COMMISSION OF THE EUROPEAN COMMUNITIES

COMMISSION COMMUNICATION

on the protection of individuals in relation to the processing of personal data in the Community and Information security

Proposal for a COUNCIL DIRECTIVE

concerning the protection of individuals in relation to the processing of personal data

Draft RESOLUTION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES MEETING WITHIN THE COUNCIL

COMMISSION DECLARATION

on the application to the institutions and other bodies of the European Communities of the principles contained in the Council Directive concerning the protection of individuals in relation to the processing of personal data

Proposal for a COUNCIL DIRECTIVE

concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks

Recommendation for a COUNCIL DECISION

on the opening of negotiations with a view to the accession of the European Communities to the Council of Europe Convention for the protection of individuals with regard to the automatic processing of personal data

Proposal for a COUNCIL DECISION

in the field of Information security
1. INTRODUCTION

1. The increasingly frequent recourse to the processing of personal data in every sphere of economic and social activity and the new data-exchange requirements linked to the strengthening of European integration necessitate the introduction in the Community of measures to ensure the protection of individuals in relation to the processing of personal data and to enhance the security of information processing in the context, notably, of the development of open telecommunications networks.

2. At a time when progress in the field of Information technology is making it much easier to process and exchange all sorts of data, the current position with regard to the protection of individuals in relation to such processing in the Community is characterized by the diversity of national approaches. In the 1970s, the concern felt about the protection of individuals in relation to the processing of personal data led to the legislative process being set in motion in several Member States with a view to limiting and providing a framework for the use of this kind of data. At the last count, however, only seven Member States had specific laws in this field. Moreover, although their objectives are the same,
those laws sometimes adopt divergent approaches, for example on the question of scope (inclusion or not of manual data files, protection or not of legal persons) or on the question of the preconditions for processing (extent of the obligation to notify, provision of information at the time of collection, processing of sensitive data).

3. Over and above national provisions and in addition to the recommendation of the Council of the OECD concerning guidelines on the protection of privacy and the cross-border flow of personal data of 23 September 1980, the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data is the only international legal instrument in this field. However, it leaves open a large number of options for the implementation of the basic principles it contains, and it has been ratified by only seven Member States, of which one still has no domestic legislation.

4. This state of affairs has given cause for concern for some time in the Community. In a number of resolutions dating back to 1978, the European Parliament has voiced its displeasure and called upon the Commission to prepare a proposal for a directive harmonizing laws on the protection of personal data.

5. The Commission, in a recommendation of 29 July 1981, stated that such protection is quite fundamental and that it is desirable that there should be an approximated level of protection in all the Member States. It recommended the Member States to ratify, before the end of 1982, the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. It added, however, that "if all the Member States do not within a reasonable time sign and ratify the Convention, the Commission reserves the right to propose that the Council adopt an instrument on the basis of the EEC Treaty".

1 OJ No C 100, 3.5.1978, p. 27; OJ No C 140, 5.6.1979, p. 34; OJ No C 87, 5.4.1982, p. 39.
3. The diversity of national approaches and the lack of a system of protection at Community level are an obstacle to completion of the internal market. If the fundamental rights of data subjects, in particular their right to privacy, are not safeguarded at Community level, the cross-border flow of data might be impeded just when it is becoming essential to the activities of business enterprises and research bodies and to collaboration between Member States authorities in the frontier-free area provided for in Article 5a of the Treaty. With this in mind, the Strasbourg European Council of 8 and 9 December 1989 stressed, in the context of measures to promote the free movement of persons and People's Europe, the need "to ensure that the procedures for cooperation between administrations first ensure the protection of individuals with regard to the use of personalized data banks".

7. A Community approach towards the protection of individuals in relation to the processing of personal data is also essential to the development of the data processing industry and of value-added data communication services. The speedy introduction of harmonized provisions concerning the protection of data and privacy in the context of digital telecommunications networks is a key element in the completion of the internal market in telecommunications equipment and services.

6. The penetration of data processing into every sphere of economic and social activity and the appearance of global communication systems making it easier to integrate various activities also represent a new challenge which calls for the affording of "protection" commensurate with the risks involved in any technical or human failure, whether it be accidental or deliberate. Effective information security is indispensable if one is to ensure effective protection of privacy and preserve the integrity of the present wealth of data recorded and transmitted electronically. The Community policies and programmes for the development of the data processing and telecommunications industries and the completion of the internal market might be seriously undermined if an active policy for the creation, development and promotion of information security standards is not adopted. Since telecommunications nowadays make it possible to exchange data worldwide, such a policy must take that dimension into account. It is, moreover, essential that national information security policies do not become an obstacle to the promotion of the harmonious development of the Community and to relations with third countries.
II. THE PROPOSED APPROACH

9. The proposed approach is designed to ensure a high level of protection via a Community system of protection based on a set of complementary measures.

A. A high level of protection

10. Since the object of national laws in this field is to protect the fundamental rights of individuals, and in particular the right to privacy, and since the Community has itself stressed the importance it attaches to fundamental rights, in particular in the third paragraph of the Preamble to the Single European Act, the action taken by the Community must not have the effect of reducing the level of protection but, on the contrary, of ensuring a high level of protection throughout the Community. Through Community action it is possible to guarantee a high level of equivalent protection in all the Member States of the Community, and in so doing remove obstacles to the establishment of the internal market in accordance with Article 100a.

11. In addition to the approximation, at a high level, of the rights of individuals, the launching of an active policy on information security is essential. Information security is vital not only to individuals but also to trade, industry and public authorities. The important thing is to ensure effective and practical security of information held in electronic form while avoiding the formation of new technical obstacles between Member States or vis-à-vis third countries. This requirement calls for the examination at Community level of the possible needs and options in close collaboration with industry and the Member States.

B. A global approach

12. In order to establish in the Community a system of protection of individuals in relation to the processing of personal data, several measures covering the various aspects of the matter must be adopted.
13. At the internal level, besides a framework directive approximating certain laws, regulations and administrative provisions of the Member States concerning the protection of individuals in relation to the processing of personal data (general directive), which is the cornerstone of the protection system, a set of other, complementary measures is proposed in order to ensure the fullest possible protection. Each of the measures proposed is tailored to a specific situation, but all take as point of departure the same protection principles to be found in the general directive. A resolution of the representatives of the Governments of the Member States meeting within the Council and a Commission declaration are thus designed to make the principles contained in the directive applicable to data files which are not covered by it. Similarly, a sectoral directive is necessary in the context of public digital telecommunications networks. Lastly, information security calls for a Community action plan.

14. At the external level, the European Community must promote among its partners the introduction of adequate protection measures and support the efforts of the Council of Europe in this field. It is desirable in this connection that the Community should enter into negotiations with a view to its accession to Council of Europe Convention No 108.

This set of proposals cannot be split up without detracting from the homogeneity and cohesion of the protection system proposed.

C. Outline of the proposal

15. The proposal for a general directive is aimed at establishing an equivalent, high level of protection in all the Member States of the Community in order to remove the obstacles to the exchange of data which is necessary if the internal market is to function. To that end, the principles set forth in the draft proposal for a directive must be underwritten by the Member States. Those principles relate to the conditions under which the processing of personal data is lawful, the
rights of the data subject (right to information, right of access, right to rectification, right of opposition, etc.), the requisite data quality (data must be accurate, collected fairly, stored for specified and lawful purposes, etc.) and the setting-up of a Working Party on the Protection of Personal Data to advise the Commission on data protection issues. The draft proposal for a directive covers both the private sector and those activities of the public sector which fall within the scope of Community law. Since every individual will enjoy in each Member State an equivalent, high level of protection in respect of the processing of personal data, the Member States will no longer be able to restrict the flow of such data in the Community on grounds of the protection of the data subject.

16. The draft resolution of the representatives of the Member States of the European Communities meeting within the Council is designed to extend the coverage of the principles contained in the general directive to include files held by those parts of the public sector to which it does not apply, that is to say those authorities whose activities are not governed by Community law. For the sake of consistency, all files held by public authorities, even those which are not covered by the general directive, should be subject to the same protection principles. To that end, the Member States should commit themselves to setting in motion the necessary domestic legislative procedures.

17. The Commission declaration on the application to the institutions and other bodies of the Community of the provisions of the general directive is an expression of the Commission's wish that the principles contained in the directive should apply to the institutions and other bodies of the Community. It provides in this respect that the Commission will take and propose the necessary measures, and indicates that, in the mean time, it will apply the directive's provisions to its own data files.
18. The proposal for a Council Directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks, supplements the general directive by applying the general principles of data protection to the specific requirements of the new telecommunications networks. The directive seeks to guarantee telecommunications users in all the Member States a basic level of protection via measures which must be integrated into the services provided by the new networks. The Council and the European Parliament have stressed on a number of occasions the importance of appropriate measures to ensure the protection of data and privacy in the light of future developments in telecommunications, and in particular the ISDN. This concern was expressed strongly by the Member States' officials in charge of data protection at their annual meeting in Berlin in August 1989.

19. The recommendation for a Council Decision on the accession of the European Community to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data is one of the external aspects of the Community's approach to the protection of personal data. Accession to the Convention will ensure, in relations between the Community and the third countries which will be parties thereto, the protection of data subjects and the cross-border flow of personal data.

20. The proposal for a Council Decision on the adoption of a two-year action plan on Information security completes the set of measures for strengthening the rights of individuals in relation to the processing of personal data. Information security, that is to say the protection of data stored, processed and transmitted electronically against every kind of threat (both accidental and deliberate) is essential if the rights of individuals in relation to the processing of personal data are to be effectively exercised. More generally, it is a primary requirement from

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the point of view of the protection of property and persons which, in the context of the deployment of open telecommunications networks, necessitates the development of a global strategy, concerted action at Community level on technologies, standards and approval and testing procedures, and technological developments involving cooperation at the pre-competitive research and development stage.

21. The proposed action plan provides for the development of a strategic framework for information security, the analysis of security requirements, the devising of ways of satisfying certain priority needs, the drawing-up of specifications, standards and validation tests, the integration of technological and operational developments in the field of information security into a general strategic framework and the integration of certain security functions into information systems.