NOTE

from : German delegation

No. Cion prop.: 9400/92 ECO 221

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 the German delegation's proposals regarding Article 8 of the abovementioned proposal.
1. Insertion of the following in Chapter II Section 3:

Article 8
Data on employed persons and social data

1. The processing of employed persons’ personal data may be carried out in the Member States by employers or by processors working on their behalf or by persons representing the employee where

   (a) the data subject has given prior consent to the processing of such data, except where the legislation of the Member State or the supervisory authority referred to in Article 30 stipulates that such consent has no validity,

   (b) processing is permitted on the basis of national law - including collective agreements - or of decisions of the courts or of the supervisory authority referred to in Article 30.

2. The processing of personal data for social purposes by entities involved in public administrations and by persons under a legal obligation to disclose such data to them may be carried out in the Member States only where

   (a) the data subject has given prior consent to processing or

   (b) processing is permitted on the basis of the national law of the Member State concerned or of decision of its courts or of the supervisory authority referred to in Article 30, and this arrangement adheres at least to the principles laid down in Articles 6 and 7.

3. Finally, paragraphs 1 and 2 shall also apply where data referred to in Article...(other sensitive data) or Article....(health data) are concerned.
2. Article 1 is amended as follows:

(a) In paragraph 2 the stop is replaced by a semi-colon and the following is added:

"Restrictions or prohibitions shall however be permitted where the level of protection in the Member State from which data on employed persons and social data are transmitted is consistent with the Directive but is higher than the level of protection of such data in the receiving State."

(b) The following paragraph 3 is added:

"Special Community legislation and intergovernmental agreements concluded between Member States within the framework of such legislation for the protection of personal data shall take precedence over the provisions of this Directive."

3. The following paragraph 2a shall be inserted in Article 26:

"Member States may restrict or prohibit the transfer of data on employed persons and social data to a third country where the level of protection in the Member State from which the data concerned are transmitted is consistent with the Directive but is higher than the level of protection of such data in the third country concerned."

4. The following Article 30a is inserted after Article 30:

"Member States may stipulate in their national legislation that the controller of the file and the processor must appoint a person responsible for internal data protection to ensure that the legal provisions adopted pursuant to this Directive and any other data protection provisions are complied with."