OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)

on: 1 and 2 December 1993

A. Amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data (1)

1. Manual files

The Working Party discussed the question of including manual files within the scope of the Directive (Article 3) on the basis of the ideas put forward by the Commission with a view to taking account of the costs of implementing the Directive, costs which had been emphasized by several delegations.

Most delegations were in favour of including such files and were prepared, for the sake of reaching a consensus, to accept that processing performed after the entry into force of the Directive on data recorded before entry into force should be subject to specific transitional arrangements with regard to the application of Articles 6, 7 and 8. Those arrangements would consist of an extension of the transitional period provided for in Article 35(2) from 3 to 8 years (though a shorter time-scale could be considered for sensitive data such as medical records), during which period the

(1) 9400/92 ECO 221.
manual data could have to be gradually brought into line with the said Articles as and when the data were used.

However, three delegations (DK/IRL and UK) remained opposed to any such inclusion and in any event wanted the concept of a "file" contained in Article 3(2) to be examined in greater detail.

At the end of the discussion, it was agreed that the Commission would submit a working document to the Working Party spelling out:

– the concept of a file (in response to the wishes of DK/IRL and UK);

– the concept of the use of data;

– the effects which applying the transitional arrangements would have on the free movement of data (in reply to a question from UK).

2. Derogation from the general ban on processing sensitive data: Article 8

The Working Party continued examining these derogations on the basis of the drafting proposals submitted by the Presidency: 7695/93 ADD 3.

(i) Paragraph 2(b) (\textsuperscript{2})

The Working Party agreed to delete the word "regular" in the phrase "persons who have regular contact with the foundation".

\footnote{\textsuperscript{2}} It should be noted that in the English version the phrase "ne poursuivant pas de but lucratif" should be translated as "non-profit making".
As far as the exemption from the obligation to notify the processing referred to in (b) was concerned the Presidency proposed, in order to take account of the comments submitted by certain delegations, that the decision be left to the discretion of the Member States and that a provision to that effect be included in Article 19.

At this stage, the majority of delegations maintained scrutiny reservations on this solution.

In the context of this discussion the I delegation wanted a distinction to be drawn between sensitive data and particularly sensitive data; the processing of the latter should be subject to prior authorization by the supervisory authority. The Commission representative replied that the concerns of this delegation were already covered as far as (a) was concerned; on the subject of (b) it was agreed to introduce an option into Article 18(4) allowing Member States to subject this derogation to prior authorization by the supervisory authority.

In addition, in order to meet the concerns of the D delegation, which thought the present wording of (b) gave it too large a scope, the Commission representative undertook to submit to the Working Party a proposal for a recital reiterating the data quality criteria referred to in Article 6.

(ii) (c)

Although they felt that the Presidency text represented progress in comparison with the Commission text, four delegations (F/I/P/L) nevertheless wanted the derogation provided for to be subject to more restrictive conditions. F in particular proposed making the processing referred to in (c) subject to authorization by the supervisory authority and adding the word "exclusively".

Five delegations (D/DK/NL/UK and IRL), which on the contrary saw the text as too restrictive, stated that they would give their final verdicts on it in the light
of the outcome of the discussions on Article 8(3).

(iii) Paragraph 3a: Processing of medical data

The Working Party adopted the Presidency text as a basis for further discussion, on the understanding that the introductory phrase would have to be re-worded so as to lay down as a principle the conditional authorization of the processing of medical data and not the prohibition of their processing subject to derogation.

However, at this stage the text still raised the following questions:

– (a) (\(^3\))

Certain delegations (in particular F) wanted to supplement this provision by inserting a list referring to the purpose of the processing. Such purposes should include in particular:

– the dispensing of care;
– prevention;
– research (in conjunction with Article 9a);
– management and planning (desirability of broadening the derogation to include non-professionals subject to ethical rules, hospital staff being a particular case in point);
– employment contract;
– checks on absenteeism (cf. suggestion from the German delegation).

\(^3\) See proposal by F, delegation, 10242/93.
(b)

Two questions were raised:

- Should the derogation be restricted solely to cases in which processing is imposed on public-health grounds or can it be extended to processing imposed on grounds of public interest?
- Is there a need for provision, in certain cases, for the data subject to be able to exercise a right of opposition?

**B. Accession of the European Community to Council of Europe Convention 108**

On the morning of 1 December, the Working Party discussed this question on the basis of a Commission working document prepared at the Working Party's request, which had been confirmed by Coreper on 14 October 1993 (cf. 8798/93 and 9186/93 EXT 1).

It emerged from the discussion that most delegations still thought that priority should be given to work on the Community Directive and that actual accession negotiations should not be considered until decisive progress had been made on the Directive.

It was therefore concluded that the Commission would pursue its contacts in Strasbourg, within the competent bodies of Convention 108, in consultation with the Member States on the spot or in Brussels.

The Working Party noted that the Commission and the Member States needed to be careful about adopting positions in this context so as not to prejudice future accession negotiations and that if difficulties arose in this connection the Commission would
ask the Council to give a ruling on authorization for the Commission to open negotiations.