OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)
on: 29 October 1992

No. prev. doc.: 9388/92 ECO 220
No. Cion prop.: 9400/92 ECO 221

Subject: Proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data

At its meeting on 29 October 1992, the Working Party on Economic Questions (Data Protection) gave the above proposal its first reading. The outcome of its discussions on Article 8 is given in the Annex.
SECTION III
SPECIAL CATEGORIES OF PROCESSING

Article 8
The processing of special categories of data

[[1. Member States shall prohibit the processing of data
   [revealing] (1) racial or ethnic origin, political opinions,
   religious, philosophical, [moral] or [ethical] (2) beliefs or
   trade-union membership, and of data concerning [health
   or] (3) sexual life.]] (4)

(1) In response to doubts expressed by NL over the choice of the
   word in square brackets, the Commission said that the term had
   been taken from the text of Article 6 of the Council of Europe's
   Convention No 108.

(2) Alternative wording proposed by F, acceptable to the Commission.
   B/GR/I: preferred at this stage to keep the term "moral",
   although it does not appear in Article 6 of Convention No 108.
   IRL/UK: expressed concern at the reference to "moral beliefs".

(3) B: wanted the words in square brackets deleted, feeling it
   preferable for data concerning health to be the subject of a
   specific provision in view of their special nature (particularly
   in medical emergencies).

   Commission: said that data on health were covered by Article 6
   of Convention No 108 as were the data referred to in this
   Article.

(4) DK: Reservation on the words in square brackets; would have
   preferred the text of Article 6 of Convention No 108 to be used.
   UK: did not see the need for such a definition of sensitive
   data.

   Commission: recalling the broad consensus reached at previous
   discussions on the need for such a definition which was, after
   all, an integral part of Convention No 108, stressed its
   importance for the protection of data relating to natural
   persons.
2. Member States shall provide that data referred to in paragraph 1 may be processed where:

(a) the data subject has given his [written] (5) consent to the processing of that data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be waived by the data subject giving his consent;

[(b) processing is carried out by a foundation or non-profit-making association [or company] (6) of a political philosophical, religious, [charitable] (7) or trade union character in the course of its legitimate activities and on condition that the

(5) DK/F/NL/UK: deletion of the text in square brackets, because of the practical aspects of the need for written agreement, particularly in certain cases (medical research, health, elections, etc.) where express agreement should suffice.

B: could agree to the text in square brackets, if provision was made for a special derogation in the health field allowing for data processing in the vital interests of the person concerned where they were unable to give their consent.

Commission: while feeling that these concerns could be covered by the text of Article 7(d) and 8(2)(c) (health), and Article 8(3) (grounds of important public interest), was open to suggestions from the delegations.

(6) Addition proposed by D/GR/1.

UK: wanted the concept of "non-profit-making" to be clarified.

Commission: could agree to the proposed addition if this clause were found to relate also to other legal forms not covered by the expression "non-profit-making".

(7) Addition proposed by UK, unacceptable to the Commission.
processing relates solely to members of the foundation or association [and to persons who have regular contact with it in connection with its purposes] (8) and that the data are not disclosed to third parties without the data subject's [written] (9) consent; or]

[(c) the processing is performed in circumstances where there is manifestly no infringement of privacy or [fundamental] (11) freedoms [enshrined in law] (12).]] (13)

(8) F/I: wanted deletion of the words in square brackets, which posed problems of substance and interpretation.

B/GR: proposed aligning this on the English text, which was considered more precise.

Commission: proposed aligning this text on the English text, which is regarded as more precise.

(9) Addition proposed by I, unacceptable to the Commission in view of the extra administrative work it would entail.

(10) E/IRL: were in favour of deleting subparagraph (b) as the problems it was intended to resolve seemed to be covered by subparagraph (c) and Article 17(5).

UK: felt the need for subparagraph (b) depended on the content of subparagraph (c).

Commission: felt it preferable to maintain subparagraph (b), which was taken from a European Parliament amendment, even if certain problems it dealt with were already covered by (c).

(11) Addition proposed by several delegations and acceptable to the Commission.

(12) Addition proposed by I, on which the Working Party has not yet stated views.

(13) B/E/F/GR/I/L/P: in favour of deleting subparagraph (c), the imprecise wording of which constituted, in their eyes, a pointless and possibly dangerous exception to a fundamental principle.

Commission/DK/IRL/NL/UK: wanted the text in square brackets kept, subject to possible clarification in order to define its scope.
[The processing of data referred to at point (b) shall not be subject to the obligation to notify imposed in Section VIII of this Chapter.] *(14)*

3. Member States may, [on grounds of important public interest,] *(15)* lay down exemptions from paragraph 1 [by national legislative provision or by decision of the supervisory authority,] *(16)* stating the types of data which may be processed, persons to whom such data may be disclosed and the persons who may be controllers and specifying suitable safeguards.

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*(14)* I/P: felt this exemption from notification to be unjustified as it concerned a very sensitive field and presented a problem of balance between the interests of associations and those of individuals.

D/NL/Commission: in favour of maintaining this provision, while open as to the best place for it to appear in the enacting terms. Commission, considering this to be mainly a problem of information and transparency, indicated a preference for no prior checking, as members of association retained a right of access and rectification in respect of data processing concerning them.

*(15)* GR: wanted the text in square brackets to be clarified.

Commission: remained open to suggestions, although felt it difficult to clarify this notion further.

*(16)* Several delegations wondered what would be the scope of the text in square brackets as it stated neither the type of legal instrument to be adopted, nor the type of authority entitled to accord such exemptions.

Commission: noting that there was consensus on the principle of this provision, reminded the delegations that under Article 189 of the EEC Treaty, a Directive shall "leave to the national authorities the choice of form and methods", and that Member States were consequently free to decide whether or not to opt for the decision of the supervisory authority; consequently, it was open to possible deletion of the problematic text.
[4. Data concerning [criminal convictions] (17) may be [held] (18) only [judicial and law-enforcement authorities] (19) and by the persons directly concerned with those convictions or by their representatives;] (20) Member States may, however, [on grounds of important public interest,] (21) lay down exemptions by means of a national legislative provision which shall specify suitable safeguards.]] (22)

(17) Replying to B/I/NL, Commission said that the concept of "criminal convictions" should be given a restrictive and limiting interpretation.

(18) B/I/F/UK: questioned the point of this provision, which was limited simply to the "holding" of data while the Directive was concerned with the "processing" of data.

Commission: said the provision was mainly intended to prevent parallel criminal records being constituted, and to prevent such data from being preserved without any time limit.

(19) Replying to several delegations, Commission said this concept covered courts of law, prosecuting authorities in criminal cases and criminal investigation police placed under the direct authority of a prosecuting authority.

(20) F/I/GR/NL: felt the words in square brackets were too vague and wanted them deleted.

Commission: said the text was aimed at persons directly implicated by the judicial decisions in question and their representatives (lawyers) or agents (the latter case being covered by the national derogations provided for in this same paragraph).

(21) Addition proposed by IRL, on which the Working Party has not yet given its views.

(22) DK/IRL/UK: had serious problems with the wording of this paragraph, particularly in view of the fact that criminal law was not an area of Community competence.

IRL: wanted to move this text to paragraph 1 of Article 8; this was unacceptable to Commission/D as the compilation of such registers could not be subject to the consent of the persons concerned.

Commission: this text aimed only to protect data and not to regulate criminal justice.
5. Member States shall determine [in their legislation] (23) the conditions under which a national identification number [or other identifier of general application] (24) may be processed.

(23) Addition proposed by IRL.
(24) F: wanted the text in square brackets clarified.