OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)
on: 12 and 13 November 1992

No. prev. doc.: 9918/92 ECO 246
No. Cion prop.: 9400/92 ECO 221 COM(92) 422 final SYN 287

Subject: Amended 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


The outcome of the discussions on Articles 9 to 14 is annexed hereto.
SECTION III (continued)

SPECIAL CATEGORIES OF PROCESSING

Article 9

Processing of personal data
and freedom on expression (1), (2)

[Insofar as they are necessary to] (3) reconcile the right to privacy with the rules governing freedom of expression, Member States [shall prescribe] (4) [exemptions] (5) from this Directive in respect of the processing of personal data [for journalistic purposes] (5) by the press, the audio-visual media and journalists.

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(1) In reply to the D delegation the Commission, supported by the Council Legal Service, stated that the legal basis for this provision was Article 100a.

(2) In reply to the DK delegation, the Commission confirmed that files kept by press undertakings for internal use and press information placed at the disposal of the public, for example, on CD Rom, could also qualify for exemptions. Other delegations (IRL/UK) observed that their legislation did not provide for any special exemptions for the press and wondered to what extent the exemption provided for in this Article went beyond the scope of Article 9 of Council of Europe Convention 108. The Commission stated that this provision was necessary in order to reconcile the right to privacy with freedom of expression.

(3) To accommodate the NL delegation, the Commission was able to agree to the addition of "insofar as they are necessary to...", which had already been included in the former text of Article 19.

(4) The GR delegation preferred the expression "may prescribe." Other delegations felt that a non-compulsory provision could result in discrepancies between Member States' legislations.

(5) Several delegations (B/DK/E/F/L/NL) requested specific criteria to guide the Member States in the matter of provision for exemptions, so as to prevent purposes being abused.

(6) Several delegations (B/DK/E/F/L/NL) requested a definition of the expression "for journalistic purposes."
SECTION IV
INFORMATION TO BE GIVEN TO THE [DATA SUBJECT] [DATA SUBJECTS] (7)

Article 10 (8)
The existence of a processing operation

1. Member States shall ensure that [any person] (9) is entitled [on request,] (10) to know of [the existence of a processing operation], (11) its purposes, the categories of data concerned, any third parties or categories of third party to

(7) It was agreed to adopt the second alternative.
(8) E/I/P and L delegations requested that the order of Articles 10 and 11 be reversed. The Commission preferred the existing order.
(9) Several delegations (D/GR/NL/P and UK) felt that a clear distinction had to be made between information for "any person" and for "the data subject." In this case it was a matter of informing "any person." As regards information to be given to "any person", it was suggested that a middle way be sought between the best possible transparency and too great an administrative burden for the person responsible for processing. In this context, the NL delegation stated that an attempt should be made to achieve transparency by means, for example, of easier access to the register, and said that it planned to supply a new text.
(10) The B delegation felt that "the data subject" should not need to make a request. Other delegations (D/UK) and the Commission representative stressed that the words "on request" were necessary. The F delegation wondered whether the Member States were free to drop the words "on request" from their national legislation. While pointing out that the Directive was not minimalist and that Member States retained a certain discretionary power, the Commission representative stated that the text of this paragraph imposed a clear obligation on Member States and, moreover, that he would be prepared to amend the text to accommodate the suggestions of the NL and F delegations.
(11) The NL delegation felt that this expression was too vague and that it must be possible for Member States to require the controller to keep the information available.
whom the data are to be disclosed, and the name and address of the controller and of his representative, if any.

2. Member States may lay down exemptions from paragraph 1 in the circumstances referred to in [Article 14(1)]. (12)

Article 11
Collection of data (13) from [the data subject[s]] (14)

1. Member States shall provide that the controller must ensure that a data subject from whom [data relating to himself] (15) are collected be [informed] (16) (17) at least of the following:

(12) The B/E/F and I delegations expressed doubts about the circumstances for exemption referred to in Article 14 and the B and E delegations requested that this paragraph be deleted. The F delegation could accept only some of the conditions laid down in Article 14. While they were in favour of the greatest possible transparency, the DK and NL delegations felt that under certain circumstances it was necessary to provide for exceptions to the right to information.

It should be noted that in the Greek version of this paragraph "Article 15" should be replaced by "Article 14".

(13) In reply to the D delegation the Commission representative stated that the information provided for in this Article should be supplied by both the public and the private sector.

(14) Several delegations (I/NL/P) asked for clarification of whether data were collected from the data subject himself or from a third person, which, according to NL, would most often be the case.

The I delegation made a drafting suggestion which does not concern the English text.

(15) Request by the UK delegation that the words "relating to himself" be added.

(16) The DK delegation asked for this information to be supplied before data was collected.

(17) In reply to the DK and UK delegations, the Commission representative stated that the European Parliament had not agreed to the information being supplied at the request of the data subject.
[(a) (18) the purposes of the processing for which the data are intended;

(b) (19) the obligatory or voluntary nature of any reply to the questions to which answers are sought;

(c) the consequences [for him] (20) if he fails to reply;

(d) the recipients or categories of recipients of the data;

(e) the existence of a right of access to and rectification of the data relating to him; and

(f) the name and address of the controller and of his representative if any.]

2. Paragraph 1 shall not [apply] (21) [where appropriate] (22) to the collection of data where to inform the data subject would hinder or prevent the exercise of or the co-operation with the

(18) Several delegations (DK/IRL/UK) felt that the information provided for in (a) to (f) was too detailed and would represent too great an administrative burden, in particular for the private sector. The Commission representative thought this information was important and should not be restricted too much.

(19) The B delegation requested that the legal basis for the information referred to in (b) and (c) be indicated. The Commission representative felt this would make no sense in the private sector.

(20) The I delegation wanted the words in square brackets deleted.

(21) The E delegation requested that this provision be made optional.

(22) Addition requested by the IRL delegation.
supervision and verification functions of a public authority or the maintenance of public order (23)

Article 12
Disclosure to a third party (24)

1. Member States shall provide that in the cases referred to in Article 7(b), (c), [(d)] (25), (e) and (f) the controller must satisfy himself that [at the appropriate time, and no later than the time when the data are first disclosed to a third party,] (26) the [data subject is informed of this disclosure] (27) (28) and of the following information at least:

(a) the name and address of the controller and of his representative, if any;

(23) The B/F/NL and UK delegations felt that the exceptions provided for in this paragraph were too wide-ranging and too vague. Several delegations asked for it to be totally or partially deleted. The Commission representative stood by the text of this paragraph, making a reference to Article 8 of the Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ No L 166, 28 June 1991, p. 77).

(24) The UK delegation entered a blanket reservation on this Article.

(25) Request by the F delegation that Article 7(d) be added.

(26) The UK delegation felt it was part of Member States' discretionary powers to decide the appropriate time to disclose such information.

(27) The D/NL and P delegations took the view that the data subject should be informed when his data were recorded and not when they were disclosed to a third party.

(28) In the opinion of the DK/F and IRL delegations, passing on the information in question represented too great an administrative burden, particularly for the private sector. They felt that the data subject should certainly not be informed when it could be assumed that he was already aware of what was happening. The Commission representative said he was willing to amend the text of the paragraph.
(b) the purposes of the processing;

(c) the categories of data concerned;

(d) the recipients or categories of recipients; and

(e) the existence of rights of access, rectification and objection.

2. Paragraph 1 shall not apply where:

- [the data subject has already been informed that the data are [recorded or] (29) are to be or may be disclosed to a third party;] (30)

- disclosure to a third party is required by a legal provision [which lays down an exemption from the obligation to inform the data subject;] (31) or

- the data are disclosed to a third party for one of the reasons listed in [Article 14(1)]. (32)

3. Where the provision of information to the data subject proves impossible or involves a disproportionate effort, or runs counter to the over-riding legitimate interests of the controller or similar interests of a third party, Member States may provide for

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(29) The B and D delegations requested the addition of these words.
(30) The IRL and NL delegations felt the text of the first indent was too wide and would result in exceptions from paragraph 1 being made too easy.
(31) The B/D and DK delegations requested that the words in square brackets be deleted.
(32) The B/F and NL delegations believed that the reference to Article 14(1) was too general and should be made more specific.
an exemption to be authorized by the supervisory authority [or a legislative provision] (33), laying down any suitable safeguards. (34)

SECTION V
THE DATA SUBJECT'S RIGHT OF ACCESS TO DATA

Article 13
[Right of access] (35)

Member States shall grant all data subjects the following [rights]: (36)

1. to obtain, on request, at reasonable intervals and without [excessive] delay or [expense], (37) [confirmation] (38) of the existence of personal data relating to him, communication to him of such data in an intelligible form [information on their

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(33) Request from the D delegation for the words in square brackets to be added.
(34) The B/E and I delegations requested that this paragraph be reworded. However the D/DK and NL delegations were in favour of the current wording.
(35) The D delegation suggested amending the title so as not to suggest that the data subject was already aware that the data relating to him had been recorded. Agreement by the Commission on this point.
(36) In reply to the DK and IRL delegations, which asked what additional rights this paragraph conferred on the data subject compared with Article 10(1), the Commission representative stated that Article 13(1) granted the additional right to information on the use to which information would be put and, at the European Parliament's request, the right to know the origin of data.
(37) The B and NL delegations wanted only a flat-rate administrative charge.
(38) In the D delegation's view, the word "confirmation" suggested that the data subject was already aware that data relating to him were being processed. It therefore asked for a different expression to be used. Other delegations wanted to keep the existing expression.
recipients], (39) [an indication of their source], (40) and [general] (41) information on their [use] [a general indication of their origin and use] (42)

Member States may provide that the [right of access to medical data] (43) may be exercised only through a [medical practitioner]; (44)

2. [(45) to refuse any demand by a third party that he should exercise his right of access in order to communicate the data in question to that third party or to another party, [...] (46)

(39) Addition requested by the D delegation. Agreement by the Commission.
(40) The DK/IRL/NL and UK delegations were in favour of more general information on the origin of data. On the other hand, the B/D/E/F and P delegations wanted to retain the existing text.
(41) According to the F delegation, the word "general" could lead to confusion. The Commission agreed to delete this expression.
(42) Alternative wording requested by the DK/IRL/NL and UK; see footnote 40 above.
(43) In reply to the I and IRL delegations, the Commission representative stated that, since this was an optional provision, Member States could stipulate that a doctor could withhold some personal information from patients if this was in their interest.
(44) In reply to the UK delegation, the Commission representative agreed to replace the expression "medical practitioner" by "health professional."
(45) The D/E/I/P and UK delegations requested that this paragraph be deleted, since it would be very difficult to incorporate it into national law and it would cause problems regarding the burden of proof. The B/F/L and NL delegations and the Commission representative were in favour of retaining this paragraph with a different wording. The I delegation suggested including the substance of this paragraph in the heading of Article 13 and stressing that rights must be freely exercised.
(46) Agreement by the Working Party and the Commission representative to delete the section in square brackets ("unless the third party's request is founded on national or Community law").
3. [to obtain, as the case may be, the rectification of inaccurate or incomplete data or the erasure or blocking of such data if they have been processed in breach of this Directive;] (47)

4. [on lodging his request based on point 3 (48) [where point 3 applies], (49) to have any third party to whom the data have been disclosed notified of the rectification, erasure or blocking; (50)

5. to be informed, on request, of the reasoning applied in any automatic processing operations [relating to himself], (51) the outcome of which is invoked against him. (52) (53)

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(47) The B delegation suggested the following wording:
"to obtain, either the rectification of inaccurate or incomplete data or, if they have been processed in breach of this Directive, the erasure or blocking of the data."
The Commission representative suggested the following text:
"to obtain, according to the circumstances, the rectification, erasure or blocking of inaccurate or incomplete data or data which have been processed in breach of this Directive."
The Working Party agreed to look at this point again.

(48) Addition requested by B delegation.

(49) Commission text.

(50) The D/NL and UK delegations were in favour of the principle of notification in certain specific cases, although they were opposed to general notification.
The Commission representative agreed to limit notification.

(51) Addition requested by B/E and P delegations. Commission agreement. The words "the outcome....against him" would then have to be deleted.

(52) The DK and UK delegations wanted the substance of this paragraph incorporated in Article 16. The Commission representative wanted it to remain in Article 13.

(53) The F delegation requested that a recital be added stipulating that Article 13(5) must not affect the protection of computer programs.
Agreement by the Commission.
Article 14

Exceptions (54) to the right of access

1. [Unless obliged to do so by a provision of Community law,] (55) Member States may [restrict] (56) the exercise of the rights provided for in Article 10(1) and in [point 1] (57) of Article [13] where such restriction is necessary to safeguard: (58)

(a) [national security;] (59)

(b) defence;

(54) Reservations by several delegations (D/NL/I/IRL/B and UK) on restricting the list of exceptions compared with Article 9(2) of Council of Europe Convention 108. In the opinion of the UK delegation, the exceptions should also apply to collection of data (Article 11).

(55) The Commission representative stated that this part of the text referred to Article 8 of Council Directive 91/308 on prevention of the use of the financial system for the purpose of money laundering (OJ No L 166/91).

The F delegation requested, in the interests of clarity, that the text read as follows: "Member States may, or if obliged to do so by a provision of Community law, must...."

(56) Request by the D and DK delegations that there should also be an exception to the right of access in the interest of the data subject, which would extend beyond the medical reasons referred to in Article 13(1), second subparagraph.

(57) Request by the I/IRL and UK delegations that the reference to point 1 of Article 13 be deleted and replaced by a reference to Article 13 as a whole.

(58) The Commission representative intended to reword the introduction to this paragraph more clearly.

(59) Reservation by the UK delegation on this point.
(c) [criminal proceedings;] \(^{(60)}\)

(d) public safety;

(e) a duly established paramount economic and financial interest of a Member State or of the Community;

(f) [a monitoring or inspection function performed by a public authority or an activity undertaken to assist the performance of such a function;] \(^{(61)}\)

(g) an equivalent right of another person and the rights and freedoms of others. \(^{(62)}\)

[2. In the circumstances described in paragraph 1, the supervisory authority shall be empowered to carry out the necessary checks, at the data subject's request, so as to verify the lawfulness of the processing within the meaning of this Directive, respecting the interests to be protected in accordance with paragraph 1.] \(^{(63)}\) \(^{(64)}\)

\(^{(60)}\) The NL delegation, supported by B and I, wanted exceptions to this Article introduced not only for criminal proceedings, but also for investigations in criminal cases. A consensus was reached on the following text (points (c) and (d)): "prevention, investigation, establishment and prosecution of criminal offences"; Reservation by the P delegation on "prevention".

\(^{(61)}\) Request by D/I and P for point (f) to be deleted.

\(^{(62)}\) The Commission representative was asked to redraft Article 14(1). The I delegation pointed out that most of the points listed in this paragraph were outside the Community's field of competence.

\(^{(63)}\) The Commission representative stated that this paragraph provided for a right of indirect access through the supervisory authority.

\(^{(64)}\) The D and IRL delegations felt that this paragraph was not appropriate in view of the fact that Article 30(3) already made provision for complaints to the supervisory authority.