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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 annexed hereto drafting proposals concerning the abovementioned Directive, put forward as a compromise by the Greek delegation for the Working Party's meeting on 20 and 21 January 1994.
Proposals submitted by the Presidency
Compromise text

Section IV
Information to be given to the data subject

Article 10
Information on the existence of a processing operation

Paragraphs 1 and 2 deleted (*)

(*) It is proposed that this Article be deleted so as to simplify the text, and that the provisions seeking to ensure the transparency of processing operations from the point of view of all individuals be transferred to Article 21. With this in mind it is proposed to modify Article 21 as follows. It is also suggested that the Article be examined in its modified form at a later date when all of the provisions regarding notification are being considered (Section VIII - Notification).

"Article 21
Publicity for processing (1)
1...
Member States may adopt other additional measures to ensure that these processing operations are made public (2)

2. Member States shall provide that controllers ensure, in respect of processing exempted from notification, that the information listed in Article 18(2)(a) to (f) be made public in an appropriate fashion." (3)

Text of the amended Commission proposal

Article 10

The existence of a processing operation

1. Member States shall ensure that any person is entitled, on request, to know of the existence of a processing operation, its purposes, the categories of data concerned, any third parties or categories of third party to whom the data are to be disclosed, and the name and address of the controller and of his representative, if any.

2. Member States may lay down exemptions from paragraph 1 in the circumstances referred to in Article 14(1).
Comments on the compromise text (Article 10)

(1) Change of title to take account of the provisions that are intended to be added to this Article as a replacement for Article 10 of the Commission proposal.

(2) Addition to respond to the concerns of delegations which, in relation to Article 10, wanted a wider choice of methods to ensure the transparency of processing operations from the point of view of all individuals (10293/92, footnote 10).

(3) Addition to fill the hole left by the deletion of Article 10. It seeks to ensure, by methods which the Member State can choose, the transparency from the point of view of all individuals of processing operations which are not notified to the supervisory authority.
Compromise text

Article 11

Information when data are collected from the data subject

1. Member States shall provide that the controller must ensure that a data subject from whom data relating to himself (1) are collected be aware (2) at least of the following:

   (a) the purposes of the processing for which the data are intended, and
   (b) the obligatory or voluntary nature of any reply (3), and
   (c) the consequences for him if he fails to reply (3), and
   (d) the recipients or categories of recipients of the data, and
   (e) the existence of a right of access to, and rectification of, the data relating to him (6), and
   (f) the identity (4) of the controller and of his representative, if any.

2. Delete (5)

Text of the amended Commission proposal

Article 11

Collection of data
from the data subject

1. Member States shall provide that the controller must ensure that a data subject from whom data are collected be informed at least of the following:

   (a) the purposes of the processing for which the data are intended;
   (b) the obligatory or voluntary nature of any reply to the questions to which answers are sought;
   (c) the consequences for him if he fails to reply;
   (d) the recipients or categories of recipients of the data;
   (e) the existence of a right of access to and rectification of the data relating to him, and
   (f) the name and address of the controller and of his representative, if any.

2. Paragraph 1 shall not apply to the collection of data where to inform the data subject would hinder or prevent the exercise of or the co-operation with the supervision and verification functions of a public authority or the maintenance of public order.
Comments on the compromise text (Article 11)

(1) Addition responding to the concern expressed by the United Kingdom delegation (10293/92, footnote 15).

(2) It is proposed that in the English text the phrase "be informed" be replaced by "be aware" and in the German text the corresponding phrase be replaced by "Kenntnis hat", so as to bring the texts in line with the French version. The other language versions should also be brought in line if necessary.

(3) Deletion of the final part of the sentence so as to avoid the ambiguity of the term "questions", which refers to a particular form of data collection.

(4) "Identity" replaces "name and address", so as to introduce a certain flexibility as to the necessary content, in response to the concerns of several delegations.

(5) It is proposed to transfer the exemptions from the obligation to inform to Article 14.

(6) Several delegations nonetheless expressed the concern that the minimum obligations to provide information laid down in this Article be reduced (10293/92).
Compromise text

Article 12

Information given to the data subject when data are recorded (1)

1. Member States shall provide that the controller must ensure (2) (3), when undertaking the recording of personal data (4), that the data subject be aware (5) at least of the following:
   (a) the identity (6) of the controller and of his representative, if any, and
   (b) the purposes of the processing, and
   (c) the categories of data concerned, and
   (d) the recipients, and
   (e) the existence of rights of access, rectification and objection. (13)

2. Paragraph 1 shall not apply where:
   – the data subject has already been informed, notably at the time when the data were collected from him, of the information in paragraph 1(a) to (e) (7), or
   – deleted (8)
   – deleted (9)
   – (10) the provision of information to the data subject proves impossible or involves a disproportionate effort (11). In these cases Member States shall provide appropriate safeguards (12).

Text of the amended Commission proposal

Article 12

Disclosure to a third party

1. Member States shall provide that in the cases referred to in Articles 7(b), (c), (e) and (f), the controller must satisfy himself that at the appropriate time, and no later than the time when the data are first disclosed to a third party, the data subject is informed of this disclosure and of the following information at least:
   (a) the name and address of the controller and of his representative, if any;
   (b) the purposes of the processing;
   (c) the categories of data concerned;
   (d) the recipients or categories of recipients, and
   (e) the existence of rights of access, rectification and objection.

2. Paragraph 1 shall not apply where:
   – the data subject has already been informed that the data are to be or may be disclosed to a third party;
   – disclosure to a third party is required by a legal provision which lays down an exemption from the obligation to inform, or
   – the data are disclosed to a third party for one of the reasons listed in Article 14(1).

3. Where the provision of information to the data subject proves impossible or involves a disproportionate effort, or runs counter to the overriding legitimate interests of the controller or similar interests of a third party, Member States may empower the supervisory authority to authorize an exemption, laying down any suitable safeguards.
Comments on the compromise text (Article 12)

Article 12

(1) Change of title to take account of the request from certain delegations (10293/92, footnote 27) that this provision should also apply at the time of recording data (to cover cases where data are collected from a third party or where data originate from the controller himself).

(2) Drafting alteration to bring the text in line with the wording used in Article 11.

(3) Deletion of the reference to Article 7, which is not useful. This change takes account of the observations of L/F (abovementioned document, footnote 25).

(4) Alteration to make it clear that the obligation to inform should be satisfied at the time data are recorded, in response to the concerns expressed by several delegations and in particular by D/NL/P (abovementioned document, footnote 27).

(5) Replacing the term "est informée" by "soit informée" in the French text, "is informed" by "be aware" in the English text, and bringing the other language versions into line, so as to ensure the necessary flexibility to meet the concerns expressed about the administrative burden of this provision (abovementioned document, footnote 28).

(6) Alignment of the wording on Article 11.

(7) Drafting change to take account of the obligation relating to the recording of data, and a clarification in response to the concerns of several delegations, which is intended to show that the provisions of Articles 11 and 12 are not cumulative.

(8) Deletion of the exemption for a disclosure required by law, which featured in the initial version of the proposed Directive, was retained in the amended proposal, but which is now redundant because of the reference to the exemptions in Article 14.

(9) It is proposed to move to Article 14 the exemptions related to that Article which the Commission envisaged.

(10) Inclusion of the provision proposed by the Commission in Article 12(3).

(11) Deletion of the reference to the overriding interests of the controller which, in reality, refer to cases covered by Article 14(1)(g).

(12) Simplification of the text to take account of the concern of D (abovementioned document, footnote 33).

(13) See footnote 6 relating to Article 11.
Compromise text

Article 13

Right of access

Member States shall guarantee for every data subject (1) the right to apply freely to the controller so as to (2)

1. (3) obtain at reasonable intervals and without excessive delay or expense:
   - (4) information as to whether or not data relating to him are processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed (5);
   - (6) communication to him in an intelligible form of the data undergoing processing (7) and of any available information as to (8) their source;
   - (9) knowledge of the reasoning applied in any automatic data processing operations relating to him (10);

(Deletion of the second subparagraph of paragraph 1 in the Commission proposal relating to medical data) (11)

2. (Deleted) (12)

3. obtain the rectification, erasure or blocking of data, the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data (13);

4. have third parties to whom the data have been disclosed notified of any rectification, erasure or blocking carried out in compliance with paragraph 3, when this is necessary in the legitimate interest of the data subject (14).

5. (Deleted) (15).

Text of the Commission proposal

Article 13

Right of access

Member States shall grant all data subjects the following rights:

1. to obtain, on request, at reasonable intervals and without excessive delay or expense, confirmation of the existence of personal data relating to him, communication to him of such data in an intelligible form, an indication of their source, and general information on their use.

Member States may provide that the right of access to medical data may be exercised only through a medical practitioner;

2. to refuse any demand by a third party that he should exercise his right of access in order to communicate the data in question to that third party or to another party, unless the third party's request is founded on national or Community law;

3. to obtain, as the case may be, the rectification of inaccurate or incomplete data or the erasure or blocking of such data if they have been processed in breach of this Directive.
Comments on the compromise text (Article 13)

(1) Drafting change.
(1') Drafting change taking up the idea of paragraph 2 (which thus becomes superfluous) in the way suggested by 1 (10293/92, footnote 45). This change retains the idea that the information will be provided by the controller at the request of the data subject, as envisaged by the Commission proposal.
(1") Restructuring of the presentation of subject access rights and extending the means through which these rights are exercised (as provided in paragraph 1 of the Commission proposal) to the right to know the reasoning applied in a processing operation.
(1') Inclusion of the provision in paragraph 1 of the Commission proposal relating to knowledge of a processing operation.
(1") Drafting changes and additional specifications in response to the concerns of D (abovementioned document, footnotes 38 and 39).
(1') Inclusion of the provision in paragraph 1 of the Commission proposal, relating to the right of access to data.
(1") Drafting change.
(1') Additional specification in response to the concerns of several delegations (abovementioned document, footnote 42).
(1") Inclusion of the provision in paragraph 5 of the Commission proposal.
(1") Replacement of the expression "the outcome of which is invoked against him" by "relating to him", in response to the request of several delegations (abovementioned document, footnote 51).
(1") It is proposed to delete this provision, which is redundant bearing in mind the wider provision that the Commission has accepted to include in Article 14 establishing an exemption from the right of access in the interest of the data subject.
(1") Deletion of paragraph 2 of the Commission proposal and inclusion of the idea in the introductory sentence to paragraph 1 (see footnote 5 in the comments on the proposed text for Article 11).
(1") Draft changes in response to the observations in footnote 47 in the abovementioned document.
(1") Drafting change and additional specification about the circumstances in which this right can be exercised, in response to the concerns of D/DK/IRL/NL/UK (10293/92, footnote 50, and 9345/93).
(1") This provision is included in the third indent of paragraph 1.
Compromise text

Section Va (1)

Article 14

Exemptions and restrictions

1. Member States may adopt legislative measures (2) to restrict the scope of the obligations and rights provided for in Articles 6(1) (3), 11, 12(1), 13 and 21 (4) when such a restriction constitutes a necessary measure to safeguard:
   (a) national security;
   (b) deleted (5);
   (c) the investigation, establishment (6) and prosecution of criminal offences;
   (d) public security (7);
   (e) a paramount economic and financial interest of a Member State or of the European Union (8);
   (f) a monitoring or inspection function performed by a public authority or an activity undertaken to assist the performance of such a function;
   (g) the protection of the data subject (9);
   (h) the protection of a right or freedom of another person (10).

   Member States shall restrict the scope of the obligations and rights provided for in the Articles of this Directive referred to in the previous subparagraph where they are obliged to do so by a provision of Community law (11).

2. (Deleted) (12)

[3. Member States may limit the right of access of the data subject when the data are kept only temporarily in personal form and are intended to be processed only for the purpose of creating statistics (13) of such a type that the data subjects can no longer be reasonably identified.] (14)

Text of the amended Commission proposal

Article 14

Exceptions to the right of access

1. Unless obliged to do so by a provision of Community law, Member States may restrict the exercise of the rights provided for in Article 10(1) and in point 1 of Article 13 where such restriction is necessary to safeguard:
   (a) national security;
   (b) defence;
   (c) criminal proceedings;
   (d) public safety;
   (e) a duly established paramount economic and financial interest of a Member State or of the Community;
   (f) a monitoring or inspection function performed by a public authority or an activity undertaken to assist the performance of such a function;
   (g) an equivalent right of another person and the rights and freedoms of others.

2. In the circumstances described in paragraph 1, the supervisory authority shall be empowered to carry out the necessary checks, at the data subject's request, so as to verify the lawfulness of the processing within the meaning of this Directive, respecting the interests to be protected in accordance with paragraph 1.

3. Member States may limit the right of access of the person concerned to data temporarily kept in personal form and which is intended to serve statistical ends of such a type that the persons concerned can no longer be reasonably identified.
Comments on the compromise text (Article 14)

(1) Creation of a new section and alteration of the title of Article 14 to take account of the increased scope of the Article (see footnotes 4 and 5 in this document and footnote 1 in 4152/93).

(2) Additional specification to take account of the observations of several delegations (abovementioned document, footnote 3).

(3) Extension of the exemptions to include Article 6 in response to the concerns of several delegations that Member States should adopt measures which apply more generally (abovementioned document, footnote 1).

(4) Transfer to Article 14 of all the exemptions allowed by the Commission proposal in Articles 11, 12 and 21, and extension of the exemptions to include the whole of Article 13, in response to the concerns of several delegations (abovementioned document, footnote 5).

(5) Deletion because it is redundant: defence is part and parcel of national security (subparagraph (a)).

(6) Additions agreed to by almost all delegations. The prevention of crime is covered by public security (subparagraph (d)) (abovementioned document, footnote 8).

(7) Change of wording to bring the text in line with the wording of Articles 36 and 56 of the Treaty on European Union (only affects the English text).

(8) Drafting change.

(9) Addition to respond to the concerns of several delegations (abovementioned document, footnotes 1 and 4).

(10) Alteration supported by the majority of delegations (abovementioned document, footnote 13).

(11) Redraft of the obligation included in paragraph 1 of the Commission proposal.

(12) As requested by several delegations at the time of the first reading (abovementioned document, footnote 17), it is proposed to include the content of this paragraph in Article 30, given the direct link with the powers of the supervisory authority. It is also proposed to extend these powers to cases coming under paragraph 3. With this in mind it is proposed that the first two subparagraphs of Article 30(3) be amended as follows:

"3. Each supervisory authority shall hear complaints or, particularly when Article 14 is being applied, requests for verification lodged by any person concerning the lawfulness of the processing within the meaning of this Directive.

The supervisory authority shall inform the person concerned of the outcome of the complaint, and of the results of the verification, which will have been undertaken with due respect to the interests safeguarded by Article 14, if this Article is being applied."

(13) Drafting changes to clarify the text of the proposal and an additional specification to meet the concerns of NL (abovementioned document, footnote 20).

(14) It is proposed to look at this provision at a later date, when considering the other provisions relating to statistics proposed by the Belgian Presidency (7695/93 ADD 3).
Compromise text

Section VI
The data subject's right to object

Article 15 (1)

Member States shall grant the data subject the right to:

(a) object at any time on legitimate grounds to the processing of data relating to him, except where otherwise provided by national legislation (2). Where there is a justified objection, the controller shall cease the processing.

(b) (3) obtain on request and free of charge, the blocking (4) of personal data which the controller anticipates being processed for the purposes of marketing by mail (5) or, if this right is not exercised, to be informed before personal data are disclosed to third parties or used on their behalf for the purposes of marketing by mail, and to be expressly offered the right given above before such disclosures or uses.

Text of the amended Commission proposal

Article 15

Objection on legitimate grounds

1. Member States shall grant the data subject the right to object at any time on legitimate grounds to the processing of data relating to him.

2. Where there is a justified objection, the controller shall cease the processing.

3. The controller must ensure that the opportunity to have data erased without cost has been expressly offered to a data subject before personal data are disclosed to third parties or used on their behalf for the purposes of marketing by mail.
Comments on the compromise text (Article 15)

Article 15

(1) It is proposed to restructure the Article so as to simplify the text, taking account of the desire expressed by several delegations to redraft paragraph 3 of the Commission proposal in terms of a right for the data subject (see footnote 3).

(2) Addition in response to the concerns of F (4152/93, footnote 28).

(3) Changes to the provisions in paragraph 3 of the Commission proposal, so as to present the provision in the form of a right of the data subject, responding to the concern of several delegations and taking account of their suggestions (4152/93, footnote 30 and 9345/93 as regards Article 15(3)).

(4) Replacement of "erasure" by "blocking" in response to the concerns of D/DK/IRL/NL/UK (abovementioned documents).

(5) Drafting change which does not affect the English text.