OUTCOME OF PROCEEDINGS (1)
of: Working Party on Economic Questions (Data Protection)
on: 4 and 5 February 1993
No. prev. doc.: 4152/93 ECO 5
No. Con 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 16(1), 17 and 18 is set out in the Annex.

(1) Provisional version.
Article 16
Automated individual decisions (2)

1. Member States [shall grant] (3) the right to every person not to be subjected to an [administrative or private] (4) [decision] (5) [affecting him] (6) which is based [solely on automatic processing] (7) defining [a personality profile] (8).

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(2) A number of delegations (D/P/IRL/UK and NL) asked for practical examples to be given regarding the scope of this type of decision in the light of existing national legislations. The B/F/I/E/GR and P delegations were in favour of such a provision. The DK/IRL and UK delegations opposed it, and called for these problems to be settled in a code of conduct; the other delegations were doubtful.

(3) The IRL and UK delegations called for this provision to be made optional.

(4) At the request of the F/GR/B/I and P delegations, the Commission representative accepted the deletion of the words "administrative or private".

(5) The GR delegation called for the word "decision" to be replaced by "assessment".

(6) The phrase "adversely affecting him" was not a correct translation of the French "lui faisant grief".

(7) The IRL and UK delegations thought that automatic processing should not be regarded as having a more unjust outcome than manual processing and entered reservations on this paragraph.

(8) A number of delegations (B/NL/DK and UK) entered reservations on the expression "personality profile".

The Commission representative undertook to clarify this expression; the F and I delegations suggested using the expression "a profile or the personality". The GR delegation preferred the expression "the profile" instead of "a profile".
2. (1) Without prejudice to the other provisions of this Directive, Member States shall provide that a person may be subjected to a decision of the kind referred to in paragraph 1 if that decision:

(a) is taken in the course of the entering into or performance of a contract, provided any request by the data subject has been satisfied, or that there are suitable measures to safeguard his legitimate interests, which must include arrangements allowing him to defend his point of view; or

(b) is authorized by a law which also lays down measures to safeguard the data subject's legitimate interests.

(1) Examination of paragraph 2 was postponed pending fuller discussion of paragraph 1 of this Article.
SECTION VII
SECURITY OF PROCESSING

ARTICLE 17

1. Member States shall provide that the controller must take [appropriate technical and organizational measures] (1) to protect personal data against [accidental or unlawful] (2) destruction or accidental loss and against alteration or [disclosure] (3) and any other [unauthorized] (4) form of processing;

Such measures shall ensure, in respect of the automatic processing of data, a suitable level of security having regard to the [state of technology] (5) (6) and the nature of the data to be protected, and an evaluation of the potential risks involved. To that end, the controller shall take into consideration any [recommendations] (7) on data security and network interoperability made by the Commission in accordance with the procedure referred to in Article 33.

(1) Request by the I delegation for a stipulation that these measures must be taken before the data are processed.
(2) Request by the I delegation for this expression to be clarified.
(3) At the request of the B/D/DK/F/GR/I and P delegations, the Commission representative agreed to replace "communication" by "access", as in the original proposal (Article 18).
(4) At the request of the I delegation, the Commission representative agreed to replace "unauthorized" by "unlawful".
(5) Following a number of contributions, it was established that this expression had not been translated correctly in those language versions which used the expression "state of the art", taken from the original proposal.
(6) Request by the B/D/DK/IRL and NL delegations for the phrase "the cost of taking these measures" which appeared in the original proposal to be reintroduced. This was opposed by the GR, I and P delegations. The Commission representative said the expression "state of technology" already took account of costs, which was not true of "state of the art".
(7) The NL delegation pointed to a problem of consistency between the word "recommendations" and the legally binding terms of Article 33 of the proposal. The Commission representative agreed to seek a solution to this problem.
12. Methods ensuring an appropriate level of security shall be chosen for the transmission of personal data within a network.

3. Where an opportunity is provided for remote access, the controller shall utilize the hardware and software in such a way that the access takes place within the limits of the lawfulness of the processing.\(^{(1)}\).

4. The obligations referred to in paragraphs 1, 2 and 3 shall also be incumbent on persons who share responsibility \(^{(2)}\) for carrying out the processing, and, in particular, on the processor. \(^{(3)}\).

5. Any person who, in the course of his work, has access to personal data, shall not disclose it to third parties without the controller's agreement, unless he is required to do so under national or Community law. \(^{(4)}\).

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\(^{(1)}\) Request by a number of delegations for the various responsibilities to be spelled out and for paragraphs 2 and 3 to be incorporated into paragraph 1.
In the view of the Commission representative, paragraphs 2 and 3 could be linked but should remain distinct from paragraph 1.

\(^{(2)}\) Request by the NL delegation, supported by other delegations, for a stipulation that two distinct responsibilities must be established: on the one hand, that of the processing controller, and on the other hand, that of the subprocession centre(s).
The Commission representative undertook to clarify the text along these lines.

\(^{(3)}\) Request by the E/GR/I and L delegations for this paragraph to be incorporated into paragraph 1.
Request by a number of delegations for the connection between this paragraph and Articles 23 and 24 of the proposal to be made clear.

\(^{(4)}\) Request by a number of delegations for the connection between this paragraph and Article 24 of the proposal to be made clear, some delegations having called for the incorporation of this paragraph into Article 24.
2. Member States shall specify the information to be given in the notification (1). It shall include at least:

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

(b) the purpose or purposes of the processing [including complementary purposes] (2);

(c) the category or categories of data subject (3);

(d) a description of the data or of the categories of data to which the processing relates (4);

(e) the third parties or categories of third party to whom the data might be disclosed (5);

(f) proposed transfers of data to third countries;

(g) a description of the measures taken pursuant to Article 17 to ensure security of processing.] (6)

(1) Reservation by the IRL delegation, which considered that it was for Member States to decide whether notification should be made and, if so, what information should be given in the notification.

(2) The Commission representative accepted this addition at the request of the F delegation.

(3) Request by the IRL delegation for the reference to categories of data subjects to be removed.

(4) Request by the F delegation for an additional subparagraph on the length of time for which the processing may be kept.

(5) Request by the F delegation for a reference to categories of processing recipients, given that "third parties" did not embody these categories.

(6) Request by the majority of delegations for only a general description to be given of security measures.

The Commission representative stood by the existing text, pointing out that this information was not made available to the public (see Article 21).
3. Any change affecting the information referred to in paragraph 2 must be notified to the supervisory authority (1) (2) (3).

4. Before [processing which poses specific risks] (4) to the rights and freedoms of individuals commences, the supervisory authority shall examine such processing within [a period of 15] (5) days commencing with the date of the notification at the end of which period [the authority shall give its conclusions] (6).

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(1) Request by the B/I and L delegations for renotification to be made in case of change of purpose.

(2) Request by the D/GR and UK delegations for only substantial changes to be notified and for a deadline for notification to be stipulated.

(3) In this context, the NL delegation, which also called for changes to be permitted only after they had been notified, suggested the following wording:

"Any change in the information referred to in paragraph 2 must be notified to the supervisory authority before it takes effect."

AGreement by the Commission representative on this text.

(4) Request by a number of delegations for it to be specified what constituted such processing. The Commission representative referred delegations to recital 23.

(5) A number of delegations thought this period too short. Other delegations suggested a reasonable period to be set by the Member States. The NL delegation suggested that two periods be provided for: a short period at the end of which the authority would make known that it was beginning its examination and another, longer, period in which to prepare its conclusions. For the sake of harmonization, the Commission representative advocated a fixed period.

(6) Request by a number of delegations for the prerogatives of the supervisory authority and the Member States' margin of manoeuvre to be spelled out, having regard to Article 30(2) of the proposal.
5. Member States [may] (1) provide that [some of the processing operations referred to in paragraph 4] (2) shall be authorized beforehand [either by law or] (3) by decision of the supervisory authority (4).

(1) A number of delegations were doubtful over the optional nature of this provision.
(2) Request by a number of delegations for it to be made clear what processing operations were involved.
(3) A number of delegations thought the procedure envisaged was much too long.
(4) Paragraphs 4 and 5 will be examined again at the next meeting.