EUROPEAN COMMUNITIES
THE COUNCIL

Brussels, 18 October 1993 (26.10)
(OR. f)

9099/93

RESTREINT

ECO 241

OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)
on: 30 September and 1 October 1993

No. prev. doc.: 8798/93 ECO 226
No. Cion prop.: 9400/92 ECO 221 COM(92) 422 final

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 30 September and 1 October 1993 the Working Party on Economic Questions (Data Protection) gave a second reading to Articles 5, 6, 7 and 9 of the above amended proposal for a Directive on the basis of a compromise text submitted by the Presidency (see 7695/93 ECO 173 for Articles 5 and 6, 7695/93 ADD 1 for Article 7 and 7695/93 ADD 2 for Article 9).

The outcome of the proceedings on those Articles is given in the Annex hereto.
Chapter

General rules on the lawfulness of the processing of personal data

Article 5 (1)

Member States shall, [within the limits of the provisions of this chapter.] (2) determine more precisely the conditions under which the processing of personal data is lawful.

(1) The French, Greek, Luxembourg and Portuguese delegations and the Commission representative could accept this compromise text proposed by the Presidency.

(2) The German delegation, with the support of the Danish, Italian, Netherlands and United Kingdom delegations, thought the Member States should be allowed to lay down stricter provisions provided they did not inhibit the free movement of data between Member States. In this context, the German delegation suggested adding a second paragraph worded as follows: "Without prejudice to the provisions of this Chapter, national law may lay down stricter provisions authorizing the processing of personal data provided the free movement of such data between Member States is not inhibited."

Objections from the other delegations and the Commission representative on this point, since the objective of harmonizing legislation would not be achieved and since distortions of competition might arise if one Member State were allowed to exceed the ceiling or floor laid down in this Directive.

As a compromise solution, the Presidency suggested inserting a recital 8a worded as follows: "Whereas, given the equivalent protection resulting from the approximation of national laws, the Member States will no longer be able to inhibit the free movement between them of personal data on grounds relating to protection of the rights and freedoms of individuals, and in particular the right to privacy; whereas a margin of manoeuvre is left to the Member States, which within the limits set by this Directive, may specify in their national legislation the general conditions governing the lawfulness of data processing; whereas the free movement of personal data within the Community must not result in the application of the rules for the protection of individuals guaranteed by the Member States under this Directive being set aside;".
SECTION I

PRINCIPLES RELATING TO DATA QUALITY

Article 6

1. Member States shall provide that personal data must be:

   (a) processed \(^{(3)}\) fairly and lawfully;

   (b) \([\text{collected}] \(^{(4)}\) for specified, [explicit] \(^{(5)}\) and legitimate purposes and further processed in a way \([\text{not incompatible}] \(^{(6)}\) with those purposes;

   (c) adequate, relevant and not excessive in relation to the purposes for which they are processed \(^{(7)}\);

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\(^{(3)}\) Request by the German, Danish, Irish, Portuguese and United Kingdom delegations that data should also be collected fairly and lawfully in accordance with Article 5(a) of Council of Europe Convention 108. Objections from the Belgian, Spanish, French, Greek, Italian and Luxembourg delegations and from the Commission representative, who could accept the text submitted by the Presidency and stressed that the word "processed" covered collection as well.

\(^{(4)}\) Five delegations (German, Danish, Irish, Netherlands and United Kingdom) wanted "stored" substituted for "collected" as in Article 5(b) of Council of Europe Convention 108. Seven delegations and the Commission representative favoured the term "collected" and the Italian delegation suggested that use subsequent to collection also be covered where it was compatible with the stated purposes.

\(^{(5)}\) The five delegations referred to in footnote 2 wanted this word deleted (see Article 5(b) of Convention 108).

\(^{(6)}\) It was agreed that the word "compatible" should be replaced by "not incompatible" in accordance with Article 5(b) of Convention 108. In this context, the Presidency suggested wording (b) as follows: "(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;".

\(^{(7)}\) It was agreed that the text of subparagraph (c) should be aligned on that of subparagraph (b). The Presidency suggested the following wording: "(c) adequate, relevant and not excessive in relation to the purposes for which they are collected or for which they are further processed."
(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete [having regard to the purposes for which they were collected] (8) are erased or rectified;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for [the purposes in view] (9). [Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use]. (10)

2. It shall be for the controller to ensure that paragraph 1 is complied with.

(8) Reservation from the Danish delegation on this phrase. The Presidency suggested the following wording:
"(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;"

(9) Reservation from the Danish delegation on this phrase (see footnote 1 above). This delegation wanted the text of Article 5(e) of Convention 108 to be used.

(10) Several delegations wanted this sentence inserted in a different context, for instance with respect to derogations. It was agreed that this question would be re-examined at a later stage. In this connection, the Presidency suggested the following wording:
"(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. [Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.]"
SECTION II

PRINCIPLES RELATING TO THE GROUNDS FOR PROCESSING DATA

Article 7 (1)

Member States shall provide that personal data may be processed only if:

(a) the data subject has given his [explicit] (12) consent [unambiguously] (13);

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

or

(c) [processing is necessary for compliance with an obligation imposed by national law] (14) or by Community law;

or

(11) Reservation from the Belgian delegation on this Article.  
The Danish delegation reserved its position.  
The Irish delegation favoured deletion of the article.

(12) The Belgian, French, Greek, Luxembourg and Portuguese delegations wanted the explicit consent of the person concerned.  
Opposition from the Danish, German, Spanish, Italian, Irish and United Kingdom delegations on this point.

(13) Compromise suggestion by the Presidency.

(14) So as to cover also obligations resulting from international conventions, the Portuguese delegation suggested amending the first part of the phrase as follows:  
"(if) processing is the result of legal obligations".  
Support from the Netherlands and United Kingdom delegations on this point with the United Kingdom delegation suggesting the following wording:  
"processing is necessary for compliance with the obligations imposed by national and international law".  
The Danish and Spanish delegations wanted "national law" replaced by "national legislation".  
In this context, the Presidency suggested the following text:  
"(c) processing is necessary for compliance with a legal obligation to which the controller is subject;"
(d) processing is necessary in order to protect the [vital] \(^{(15)}\) interests of the data subject;

or

(e) processing is necessary for the performance of a task carried out [in the exercise of official authority] \(^{(16)}\) vested in the controller or in a third party to whom the data are disclosed;

\(^{(15)}\) Request from the Danish and United Kingdom delegations that the word "vital" be deleted.

Request from the Portuguese delegation for the inclusion of derogation clauses regarding the concept of "vital".

The Belgian, German, French, Greek, Italian and Netherlands delegations and the Commission representative wanted this term to be retained and suggested making it clear in a recital that "vital" did not just cover the idea of life or death but had a wider scope.

The Commission representative suggested the following recital to expand on the idea of "vital interests":

"16a Whereas the processing of personal data must be regarded as lawful where it is carried out in order to protect an interest which is essential for the data subject's life."

\(^{(16)}\) It was agreed that reference should be added to the public interest so that subparagraph (e) would read as follows:

"(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;"

In response to a query from the United Kingdom delegation, the Presidency suggested the following recital:

"16b Whereas it is for the Member States to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public administration or a person governed by private law such as a professional association;".
(f) processing is necessary for the purposes of the legitimate interests (17) pursued by the controller] or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the fundamental [rights] and freedoms of the data subject, particularly the right to privacy.

(17) Several delegations favoured the text proposed by the Presidency. Other delegations thought that "interests" and "rights" were not comparable. Consequently, these delegations entered scrutiny reservations on this subparagraph and the Netherlands delegation suggested the following wording: "processing is necessary ...... disclosed, except where, for the protection of privacy, such interests are overridden by the interests of the data subject".

The Commission representative could accept the text proposed by the Presidency and stressed that this subparagraph covered an area which Member States would have to clarify when transposing the Directive into national law.
In this context, the Presidency suggested the following wording:
"(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests of the data subject which require protection under this Directive."
Article 9

Processing of personal data and freedom of expression

Insofar as they are necessary to reconcile the right to privacy with the rules governing freedom of expression, Member States shall prescribe exemptions from the provisions of this Chapter and of Chapter IV for the processing of personal data carried out solely for journalistic purposes or the purposes of artistic or literary creation (18).

(18) Examination of this Article will continue at the next Working Party meeting. The Presidency suggested including the following statements in the Council minutes:

Statements for the minutes
1. The Council and the Commission consider that reconciling the right to privacy with freedom of expression should not lead Member States to prescribe exemptions from Article 17 on the security of processing.

2. In its regular reports on the implementation of this Directive, the Commission will pay close attention to the application by Member States of Article 9 with a view to submitting any necessary proposals.
CONSEIL DES REPRESENTANTS PERMANENTS

tenue à Bruxelles, le jeudi 14 octobre 1993

Point 11 de l'ordre du jour:

Proposition modifiée de directive du Conseil relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation des données

- Etat des travaux : Note de la Présidence
docs 8381/2/93 ECO 206 REV 2
  8798/93 ECO 226