OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)
on: 2 and 3 September 1993

No. prev. doc.: 7695/93 ECO 173
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

1. At its meeting on 2 and 3 September 1993, the Working Party on Economic Questions (Data Protection) (1) continued its second reading of the above amended proposal for a Directive on the basis of a compromise text submitted by the Presidency (see 7695/93 ECO 173).

The outcome of the discussions on Articles 2(d) to (f) and 3(1) is set out in the Annex hereto.

(1) The Greek delegation was not represented.
Article 2 (continued)

(d) "controller" means any natural or legal person, public authority, agency or other body which determines the purposes (2) of the processing of personal data.

[where the purposes of processing are determined by national or Community laws or regulations, it will be for the national or Community law concerned to name the controller or the specific criteria for the nomination thereof. (3)]

(e) "processor" means any natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller (4);

(2) DK/D/IRL/L/F: wanted a reference to several criteria for determining the controller and proposed the wording of Convention 108 for the purpose.

I: in the interests of a consolidated text, proposed adding the words "and detailed arrangements".

UK: open on the question of adopting one or more criteria.

Cion/B/NL/P/E: could support neither of these two proposals, principally on grounds of legal security, in order to avoid the complications and the dilution of responsibilities which could result from a multiplicity of criteria.

(3) Compromise text proposed by the Presidency, leaving open the possibility of replacing it by a joint statement by the Council and the Commission for entry in the Council minutes.

(4) The Working Party agreed to review this text when it came to discuss Article 17a. The Commission wished to make clear that the concept of "processor" covered any contractor working on the instructions of the controller, irrespective of whether or not he was directly subordinate to him.
(f) "third party" means any natural or legal person, public authority, agency or other body other than the data subject, the controller, the processor and the persons who, under the [direct] (5) authority of the controller or the processor, are authorized to process the data.

[(f)bis "recipient" means any natural or legal person, public authority, agency or other body to whom data are disclosed, whether a third party or not (6).]

(g) "the data subject's consent" means any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed (7).

[Withdrawal of consent by the data subject shall be without retroactive effect.] (8)

(5) Delegations were divided on whether
   – the word in square brackets should be deleted,
   – it should be replaced by the words "direct or indirect",
   – or it should be replaced by the word "hierarchical".

(6) The Working Party agreed to resume examination of this subparagraph in the light of the various provisions which use the terminology it is intended to define.

(7) IRL/UK: scrutiny reservation.

(8) The Working Party agreed to re-examine this subparagraph on the basis of an alternative text to be proposed by the Commission.
Article 3

Scope

1. This Directive shall apply to the wholly or partly automated processing of personal data [and to processing other than by automatic means] (9) of personal data which forms part of a file or is intended to form part of a file.

2. (10) This Directive shall not apply to the personal data processing

   – for an activity which falls outside the scope of Community law;

   – by a natural person for a purely personal or household activity.

(9) B/D/F/I/L/NL and Cion: agreement on the text in square brackets.
   DK/E/IRL/P/UK: could agree to the inclusion of manual files only on a voluntary or optional basis, or possibly:
   – for DK and P: should the Directive provide for a longer transitional period;
   – for UK: where it is left to the discretion of the Member States concerned whether to include all or part of the manual files.

(10) The Working Party agreed to resume examination of this paragraph at its meeting on Thursday, 30 September and Friday, 1 October 1993.