OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data protection)

on: 28 and 29 October 1993

No. prev. doc.: 9099/93 ECO 241
No. Cion prop.: 9400/92 ECO 221 - COM(92) 422 final

Subject: Amended Council proposal on the protection of the individuals with regard to the processing of personal data and on the free movement of such data

At its meeting on 28 and 29 October the Working Party examined Articles 9, 3 and 8 in succession.

The outcome of its proceedings is summarized below.

1. Article 9: Processing of personal data and freedom of expression

   Following the Working Party's latest discussions (¹), Article 9 now reads as follows:

   Examination on the basis of 9099/93.

(¹) Examination on the basis of 9099/93.
"Member States shall provide for exemptions from the provisions of this Chapter, Chapter IV [and Chapter VI] for the processing of personal data carried out solely for journalistic purposes [or the purpose of artistic or literary creation] which prove necessary to reconcile the right to privacy with the rules governing freedom of expression."

This text is also accompanied by two statements for the Council minutes suggested by the Presidency, given in a footnote to page 8 of 9099/93.

However, the new text still gives rise to three sets of problems:

– the DK and D delegations wanted a provision offering more flexibility and therefore entered reservations; for their part the NL and UK delegations stood by their scrutiny reservations;

– four delegations (F/LUX/I and P) were unable to agree to a reference to Chapter VI at this stage;

– the D/E and GR delegations were against the reference to artistic or literary creation; meanwhile four other delegations (LUX/IRL/I and NL) had misgivings as to such a reference.

2. Article 3: Scope

– Paragraph 2: processing excluded from the scope
  (see proposal submitted by the Presidency on page 10 of 7695/93)
(a) **Areas coming under Titles V and VI of the Treaty on European Union**

The D/DK/IRL and UK delegations confirmed their joint request on page 2 of 9345/93 that data on a number of specific sectors (State security, public safety, currency and law enforcement) should not be covered.

The F delegation wanted to exclude processing for the purposes of public safety, defence or State security and processing carried out for activity relating to areas covered by Titles V and VI of the Treaty on European Union. (The French delegation would be submitting a written text for the next meeting).

These requests met with the following reaction:

– NL was favourably inclined;

– I was open-minded but wanted to know if delegations would be ready to apply on a voluntary basis the principles of data protection to the areas they wished to exclude (by means of a Resolution);

– misgivings by the B/GR/E and P delegations and the COM, which thought these exclusions too broad.

(b) **Purely personal or household activity**

Agreement of principle in the Working Party that processing in the course of a purely personal or household activity should not be included.
The I delegation wanted it stipulated in a statement for the minutes that the expression "purely personal or household activity" should not mean that the processing of personal data by a natural person was exempt when the data was forwarded not just to one or more persons, but to an indeterminate number of people.

Eight delegations supported the principle of a statement along these lines, three were against it (D/UK and IRL). One abstained (DK).

c) Data for public registers

The NL suggestion on page 2 of 8706/93 that such data should not be included gave rise to the following views:

– B/GR/IRL (²) and UK were favourably inclined;

– DK/D/LUX/I/F and P were opposed, but nevertheless agreed that exemptions could be made for such data;

– E abstained.

(²) In this context IRL restated the proposal it had made in March 1991, which is set out below for the record.

Article 3.2 - add
"- Personal data required by national law to be made available by the data controller to the public."

Article 3.2, first indent
Ireland agrees that "defence" be specified in the text as an additional matter which falls outside Community competence.
(d) **Data for books or other publications**

The Working Party was inclined to consider that such data should be included, on the understanding that the arrangements for them could be examined in the context of Article 9.

(e) **Manual files**

The Working Party agreed that it would consider whether or not to include manual files at its next meeting, on the basis of the Commission departments' presentation of the problem.

(f) **Data of a social nature**

The D delegation explained to the Working Party in great detail why it thought it necessary to exclude such data from the scope of this Directive (while admitting that they should be dealt with under a specific directive).

However, its request was not supported by any of the other delegations (only UK showed some sympathy but entered a scrutiny reservation) and most delegations remained unconvinced of the need for this measure.

However, most delegations did concede that there would probably need to be special arrangements for data of a social nature and so the Presidency suggested at the close of the discussion that the Working Party's discussions on this point should tend in this direction and called on the D delegation (which upheld its reservation on this point for the time being) to submit to the Working Party a list of the needs it saw within the framework of this Directive.
3. Article 8

In the course of a preliminary round of comments on whether medical data should be subject to the general arrangements for sensitive data or to specific arrangements, delegations expressed the following points of view:

– in favour of specific arrangements: B/ES/LUX/GR/F and P;

– preference for the general arrangements: I;

– no definitive position as yet: DK/D/IRL and UK.