emerged that this article as proposed by the Commission, for certain delegations, gave rise to problems in respect of the delimitation of responsibility between the Controller and the person processing on behalf of the Controller as well as to problems in respect of the interrelation between the different paragraphs of the article. As regards in particular paragraph 2 of Article 22, a number of delegations queried the need to make a reference to Article 16 of the Directive. In these delegations' views the obligations provided for in Article 16 would fall on the Controller, whereas for example a computer bureau would not be in a position to know if the data given to it for processing were adequate or relevant or up-to-date.

The Italian delegation, which had no objections in principle to Article 22, proposed in paragraph 2 to highlight that the Controller and the person who processed personal data on behalf of the Controller both shared responsibility.
The United Kingdom delegation suggested that it would suffice in the Directive to indicate that the Member States in the case covered by Article 22 paragraph 2 should provide a clear allocation of the responsibility under Articles 16 and 18, leaving the details to be established by the Member States.

**Detailed wording**

8. As regards the specific wording of Article 22, the UK delegation suggested that as was the case in paragraph 2 a reference to the collection of data also be made in paragraph 1 of Article 22.

**Article 23 - Sanctions**

9. The discussion within the Working Party of Article 23 mainly concerned the words "dissuasive sanctions" in the second line of the article. In some delegations' view this expression seemed to imply that also penal sanctions should be applied. These delegations were of the opinion that any sanctions be limited to civil and administrative sanctions. It was suggested to use either the word "sufficient", "efficient" or "adequate" sanctions.

The French delegation on its side indicated that the text proposed by the Commission was an acceptable text leaving a certain flexibility as to the sanctions to be applied by the Member States. In the French delegation's view the word "dissuasive" did not imply that penal sanctions should be provided for.

**Chapter X - Rule-making powers of the Commission**

**Article 29 - Exercise of rule-making powers**

10. From the deliberations of the Working Party it emerged that the wording of Article 29 as proposed by the Commission, for a large number of delegations, was too broad and needed
clarification. Taking into account that the area of data processing was large and concerned the public as well as private sectors it was suggested to tighten up the wording of the article and to specify in which areas specific measures could be taken by the Commission in accordance with the procedure laid down in Article 30 of the draft Directive.

Responding to the reaction by delegations, the representative of the Commission indicated that it would not seem appropriate to limit the application of Article 29 to specific areas as had been suggested. In the view of the representative of the Commission a better approach would be to take a more open and broader approach clarifying that Article 29 did not cover the possibility for the Commission to establish sectorial directives but was intended to cover situations which required quick action.

In conclusion the representative of the Commission was requested to reflect further on a possible redrafting of Article 29 taking into account the hesitations and doubts expressed by delegations in respect of the present wording.

Article 30 - Advisory Committee

Discussing Article 30 a large number of delegations indicated that the proposed Procedure I of the Council Decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission be replaced by Procedure III of the same Council Decision².

Article 31

13. Discussing Article 31, note was taken of a suggestion by the French delegation that Article 31 be aligned on the formulation agreed upon by Council.

14. Note was furthermore taken of an intervention by the UK delegation indicating the need for a provision setting out transitional measures.

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3 Agreement of Council of 8 November 1990 (doc. 9417/90). According to this agreement the second indent of Article 31 paragraph 1 should read:

"When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States."