OUTCOME OF PROCEEDINGS
of: Working Party on Economic Questions (Data Protection)
on: 18 June 1992

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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 14th meeting on 18 June 1992 during which it continued its examination of the proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data. The meeting was devoted to:

   I. The role of self-regulation in the scheme of data protection.

   II. The scope of the Directive: exceptions (Article 3 paragraph 2).

I. The role of self-regulation

2. The Working Party’s discussion of the role of self-regulation was based on Working Document No 16 drawn up by the Netherlands delegation. In introducing its document and answering a number of questions put forward by delegations, the Netherlands delegation explained that it was not possible in codes of conduct to derogate from the law. The purpose of codes of conduct was to interpret or supplement the law on data...
protection and any derogation to that law would have to be done by a new law. Such laws did indeed already exist and a further one was under preparation.

As regards the declarations issued by the Registration Chamber to the effect that a code of conduct was in conformity with the provisions of the data protection Act, such a recommendation would naturally play a role if a case was brought to court. It would not, however, prevent the judge from ruling that the code of conduct did not reflect a correct interpretation of the Act of data protection. The Netherlands delegation in this context explained that proceedings before the court were civil proceedings and no penal sanctions were foreseen.

As to assessing whether the applicant applying to the Registration Chamber for a declaration that the code of conduct conformed with the provisions of the data protection Act was sufficiently representative, the Netherlands delegation indicated that this was exactly one of the elements the Registration Chamber considered before giving its declaration.

As regards the question of defining the sector for which the code would apply, this did in most cases not give rise to problems.

The Netherlands delegation finally indicated that it was in favour of Article 20 of the draft Directive but wondered whether, as was the case in the Netherlands, there should not be the possibility of laying down binding regulations for a certain sector as a sanction for inadequate or ineffective self-regulation. The Netherlands delegation also wondered whether codes of conduct on a Community level should not be provided for.

3. The Irish delegation explained that the Irish system in respect of codes of conduct went further than the system applied in the Netherlands because the codes of conduct would
have the force of law. In Ireland the supervisory authority would encourage different sectors to establish codes of conduct containing more detailed rules than the law on data processing. Once established, the code of conduct in a specific sector would be submitted to the supervisory authority who would approve or enter into negotiation in order to improve the codes before approval. The approved code of conduct would then be sent to the Ministry of Justice who would put it before the two houses of Parliament. If passed by Parliament the code of conduct would have the force of law.

No codes of conduct yet existed in Ireland but a number of sectors were preparing such codes.

4. The German delegation explained that in Germany there were a number of types of codes of conduct, some having the character of statutes of law containing rules for lawyers and doctors, others being voluntary codes of conduct negotiated between the authorities and sectors like banks and credit institutions. Whereas the statutes of law for lawyers and doctors were legally binding, the voluntary codes had no direct legally binding force and could be revised if necessary following, for example, a ruling by a court.

The German delegation considered codes of conduct as a means of interpreting the law but expressed concern that certain sectors might not take the initiative to draw up such codes.

5. The United Kingdom delegation explained that in the United Kingdom five codes of conduct, with no statutory backup, existed. They had been drawn up on the basis of a totally voluntary arrangement between the Registrar and different organisations in order to give indications as to how the data protection Act should be interpreted. Even if the codes of conduct had not got the force of law, they could be, and as a matter of fact had been, used before the courts.
The United Kingdom delegation, like the Netherlands delegation, supported Article 20 of the draft Directive which it considered a useful and flexible means of ensuring compliance with data protection principles.

6. The Belgian, Danish, French and Luxembourg delegations indicated that codes of conduct did not exist in their countries. The Danish delegation did, however, understand the interest certain codes of conduct could have, but stressed that codes of conduct could only be non-binding rules. The areas where codes of conduct could be a possibility were only those where there was no need for binding rules.

7. Comparing the approach in the Netherlands, which was to establish codes of conduct in order to replace laws, with that in Ireland, which was to arrive at legally binding rules, the Representative of the Commission queried whether industry might not express misgiving if codes of conduct were to be binding.

II. The scope of the Directive: exceptions (Article 3 paragraph 2)

8. The discussions of the Working Party of this point was based on Working Document No 18 from the Belgian delegation and Working Document No 19 from the Danish delegation, concerning respectively statistical data and research files.

9. Addressing the question of research files in particular, the German delegation indicated that in their opinion such files should not be covered by the general framework Directive but rather by a sectoral Directive.

10. The Belgian delegation addressing also the question of research files, explained that when discussing the Bill of data protection in Belgium the question of research files had arisen. On the basis of this discussion it was now being considered whether to enter an amendment in the Bill to cover research files. As such files gave rise to specific problems
which needed careful consideration, the Belgian delegation as the German delegation, felt that it might be useful that they be dealt with in a sectoral directive.

11. The French delegation indicated that it had understanding for the difficulties explained by the Danish and Belgian delegations in their documents. As a provisional view, the French delegation felt that it might be advantageous for the specific problems raised by the two delegations to be dealt with in the general directive itself avoiding other negotiation at some later stage. The French delegation recognized, however, that such an approach might delay the adoption of the Directive which it did not want.

12. Also the Greek delegation agreed with the concerns expressed by the Belgian and Danish delegations in their documents. In the Greek delegation's view consideration should furthermore be given to the area of the delivery of medical certificates which had given rise to specific problems in Greece.

13. The United Kingdom delegation supported the anxieties of the Danish and Belgian delegations. The United Kingdom delegation was, however, not sure whether the statistical data and research files should be excluded altogether from the general Directive or should be covered by specific control clauses.

14. The Italian delegation stated that in its opinion there should be exceptions for statistical data and research files but these should not be total exceptions. In the Italian delegation's view certain problems might arise for research files in the cases where these files were used also for other purposes. The Italian delegation also wondered whether Amendment No 60 proposed by Parliament would be compatible with Article 9 of the Council of Europe Convention.
15. The Netherlands delegation agreed with the Italian delegation as to the doubt on the compatibility with the Council of Europe Convention. Referring specifically to Article 5e of that Convention, the Netherlands delegation queried whether keeping files for any unlimited time, with the aim that this data might possibly be used for research purposes at some later time was compatible with this Article.

In the Netherlands a patient had the right to request that his medical file be destroyed. If such a request was not made it would be destroyed after 5 years. During these 5 years the data could be used and passed on to a research body.

16. The Danish delegation, referring to Amendment No 60 by Parliament, which would allow data instead of being erased to be transferred to archives, stated that this amendment, if followed, would not suffice to meet its concerns as problems would remain in respect of the question of the accessibility of research files to other files. The maintenance of an obligation of consent in these cases would, in the Danish delegation’s view, ruin all research possibilities.

Addressing the question raised by the Netherlands on Article 5e of the Council of Europe Convention, the Danish delegation explained that it was difficult to say when files no longer served their purpose. In Denmark medical data were erased 10 years after the patient’s death.