THE COUNCIL

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TRANSLATION OF LETTER

from: Presidency

dated: 20 September 1993

to: Council General Secretariat

No. prev. doc.: 8706/93 ECO 221
No. Cion prop.: 9400/92 ECO 221 - COM(92) 422 final SYN 287

Subject: Protection of individuals with regard to the processing of personal data.
Recommendation for a Council Decision on the opening of negotiations with a view to the
accession of the European Communities to Council of Europe Convention No 108 for the
Protection of Individuals with regard to the Automatic Processing of Personal Data
– Progress report

Further to the meeting on 14 September 1993 of the ad hoc Working Party tasked with studying the above
draft Recommendation for a Council Decision, the Presidency has drawn up a report on proceedings
(see Annex).

I would be grateful if you would ensure that the report is circulated to delegations in all the official
Community languages in preparation for the meeting on 30 September and 1 October 1993.

(Complimentary close).

(s.) Ph. de Schoutheete de Tervarent
Permanent Representative

Encl.: 1 note
Presidency note

Subject: Recommendation for a Council Decision on the opening of negotiations with a view to the accession of the European Communities to the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data

- Progress report

On 18 July 1990 the Commission submitted to the Council a Recommendation for a Council Decision on the opening of negotiations with a view to the accession of the European Communities to the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data.

On 14 September 1993 the Recommendation was given a first reading by the Working Party of Experts examining the proposal for a Directive on the protection of individuals with regard to the processing of personal data.

The Working Party as a whole thought it important to concentrate on the proposal for a Directive and to speed up the search for a common position on that text.

Misgivings were expressed about the European Communities' acceding to Convention No 108 of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data. The main doubts, which were raised by various delegations, related to the distribution of powers between the European Communities and the Member States and how this might affect the operation of the Consultative Committee under the Convention.

The explanations given by the Council Legal Service shed considerable light on these issues:

- case-law stemming from the AETR Judgment (Judgment 22/70 of 31 March 1971) implied that Member States' powers would be gradually transferred to the Communities as and when the latter came to exercise those powers;

- areas falling within Community competence were not fixed in time because Community law was thus evolving;

- adoption of the Directive would inevitably result in a transfer of powers, whether or not the Communities acceded to Convention No 108.

The Working Party asked the Commission to produce a working paper addressing a number of issues, including the criteria for determining Community competence and the possible nature and form of accession; the Commission agreed to submit such a paper shortly in order to explain its Recommendation to the Council.
In the light of that paper the Working Party would consider whether the Commission should be given an exploratory mandate to seek solutions which might enable the Communities to accede to the Convention.

In the meantime, the Commission and the Member States would continue to take part in any discussions which the Committee under the Convention held on this topic.

The Working Party also decided that at the Committee's next meeting the Presidency and the Member States would affirm the Communities' view that the level of data protection achieved under the Community directive could in no event be lower than that guaranteed by Convention No 108 and that, for the rest, the process of internal co-ordination was continuing on the problem of possible accession.