OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)
on: 3 and 4 June 1993

No. prev. doc.: 6477/93 ECO 112
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

At its meeting on 3 and 4 June 1993, the Working Party on Economic Questions (Data Protection) completed the first reading of the above amended proposal.

The outcome of its discussions on Articles 30 to 37 are attached.
ANNEX

CHAPTER VI
SUPERVISORY AUTHORITY AND WORKING PARTY ON THE
PROTECTION OF INDIVIDUALS WITH REGARD TO THE
PROCESSING OF PERSONAL DATA

Article 30
Supervisory authority

1. Each Member State shall [designate] [provide for] (1) an [independent] (2) [public authority] [public body] (3) to [supervise] [monitor] (4) the protection of personal data. The authority shall be responsible for monitoring the application of the national provisions adopted pursuant to this Directive and for performing all the functions entrusted to it by this Directive. Each Member State may designate more than one supervisory authority.

(1) The German delegation wanted "designate" to be replaced by "provide for" (see 6733/93). The Commission representative agreed.

(2) A large majority of delegations supported the idea of an independent supervisory authority. The German delegation, referring to its note (6733/93), was against the proposed text.

(3) The German delegation wanted "public authority" (staatliche Behörde) to be replaced by "public body" (öffentliche Stelle) (see 6733/93). The Commission representative agreed.

(4) The German delegation wanted "supervise" to be replaced by "monitor" (see 6733/93.). The Commission representative agreed.
Article 30 (continued)

2. Each supervisory authority shall have:

- investigative powers (5) including the right of access to data forming the subject-matter of processing operations covered by this Directive and the right to collect all the information necessary for the performance of its supervisory duties;

- [effective powers of intervention such as ordering the blocking or erasure of data (6), a temporary or definitive ban on processing or the destruction of data material, or warning the controller;] (7)

(5) Replying to a query from the Italian delegation, the Commission representative referred to Article 4 of the proposal and explained that the powers of the supervisory authority should be seen in the context of the law applicable.

(6) The Netherlands delegation was opposed to the power to order the complete erasure of data.

(7) The Danish delegation suggested replacing the text of the second indent by the following:

- "effective powers to ensure compliance with the national provisions adopted pursuant to this Directive, such as ordering the blocking or erasure of data, a temporary or definitive ban on processing or the destruction of data material, or warning or admonishing the controller".

This text was favourably received by most delegations and the Commission representative.
Article 30(2) (continued)

- [the power to bring an action before the courts where it finds that the national provisions implementing this Directive have been infringed.] (*).

3. Each supervisory authority shall [hear] (*) [complaints] (10) (11) lodged by any person concerning the protection of persons with regard to the processing of personal data. The person concerned shall be informed of the outcome of the complaint.

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(*): The Belgian, French, Spanish, Greek, Portuguese and Netherlands delegations were in favour of the Commission text. The German delegation was against giving the supervisory authority the power to bring actions before the courts. The Italian delegation wanted the text of the third indent to be replaced by a new paragraph as follows: "Member States shall ensure that infringement of the national provisions implementing this Directive can be brought to court."

As a compromise, the United Kingdom delegation suggested replacing the third indent with the following:

- "the power to take suitable action in response to infringements of the national provisions implementing this Directive, including judicial proceedings where appropriate."

This text was supported by the Danish, Irish, Italian and Netherlands delegations. The Commission representative thought that it was a good basis for discussion.

(10): The French delegation wanted the word "plainte" in French deleted or replaced by another term.

(11): The Luxembourg delegation wanted the word "checks", which appeared in Article 14(2) of the Directive, to be included alongside "complaints". The Commission representative concurred.
Article 30 (continued)

4. Each supervisory authority shall produce [an annual report] (12). The report shall be made public [or forwarded to the relevant legislature and regulatory bodies]. (13)

5. [Member States' authorities shall] (14) co-operate with one another to the extent necessary for the performance of their supervisory duties inter alia by exchanging useful information or [exercising their powers of investigation or intervention.] (15) (16)

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(12) The German and United Kingdom delegations wanted "an annual report" replaced by "a regular report". This was accepted by the Commission representative.

(13) Addition requested by the Belgian delegation.

(14) The Irish delegation wanted the introductory phrase to be replaced by "Member States shall provide that their authorities shall co-operate...". It also wanted the following new paragraph added:

"An authority shall co-operate with an authority in another Member State under paragraph 5 to the extent that the provision of such co-operation would be compatible with the powers it exercises in the field of data protection." (See Article 6 of Council of Europe Convention 108). The Commission representative agreed to this addition.

(15) At the request of the Italian delegation, the Commission representative agreed to add the following text to paragraph 3:

"Where complaints or checks relate to processing of which the controller is established in the territory of a Member State other than that of the complainant, the latter may lodge his complaint with the relevant supervisory authority through the intermediary of the supervisory authority of the Member State in which he is resident."

(16) It should be noted that the final part of paragraph 5 should be aligned on the new text of the second indent of paragraph 2.
Article 30 (continued)

6. Member States shall provide that the supervisory authority, its members and its staff are to be subject to a duty of confidence. (17) (18) (19)

(17) The Danish delegation wanted to add the words "with regard to confidential information". The Commission representative agreed to include this addition in recital No 29.

(18) The Portuguese delegation wanted to add "even after their contract of employment has terminated". The Commission representative agreed to this.

(19) The German delegation wanted the following Article 30a to be added:
"Member States may provide in their law that the processor and the controller shall be obliged to appoint an internal data protection controller who shall ensure that the rules adopted pursuant to this Directive are complied with."
Article 31

Working Party on the Protection of Individuals with regard to the Processing of Personal Data

1. A Working Party on the Protection of Individuals with regard to the Processing of Personal Data, hereinafter referred to as "the Working Party", is hereby set up. The Working Party, which shall have advisory status, shall act independently. It shall be composed of representatives of the supervisory authorities provided for in Article 30 and a representative of the Commission. Where a Member State designates more than one supervisory authority, those authorities shall appoint joint representatives who, within the Working Party, shall have the same rights and obligations as the other representatives of the other authorities.

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(20) The German delegation entered a general reservation on Article 31 until the text of Article 30 had been settled.

(21) The Working Party wanted the number of representatives to be specified in this Article. The Commission representative agreed and suggested two representatives per delegation.

(22) A number of delegations wanted representatives to be designated by Member States and not by the supervisory authorities. The Commission representative thought that this might prejudice the Working Party's independence (see Article 32(1)(c)).

(23) Several delegations wanted the role of the Commission in this Working Party to be clarified, particularly in regard to voting rights. They insisted that the Commission should not play such a large role as the representatives of the Member States. Underlining the role of the Commission, the Commission representative was prepared to give some thought to the part which the Commission representative would play in the Working Party. He suggested one vote per Member State and made the further point that provision should be made for representatives of a future Community supervisory authority.

The Luxembourg delegation suggested providing for a representative of the Community institutions "instead of" a Commission representative.

(24) The Italian delegation wanted the word "obligations" replaced by "powers". 
Article 31 (continued)

2. The Working Party shall elect its chairman. The chairman's term of office shall be [two years]. \(^{(25)}\) His appointment shall be renewable.

3. [The Working Party's secretariat shall be provided by the Commission.] \(^{(26)}\)


5. The Working Party shall consider items placed on its agenda by its chairman, either on his own initiative or at the [reasoned] \(^{(27)}\) [request] of a representative of the supervisory authorities, or at the request of the Commission [representative]. \(^{(28)}\) \(^{(29)}\)

\(^{(25)}\) The French delegation wanted the term of office of Member States' representatives also to be specified. The Commission representative disagreed, taking the view that this point could be settled in the Working Party's rules of procedure.

\(^{(26)}\) Several delegations voiced doubts about the Working Party's task of advising the Commission (see Article 32(1)(c)) should the Commission be made responsible for providing the secretariat for the Working Party.

\(^{(27)}\) The Working Party and the Commission representative agreed to delete the word "reasoned".

\(^{(28)}\) The German and Spanish delegations wanted paragraph 5 deleted as paragraph 4 already covered these matters. The Commission representative was opposed to this.

\(^{(29)}\) The Belgian delegation wanted requests by the Advisory Committee also to be included here (See Article 34). The Commission representative was opposed to this.
Article 32

Tasks of the Working Party

1. The Working Party shall:

(a) [contribute] \(^{(30)}\) to the uniform application of the national measures taken under this Directive; \(^{(31)}\) \(^{(32)}\)

(b) give [an opinion] \(^{(33)}\) on the level of protection in the Community and in third countries;

(c) advise the Commission on any proposed amendment of this Directive, on any additional or specific measures to safeguard the rights and freedoms of natural persons and [if so requested,], \(^{(34)}\) on any other proposed [measures affecting such rights and freedoms]; \(^{(35)}\)

(d) give an opinion on codes of conduct drawn up at Community level.

\(^{(30)}\) As the Greek and United Kingdom delegations wanted the verb "contribute" to be replaced by one which gave a better indication of the advisory nature of the Working Party, the Commission representative undertook to find a different term.

\(^{(31)}\) Several delegations wanted subparagraph (a) either to be made more specific or deleted.

\(^{(32)}\) Other delegations wanted the wording of subparagraph (a) to be reviewed in order to establish a link with paragraph 2.

\(^{(33)}\) In reply to a query from the United Kingdom delegation, the Commission representative explained that this opinion would be given to the Commission (see paragraph 4).

\(^{(34)}\) Addition requested by the Netherlands delegation.

\(^{(35)}\) The German, French and United Kingdom delegations wanted it made clear that this was a reference purely to measures relating to this Directive and not to human rights in general. The Commission representative agreed to this.
Article 32 (continued)

2. [If this Directive imposes an obligation on Member States and] (36) the Working Party finds that serious divergences are arising between the laws or practices of Member States concerning the protection of persons with regard to the processing of personal data and that those divergences might affect the equivalence of protection in the Community, it shall inform the Commission accordingly.

3. The Working Party may, on its own initiative, make recommendations on all matters relating to the protection of persons with regard to the processing of personal data in the Community.

4. The Working Party's opinions and recommendations shall be, [recorded in its minutes] (37) and forwarded to the Commission; they [may also be] (38) forwarded to the Advisory Committee referred to in Article 34.

(36) Addition requested by the Irish and United Kingdom delegations. The Commission representative was opposed to it.

(37) The Working Party agreed that the possible recording of opinions and recommendations in the minutes would be dealt with in the Data Protection Working Party's rules of procedure (See Article 31(4)); the text in square brackets would therefore be deleted.

(38) Most delegations wanted this provision to be made compulsory and hence "may be" replaced by "shall be". The Commission representative was against this.
Article 32 (continued)

5. The Commission shall inform the Working Party of the action it has taken in response to its opinions and recommendations. It shall do so in a report which shall also be forwarded to the European Parliament and the Council. The report shall be [made public] [public]. (39)

6. The Working Party shall draw up an annual report on [the situation regarding the protection of natural persons with regard to the processing of personal data in the Community] (40) and in third countries, which it shall forward to the Commission, the European Parliament and the Council. The report shall be made public.

(1) Alternative suggested by the United Kingdom and Netherlands delegations. The Commission representative stood by the term "made public".

(40) The German delegation wanted this part of the sentence to be replaced by "the Working Party's activities".
CHAPTER VII

RULE-MAKING POWERS OF THE COMMISSION

Article 33

Exercise of rule-making powers

The Commission shall, in accordance with the procedure laid down in Article 34(2), adopt such technical measures as are necessary to apply this Directive to the specific characteristics of particular sectors or classes of processing, and the measures necessary to ensure the consistent application of this Directive. (41)
Article 34

Advisory Committee

1. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by a representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account. (42)

(42) All the delegations were against the arrangement proposed in this Article. For this particular case, they were unanimously in favour of procedure III(b) as set out in Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission.
FINAL PROVISIONS

Article 35

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [1 July 1994]. (43) When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall set a date after which [processing operations] (44) which began before 1 July 1994 must be compatible with the national provisions adopted pursuant to this Directive; the date set may be no later than 30 June 1997. (45)

3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

(43) This date will be fixed when the Directive is adopted. Most of the delegations thought that Member States would need two or three years to transpose this Directive into national law.

(44) The German delegation wanted "processing operations" replaced by "processing procedures" (Verarbeitungsverfahren).

(45) Several delegations wanted paragraph 2 to be reformulated and to cover manual data and retroactivity in particular. The Commission representative emphasized that having two different systems for old and new processing operations would not be acceptable. He was prepared to agree to a longer transitional period for manual data.
Article 36

The Commission shall report to the Council and the European Parliament at regular intervals on the implementation of this Directive, attaching to its report, if necessary, suitable proposals for amendments. The report shall be made public.

Article 37

This Directive is addressed to the Member States. (46)

(46) The Working Party agreed to the proposed text of Articles 36 and 37 as set out above.
CORRIGENDUM TO OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)
on: 3 and 4 June 1993

No. prev. doc.: 6477/93 ECO 112
No. Com 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

On page 3, footnote 3 should read as follows:

(3) The Danish delegation suggested replacing the text of the second indent by the following:
- "effective powers to ensure compliance with the national provisions adopted pursuant to this Directive, such as ordering the blocking or erasure of data, a temporary or definitive ban on processing or the destruction of data material, or warning or admonishing the controller".

This text was favourably received by most delegations and the Commission representative. The French delegation was against effective powers to intervene, such as powers to order the blocking or erasure of data, a temporary or definitive ban on processing or the destruction of data material.

On page 5, footnote 3, the text in brackets should read as follows: (See Article 16 of Council of Europe Convention 108).
ANNEX

CHAPTER VI
SUPERVISORY AUTHORITY AND WORKING PARTY ON THE
PROTECTION OF INDIVIDUALS WITH REGARD TO THE
PROCESSING OF PERSONAL DATA

Article 30
Supervisory authority

1. Each Member State shall [designate] [provide for] (¹) an [independent] (²) [public authority] [public body] (³) to [supervise] [monitor] (⁴) the protection of personal data. The authority shall be responsible for monitoring the application of the national provisions adopted pursuant to this Directive and for performing all the functions entrusted to it by this Directive. Each Member State may designate more than one supervisory authority.

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¹The German delegation wanted "designate" to be replaced by "provide for" (see 6733/93).
²A large majority of delegations supported the idea of an independent supervisory authority.
³The German delegation, referring to its note (6733/93), was against the proposed text.
⁴The German delegation wanted "public authority" (staatliche Behörde) to be replaced by "public body" (öffentliche Stelle) (see 6733/93). The Commission representative agreed.
⁵The German delegation wanted "supervise" to be replaced by "monitor" (see 6733/93.).
⁶The Commission representative agreed.
Article 30 (continued)

2. Each supervisory authority shall have:

- investigative powers (5) including the right of access to data forming the subject-matter of processing operations covered by this Directive and the right to collect all the information necessary for the performance of its supervisory duties;

- [effective powers of intervention such as ordering the blocking or erasure of data (6), a temporary or definitive ban on processing or the destruction of data material, or warning the controller;] (7)

(5) Replying to a query from the Italian delegation, the Commission representative referred to Article 4 of the proposal and explained that the powers of the supervisory authority should be seen in the context of the law applicable.

(6) The Netherlands delegation was opposed to the power to order the complete erasure of data.

(7) The Danish delegation suggested replacing the text of the second indent by the following:

- "effective powers to ensure compliance with the national provisions adopted pursuant to this Directive, such as ordering the blocking or erasure of data, a temporary or definitive ban on processing or the destruction of data material, or warning or admonishing the controller".

This text was favourably received by most delegations and the Commission representative.
Article 30(2) (continued)

- [the power to bring an action before the courts where it finds that the national provisions implementing this Directive have been infringed.] (8).

3. Each supervisory authority shall [hear] (9) [complaints] (10) (11) lodged by any person concerning the protection of persons with regard to the processing of personal data. The person concerned shall be informed of the outcome of the complaint.

(8) The Belgian, French, Spanish, Greek, Portuguese and Netherlands delegations were in favour of the Commission text.

The German delegation was against giving the supervisory authority the power to bring actions before the courts.

The Italian delegation wanted the text of the third indent to be replaced by a new paragraph as follows:

"Member States shall ensure that infringement of the national provisions implementing this Directive can be brought to court."

As a compromise, the United Kingdom delegation suggested replacing the third indent with the following:

- "the power to take suitable action in response to infringements of the national provisions implementing this Directive, including judicial proceedings where appropriate."

This text was supported by the Danish, Irish, Italian and Netherlands delegations. The Commission representative thought that it was a good basis for discussion.

(9) The United Kingdom delegation wanted the supervisory authority to be allowed to give active consideration to following up complaints. The Commission representative agreed.

(10) The French delegation wanted the word "plainte" in French deleted or replaced by another term.

(11) The Luxembourg delegation wanted the word "checks", which appeared in Article 14(2) of the Directive, to be included alongside "complaints". The Commission representative concurred.
Article 30 (continued)

4. Each supervisory authority shall produce [an annual report] \(^{(12)}\). The report shall be made public [or forwarded to the relevant legislature and regulatory bodies]. \(^{(13)}\)

5. [Member States' authorities shall] \(^{(14)}\) co-operate with one another to the extent necessary for the performance of their supervisory duties *inter alia* by exchanging useful information or [exercising their powers of investigation or intervention.\(^{(15)}\)\(^{(16)}\)

\(^{(12)}\)The German and United Kingdom delegations wanted "an annual report" replaced by "a regular report". This was accepted by the Commission representative.

\(^{(13)}\)Addition requested by the Belgian delegation.

\(^{(14)}\)The Irish delegation wanted the introductory phrase to be replaced by "Member States shall provide that their authorities shall co-operate...".

It also wanted the following new paragraph added:

"An authority shall co-operate with an authority in another Member State under paragraph 5 to the extent that the provision of such co-operation would be compatible with the powers it exercises in the field of data protection." (See Article 6 of Council of Europe Convention 108). The Commission representative agreed to this addition.

\(^{(15)}\)At the request of the Italian delegation, the Commission representative agreed to add the following text to paragraph 3:

"Where complaints or checks relate to processing of which the controller is established in the territory of a Member State other than that of the complainant, the latter may lodge his complaint with the relevant supervisory authority through the intermediary of the supervisory authority of the Member State in which he is resident."

\(^{(16)}\)It should be noted that the final part of paragraph 5 should be aligned on the new text of the second indent of paragraph 2.
6. Member States shall provide that the supervisory authority, its members and its staff are to be subject to a duty of confidence. (17) (18) (19)

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(17) The Danish delegation wanted to add the words "with regard to confidential information". The Commission representative agreed to include this addition in recital No 29.

(18) The Portuguese delegation wanted to add "even after their contract of employment has terminated". The Commission representative agreed to this.

(19) The German delegation wanted the following Article 30a to be added: "Member States may provide in their law that the processor and the controller shall be obliged to appoint an internal data protection controller who shall ensure that the rules adopted pursuant to this Directive are complied with."
Article 31 (20)

Working Party on the Protection of Individuals with regard to the Processing of Personal Data

1. A Working Party on the Protection of Individuals with regard to the Processing of Personal Data, hereinafter referred to as "the Working Party", is hereby set up. The Working Party, which shall have advisory status, shall act independently. It shall be composed of [representatives] (21) of the [supervisory authorities] (22) provided for in Article 30 and a [representative of the Commission.] (23) Where a Member State designates more than one supervisory authority, those authorities shall appoint joint representatives who, within the Working Party, shall have the same rights and [obligations] (24) as the other representatives of the other authorities.

(20) The German delegation entered a general reservation on Article 31 until the text of Article 30 had been settled.
(21) The Working Party wanted the number of representatives to be specified in this Article.

The Commission representative agreed and suggested two representatives per delegation.
(22) A number of delegations wanted representatives to be designated by Member States and not by the supervisory authorities. The Commission representative thought that this might prejudice the Working Party's independence (see Article 32(1)(c)).
(23) Several delegations wanted the role of the Commission in this Working Party to be clarified, particularly in regard to voting rights. They insisted that the Commission should not play such a large role as the representatives of the Member States. Underlining the role of the Commission, the Commission representative was prepared to give some thought to the part which the Commission representative would play in the Working Party. He suggested one vote per Member State and made the further point that provision should be made for representatives of a future Community supervisory authority.
(24) The Luxembourg delegation suggested providing for a representative of the Community institutions "instead of" a Commission representative.

The Italian delegation wanted the word "obligations" replaced by "powers".
Article 31 (continued)

2. The Working Party shall elect its chairman. The chairman's term of office shall be [two years]. (25) His appointment shall be renewable.

3. [The Working Party's secretariat shall be provided by the Commission.] (26)


5. The Working Party shall consider items placed on its agenda by its chairman, either on his own initiative or at the [reasoned] (27) [request] of a representative of the supervisory authorities, or at the request of the Commission [representative]. (28) (29)

(25) The French delegation wanted the term of office of Member States' representatives also to be specified. The Commission representative disagreed, taking the view that this point could be settled in the Working Party's rules of procedure.

(26) Several delegations voiced doubts about the Working Party's task of advising the Commission (see Article 32(1)(c)) should the Commission be made responsible for providing the secretariat for the Working Party.

(27) The Working Party and the Commission representative agreed to delete the word "reasoned".

(28) The German and Spanish delegations wanted paragraph 5 deleted as paragraph 4 already covered these matters. The Commission representative was opposed to this.

(29) The Belgian delegation wanted requests by the Advisory Committee also to be included here (See Article 34). The Commission representative was opposed to this.
Article 32
Tasks of the Working Party

1. The Working Party shall:

(a) [contribute](30) to the uniform application of the national measures taken under this Directive; (31) (32)

(b) give [an opinion](33) on the level of protection in the Community and in third countries;

(c) advise the Commission on any proposed amendment of this Directive, on any additional or specific measures to safeguard the rights and freedoms of natural persons and [if so requested,] (34) on any other proposed [measures affecting such rights and freedoms;] (35)

(d) give an opinion on codes of conduct drawn up at Community level.

(30) As the Greek and United Kingdom delegations wanted the verb "contribute" to be replaced by one which gave a better indication of the advisory nature of the Working Party, the Commission representative undertook to find a different term.

(31) Several delegations wanted subparagraph (a) either to be made more specific or deleted.

(32) Other delegations wanted the wording of subparagraph (a) to be reviewed in order to establish a link with paragraph 2.

(33) In reply to a query from the United Kingdom delegation, the Commission representative explained that this opinion would be given to the Commission (see paragraph 4).

(34) Addition requested by the Netherlands delegation.

(35) The German, French and United Kingdom delegations wanted it made clear that this was a reference purely to measures relating to this Directive and not to human rights in general. The Commission representative agreed to this.
2. [If this Directive imposes an obligation on Member States and] (36) the Working Party finds that serious divergences are arising between the laws or practices of Member States concerning the protection of persons with regard to the processing of personal data and that those divergences might affect the equivalence of protection in the Community, it shall inform the Commission accordingly.

3. The Working Party may, on its own initiative, make recommendations on all matters relating to the protection of persons with regard to the processing of personal data in the Community.

4. The Working Party's opinions and recommendations shall be, [recorded in its minutes] (37) and forwarded to the Commission; they [may also be] (38) forwarded to the Advisory Committee referred to in Article 34.

(36) Addition requested by the Irish and United Kingdom delegations. The Commission representative was opposed to it.

(37) The Working Party agreed that the possible recording of opinions and recommendations in the minutes would be dealt with in the Data Protection Working Party's rules of procedure (See Article 31(4)); the text in square brackets would therefore be deleted.

(38) Most delegations wanted this provision to be made compulsory and hence "may be" replaced by "shall be". The Commission representative was against this.
Article 32 (continued)

5. The Commission shall inform the Working Party of the action it has taken in response to its opinions and recommendations. It shall do so in a report which shall also be forwarded to the European Parliament and the Council. The report shall be [made public] [public]. \(^{39}\)

6. The Working Party shall draw up an annual report on [the situation regarding the protection of natural persons with regard to the processing of personal data in the Community] \(^{40}\) and in third countries, which it shall forward to the Commission, the European Parliament and the Council. The report shall be made public.

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(1) Alternative suggested by the United Kingdom and Netherlands delegations. The Commission representative stood by the term “made public”.

\(^{40}\) The German delegation wanted this part of the sentence to be replaced by “the Working Party's activities”.

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CHAPTER VII

RULE-MAKING POWERS OF THE COMMISSION

Article 33

Exercise of rule-making powers

The Commission shall, in accordance with the procedure laid down in Article 34(2), adopt such technical measures as are necessary to apply this Directive to the specific characteristics of particular sectors or classes of processing, and the measures necessary to ensure the consistent application of this Directive. (41)

(41) A large majority of delegations wanted the extent of the Commission's powers to be specified. Several of them asked for an exhaustive list which clearly indicated the limits of the Commission's powers.

Referring to Article 145 of the EEC Treaty, which states that the Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down, the Commission representative pointed out that the text of this Article was in accordance with the Council Decision of 13 July 1987 on committee procedure. He therefore stood by the text as proposed.
Article 34

Advisory Committee

1. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by a representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account. (42)

(42) All the delegations were against the arrangement proposed in this Article. For this particular case, they were unanimously in favour of procedure III(b) as set out in Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission.
FINAL PROVISIONS

Article 35

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [1 July 1994.] \(^{(43)}\) When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall set a date after which [processing operations] \(^{(44)}\) which began before 1 July 1994 must be compatible with the national provisions adopted pursuant to this Directive; the date set may be no later than 30 June 1997. \(^{(45)}\)

3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

\(^{(43)}\)This date will be fixed when the Directive is adopted.

Most of the delegations thought that Member States would need two or three years to transpose this Directive into national law.

\(^{(44)}\)The German delegation wanted "processing operations" replaced by "processing procedures" (Verarbeitungsverfahren).

\(^{(45)}\)Several delegations wanted paragraph 2 to be reformulated and to cover manual data and retroactivity in particular. The Commission representative emphasized that having two different systems for old and new processing operations would not be acceptable. He was prepared to agree to a longer transitional period for manual data.
Article 36

The Commission shall report to the Council and the European Parliament at regular intervals on the implementation of this Directive, attaching to its report, if necessary, suitable proposals for amendments. The report shall be made public.

Article 37

This Directive is addressed to the Member States. (46) THE COUNCIL (OR. f)

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&

(46) The Working Party agreed to the proposed text of Articles 36 and 37 as set out above.