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from : Netherlands delegation

to : Working Party on Economic Questions (Protection of Personal Data)

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 an alternative proposal for the text of Articles 3 to 6 of this Directive.
Alternative drafting proposals
by the Netherlands delegation

The second indent of Article 3(2) should read as follows:

– to the processing of personal data in the course of a purely private and personal activity (1).

The following should be added to Article 3(2):

- to the processing of personal data for the purpose of their inclusion in books or other publications, as well as the cataloguing thereof;
- to the processing of personal data for the purpose of their inclusion in a public register which is established by law (2).

Article 4 should be amended as follows:

paragraph 2 should become paragraph 3, and the following new paragraph should be added:

2. By way of derogation from paragraph 1 each Member State shall, in the case of personal data collected in its territory (3) and as regards the exercise of the powers of the

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(1) The aim of the proposal is to exclude data processing for private or personal purposes from the scope of the Directive. By deleting the words "by a natural person", it is no longer relevant whether the processing is carried out by a natural person or a legal person. It is not the nature of the data-holder, but the purpose for which the processing is carried out which should be the decisive factor here. Consequently, internal business reports are outside the scope of the Directive. By providing that what is involved must be an activity of an exclusively private or personal nature, data processing for strictly personal use in the context of professional activities (e.g. an electronic diary) is also excluded from the scope of the Directive.

(2) There is little point in declaring that the provisions of the Directive apply to such forms of data processing. Books and other publications and public registers are after all as a rule in the public domain. No rules need therefore be laid down concerning them. Since their content is public, the data subject may dispute any illegal action before the courts. Furthermore, a right of rectification as provided for in the Directive could give rise to considerable practical problems.

(3) By way of derogation from the principle that the law applicable depends on where the holder is established (paragraph 1), a new paragraph 2 is proposed in which, as regards the collection of data, the place of collection is considered the decisive factor. Anyone collecting data in a given Member State must comply with that Member States law. It would be undesirable if the law of the holder's place of establishment were to determine under what conditions data could be collected in (for instance) other Member States.
supervisory authority, apply the national provisions adopted for implementing this Directive (†).

Article 6 should be amended as follows:

(d) accurate and, where necessary kept up to date; reasonable steps must be taken to ensure that data (‡) which are inaccurate or incomplete having regard to the purposes for which they were collected are erased or rectified;

The following new Article 6a should be added after Article 6:

Article 6a (§)

On the basis of a national legal provision, Member States may allow derogations from Article 6 which are necessary for:

(a) protecting State security;
(b) public safety;
(c) the State's monetary interests;
(d) suppressing criminal offences, or
(e) protecting the data subject or the rights and freedoms of others.

(†) It would be desirable if, by way of derogation from paragraph 1, the (monitoring) powers of the supervisory authority could also be determined by the national law of the Member State where the data are processed.

(‡) Data-holders cannot be expected to take all possible measures to guarantee that inaccurate or incomplete data are erased. Factors such as cost, the nature of the data concerned, technological progress, etc. are also relevant in determining what measures the holder may reasonably be expected to take. For this reason it is proposed that the phrase "every step" be replaced by "reasonable steps".

(§) This Article draws on Article 9(2) of the Data Processing Convention. Entitlement to process data for a purpose which, strictly speaking, is incompatible with that for which the data were collected is necessary in the case of tasks such as the detection of punishable offences, maintenance of law and order, etc. The criteria involved here are the same as those referred to in Article 14 of the Directive. They cannot be included in Section V of the Directive because that section concerns the right of access to data. For the sake of good order it would seem desirable to refer to them alongside the main rule (Article 6).