TRANSMISSION NOTE

from the Danish, German, Irish and United Kingdom delegations
to Working Party on Economic Questions (data protection)

no. Com 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 joint paper from the Danish, German, Irish and United Kingdom delegations proposing some amendments to the above mentioned proposal.
DRAFT DIRECTIVE ON DATA PROTECTION

PROPOSALS FOR AMENDMENT MADE BY DENMARK, GERMANY, IRELAND AND THE UNITED KINGDOM

Denmark, Germany, Ireland and the United Kingdom believe that the Directive needs to be simplified. Their general position is that they are in favour of changes which give more discretion to Member States. This is consistent with the principle of subsidiarity as set out in the Edinburgh guidelines. They also believe that many of the provisions of the Directive need clarification.

The following proposals are put forward having regard to these two objectives. They reflect only those points on which all four countries are in full agreement. In this sense, they represent a minimum agenda for change. Each of the countries may put forward additional proposals in its own name, or support proposals made by other countries, the Presidency or the Commission. And other points may be raised later by the four countries collectively.

ARTICLE 1

Add new paragraph 3:

"Specific legal provisions of the Community as well as intergovernmental agreements concluded among the Member States which are in accordance with Community law take precedence over the provisions of this Directive."

ARTICLE 2

(a) In paragraph 1, delete "collection".

(b) Delete paragraph (f) bis. Substitute reference to "third party to whom data are disclosed" for references to "recipient" elsewhere in the text.

ARTICLE 3

Rewrite the first sub-paragraph of paragraph 2 as follows:

"The Directive shall not apply to the collection and 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 collection and processing which relate to, or otherwise affect, State security, public safety, the monetary interests of the State or law enforcement."

9345/93  EN  - 2 -
ARTICLE 5
Replace the second paragraph of the Directive text with:

"National law may provide stricter requirements than those provided for by this chapter, under which the processing of personal data is permissible, provided that the free flow of personal data between Member States is not restricted."

ARTICLE 6
(a) Insert "obtained and" at the start of paragraph 1(a)
(b) Insert "reasonable" before "step" in paragraph 1(d)
(c) Add new paragraph 2 as follows:

"2. Member States may lay down exemptions from paragraph 1 by national law, where such exemptions constitute a necessary measure in a democratic society in the interests of:

(a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences; or

(b) protecting the data subject or the rights and freedoms of others."

(d) Existing paragraph 2 becomes paragraph 3.

ARTICLE 8
(a) Rewrite paragraph 1 as follows:

"1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious beliefs, philosophical or ethical persuasion or trade union membership, and of personal data concerning health or sexual life or criminal convictions. Member States may extend this prohibition to other categories of sensitive personal data.

(b) Rewrite paragraph 3 as follows:

"Subject to the provision of suitable safeguards, Member States may lay down further exemptions from the provisions in paragraph 1, either by national law or by decision of the supervisory authority."

(c) Delete paragraph 4.

(d) In paragraph 5, substitute "may" for "shall.

ARTICLE 10
Delete whole article.
ARTICLE 11
(a) After paragraph 1(b) add:
"Member States may provide that, on request, the data subject is also informed of the following:"
(b) In paragraph 2
- add "regulatory," before "supervision";
- substitute "an authority designated by the Member State" for "a public authority".

ARTICLE 12
(a) At the beginning of paragraph 1 add "when data are collected otherwise than from the data subject,"
(b) Delete sub-paragraphs 1(d) and 1(e).
(c) Rewrite the first indent of paragraph 2 as follows:
"the data subject already knows or can reasonably be expected to know that the data are to be or may be disclosed to a third party;"
(d) In the second indent of paragraph 2, delete "which lays down an exemption from the obligation to inform".

ARTICLE 13
Redraft paragraph 4 to read:
"where paragraph 3 applies, and where the legitimate interest of the data subject requires it, for any third party to whom data have been disclosed to be notified of the rectification, erasure or blocking, insofar as this is reasonably possible."

ARTICLE 14
(a) In paragraph 1(a) substitute "State" for "national"
(b) In paragraph 1(c) substitute "law enforcement" for "criminal proceedings".
(c) In paragraph 1(e) substitute "the monetary interests of the state" for the present wording.
(d) In paragraph 1(f):
- add "regulatory," before "monitoring";
- delete "a public authority" and substitute "an authority designated by the Member State".
(e) Add new sub-paragraph in paragraph 1 as follows:
"(h) protecting the data subject."

(f) Move paragraph (2) to article 30.

ARTICLE 15

(a) Delete paragraphs 1 and 2.

(b) Substitute for paragraph 3 as follows:

"Member States shall provide that a data subject shall have the right:

(i) to obtain, on request and free of charge, the blocking of personal data intended for processing for purposes of marketing by mail; or

(ii) to be informed before personal data are disclosed to third parties for the first time for purposes of marketing by mail, and thereafter to enjoy the right as in (i)."

ARTICLE 17

In paragraph 1, insert "and the cost of taking the measures" after "risks involved".

ARTICLE 17A

In paragraph 1, add "take reasonable steps to" before "ensure".

ARTICLE 18

(a) Rewrite paragraph 1 as follows:

"1. Member States shall provide that, in respect of specified categories of processing operation, the controller or his representative, if any, must notify the supervisory authority referred to in Article 30 if carrying out any automatic processing operation intended to serve a single purpose or several related purposes. Member States shall specify the categories of processing operation to be notified."

(b) In paragraph 2:

- after "specify" add "by national law or by decision of the supervisory authority".

- delete sub-paragraphs (c) and (g)

(c) Delete paragraphs 3 to 6.

ARTICLE 19

Delete whole article.
ARTICLE 23

Clarify that this article creates "at fault" rather than "strict" liability.

ARTICLE 30

Rewrite article 30 (1) and (2) as follows:

"1. Member States shall provide for one or more public bodies to be responsible for monitoring the protection of personal data. Such bodies shall be independent of the entity to be monitored. They shall be responsible for monitoring the application of the national provisions adopted pursuant to this Directive and for performing all the functions entrusted to them by this Directive."

2. Each such body shall have:

(a) investigative powers, including the right of access to data forming the subject of processing operations covered by this Directive and to collect all the information necessary for the performance of its supervisory duties; and

(b) effective powers of intervention, such as the power to order the blocking or erasure of data, a temporary or definitive ban on processing or the destruction of data material; and/or the right to lodge a complaint with the controller and, in the event of non-compliance, to bring the matter before Parliament or the courts."