TRANSMISSION NOTE

from the United Kingdom delegation

to Working Party on Economic Questions (data protection)

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

Delegations will find attached a note from the United Kingdom delegation concerning Article 3, paragraph 2 of the above mentioned proposal.
NOTE FROM THE DELEGATION OF THE UNITED KINGDOM

APPLICATION OF THE DIRECTIVE TO VARIOUS SECTORS

Article 3(2)

Article 3 sets out the scope of the draft Directive. Among other things it provides, in paragraph 2, that

"This Directive shall not apply:
- to the processing of data in the course of an activity which falls outside the scope of Community law."

The Presidency's proposed compromise text would amend the above formulation by the addition of the word "personal" before "data".

Problem of interpretation

2. In the view of the United Kingdom, the above formulation is unclear because the parameters of Community law are not defined and are constantly changing. Moreover, the word "activity" is itself open to a range of interpretations. It could, for example, be taken to mean everything that is done in a particular sector which is outside Community competence (e.g. the national security sector). On the other hand, the word also bears a much narrower meaning, and could be taken to refer to one specific action undertaken in a particular sector.

3. On either interpretation of "activity", the formulation is unsatisfactory. In the first case, it fails to exempt from the Directive things which are done outside the sector in question (in the example above, the national security sector) but which nevertheless have a direct connection with that sector. For
nevertheless have a direct connection with that sector. For example, a bank might process data that contains evidence of a terrorist activity. On the broad reading, since banks are clearly not in the national security sector, the processing would not be exempt from the Directive.

4. The second interpretation would fail to exempt from the Directive specific actions which fall within the scope of Community law but which are carried out within a sector over which the Community does not have competence. An example might be the collection and exchange by the security and intelligence agencies of information on sanctions breaking or on the alleged export of chemical weapons precursors.

Scope of concern

5. At the meeting of the Working Party on 15 and 16 July a number of delegations expressed concern that the Directive might have unforeseen and unintended consequences for the work of the police. The United Kingdom shares the concern about the implications of the Directive for law enforcement. It has similar concern about national security, defence and national economic well-being.

Proposed solution

6. The United Kingdom believes that the solution is to redraft the first sub-paragraph of article 3.2 to make clear beyond any doubt that the Directive does not apply to processing relating to the matters mentioned in paragraph 5.

7. The United Kingdom accordingly proposes that the first sub-paragraph of article 3.2 should be reworded as follows:

"This Directive shall not apply to the processing of personal data:
- for any purposes which fall outside the scope of community law; without prejudice to the foregoing, it shall not in any event apply to processing which
relates to, or otherwise affects, State security, public safety, the monetary interests of the State (including the assessment or collection of public revenues) or law enforcement;"

8. This formulation broadly follows article 9.2.a of the Council of Europe Convention 108 which sets out those matters in respect of which Parties to the Convention may derogate from its provisions.