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CORRIGENDUM TO THE OUTCOME OF PROCEEDINGS

of : Working Party on Economic Questions (Data Protection)
on : 20 and 21 January 1994

No. prev. doc.: 11254/93 ECO 326
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

The following footnote should be added at the bottom of page 1 (relating to the first sentence of the report):

"(1) Presenting the method of work which he intended to follow for the Working Party's discussions, the Chairman explained that it would consist in clarifying the main problems raised by the proposal for a Directive."

On page 1, the first sentence of point 2 should read as follows:

"Following a detailed discussion of its compromise text the Presidency submitted a redraft of its proposal, set out below, which as far as possible reflected delegations' concerns and which would be submitted to the Permanent Representatives Committee."
On page 3, the first sentence of point 3 should read as follows:

"As with the previous Article, following a thorough examination of its compromise the Presidency submitted a new text, set out below, which would be submitted to the Permanent Representatives Committee.".
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At the request of the Irish delegation, the phrase "IRL also wanted the reference to the controller’s representative to be deleted" has been deleted from the second last indent on page 2.
OUTCOME OF PROCEEDINGS

of : Working Party on Economic Questions (Data Protection)
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the processing of personal data and on the free movement of such data

At its meeting on 20 and 21 January 1994 the Working Party concentrated on finalizing Articles 10,
11, 12, 13 and 14 of the above proposal, on the basis of the compromise text submitted by the
Greek Presidency in 4078/94. The outcome of its discussions is summarized below.

1. Article 10 (4078/94, Annex, page 3)

A consensus was reached on the Presidency solution whereby this Article would be deleted and
the transparency and publicity of processing operations would be dealt with in another part of
the Directive.

2. Article 11 (4078/94, page 5)

Following a detailed discussion of its compromise text the Presidency submitted a redraft of its
proposal, set out below, which as far as possible reflected delegations' concerns.
**Article 11**

**Information when data are collected from the data subject**

Member States shall provide that the controller or his representative must provide to a data subject from whom data relating to himself are collected at least the following information, except where it is already in his possession:

(a) the identity of the controller and of his representative if any,

(b) the purposes of the processing for which the data are intended,

(c) the recipients or categories of recipients of the data, and

(d) the obligatory or voluntary nature of any reply, as well as the possible consequences for him if he fails to reply.

NB: Former paragraph 2 deleted."

Nevertheless, the new text continued to elicit concern in relation to the following points:

– **DK, IRL, NL and UK** maintained scrutiny reservations at this stage; *(IRL and UK in particular continued to query the need to retain this Article);*

– **with regard to the first sentence, IRL, NL and UK** expressed a preference for a wording closer to that originally proposed by the Greek Presidency (*"a data subject can be expected to be aware at least of the following”*); **IRL** also wanted the reference to the controller's representative to be deleted;

– with regard to the **list of information**, **D, DK, NL and UK** considered that information concerning the recipients of data (letter (c)) and the possible
consequences of failure to reply (second part of (d)) should be provided only at the request of the data subject; B, E, F, I, L and P regretted the disappearance of letter (e) concerning the existence of a right of access to data, arguing that such information should at least be communicated at the request of the data subject. Note also that D suggested that "recipient" be replaced by "third party".

3. Article 12 (4078/94, page 7)

As with the previous Article, following a thorough examination of its compromise the Presidency submitted a new text, set out below:

"Article 12
Information given to the data subject when data are recorded or disclosed to a third party

1. Member States shall provide that the controller or his representative must provide to the data subject at the time when undertaking the recording of personal data, or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed, at least the following information, except where it is already in his possession:

(a) the identity of the controller and of his representative if any,

(b) the purposes of the processing,

(c) the recipients or categories of recipients, and

(d) the categories of data concerned."
2. Paragraph 1 shall not apply where the provision of information to the data subject proves impossible or involves a disproportionate effort. In these cases Member States shall provide appropriate safeguards."

Note however that:

– paragraph 1 elicited the same scrutiny reservations or comments as Article 11 (although D can agree to the heading while B is not happy with the wording of it);

– paragraph 2 met with reservations from D and I, the latter regretting that public data or data kept on the basis of a legal obligation were not taken into account.

4. Article 13 (4078/94, page 9)

The Presidency text was considered by a majority of delegations to be better than the text of the amended proposal but nevertheless elicited the following comments:

– First paragraph

UK thought it would be more appropriate to use the words "without restriction" rather than "freely".

– First indent of paragraph 1

DK and IRL proposed that only the first part of this indent be retained (whether or not data are processed).

– Second indent of paragraph 1

I and P expressed the fear that this indent as worded (notably the use of the expression "available information") might allow of fraudulent practice.
– **Third indent of paragraph 1**

A majority of delegations wished to retain the text of the amended proposal (paragraph 5); some delegations (DK, E, NL and UK) also suggested establishing a link between this provision and paragraph 1 of Article 16.

– **As regards the deletion of the second subparagraph of paragraph 1 in the amended proposal**, the Chairman confirmed, for F in particular, his intention to return to the question of access to medical data, for instance in a recital.

– **Paragraph 3**

IRL suggested a time limit for the application of this provision.

– **Paragraph 4**

D, DK, IRL and UK maintained their preference for the text they had submitted last October (9345/93); the Working Party accordingly envisaged the adoption, on the initiative of I and F, of a provision similar to that in Article 12(2).

– **Note also that I considers that this Article does not bring out sufficiently clearly the principle that data subjects should be informed of the existence of processing.**

5. **Article 14 (4078/94, page 11)**

The Presidency text, which a majority of delegations welcomed as an improvement on the proposal, gave rise to the following comments:

– **paragraph 1**

It was broadly agreed that the scope of this Article should be extended to include the provisions of Article 6(1) (I, however, wanted this paragraph limited to letters (a) and (b)).

– **letter (b)**

Most delegations wanted this letter, concerning defence, to be retained.

– **letter (c)**

In the English version, "establishment" should be replaced by "detection".
– letter (d)

UK had queried the scope of the term "public security" and it was explained that this meant police matters and that this concept was in any case enshrined in the EC Treaty (Articles 36 and 56) and had been elucidated by the case law of the European Court.

– letter (e)

B and F maintained scrutiny reservations on this letter.

To the expression "economic and financial interest" the addition of "monetary" (UK) and "budgetary" (F) were proposed; L was doubtful about the adjective "paramount" ("impératif").

In addition it was proposed that a statement be entered in the Council minutes confirming that this provision did in fact cover taxation (IRL request).

– letter (f)

To meet the requirements of UK it was proposed that this letter be reworded to encompass the activities of private persons participating, even on an occasional basis, in public authority functions; B and I maintained reservations on this provision. (B however suggested that the second part of this provision be incorporated in (c)).

– letter (g)

UK suggested making it clear that this was "the protection of the interests of the data subject".

– letter (h)

There was a consensus that this should be the protection of "the rights or freedoms ..... "; D, DK and I were not happy with the expression "rights of others". (DK and IRL suggested "other party"; D advocated "third party").

– paragraph 3

A broad consensus favoured examining this provision at a later date, in particular when Article 9a proposed by the Belgian Presidency was examined. Note here that IRL and P asked that the requirements of scientific research be taken into account.
I wanted it made clear in a recital that this Article dealt only with the scope of Community law; the Commission and this delegation were invited to examine this problem together.