WORKING DOCUMENT

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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:

(a) the final version of Articles 13 and 14

(b) proposals from the Presidency for Articles 18, 19, 21 and 30.
Article 13
Right of Access

Member States shall guarantee for every data subject the right to apply without constraint to the controller so as to

1. obtain at reasonable intervals and without excessive delay or expense:
   
   – 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;

   – communication to him in an intelligible form of the data undergoing processing and of any available information (1) as to their source;

   – knowledge of the logic involved in any automatic data processing operations with which he is confronted particularly in the case of the automated decisions of Article 16, paragraph 1;

2. 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;

3. have third parties to whom the data have been disclosed notified of any rectification, erasure or blocking carried out in compliance with paragraph 3, if it does not prove

(1) The availability of information will be subjected in judicial control dealt with on the basis of general law principles on fraud in transactions.
impossible or involve a disproportionate effort.

**Article 14**

**Exemptions and restrictions**

Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in Articles 6(1), 11, 12(1), 13 and 21 when such a restriction constitutes a necessary measure to safeguard

(a) national security;
(b) defence;
(c) public security;
(d) the investigation, detection and prosecution of criminal offences;
(e) an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters;
(f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority;
(g) the protection of the interests of the data subject;
(h) the protection of an equivalent right or freedom of another person.

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.
2. Member States may limit the right of access of the data subject when the data are kept only temporarily in personal form and intended to be processed only for the purpose of creating statistics, particularly for purposes of scientific research, of such a type that the data subjects can no longer be reasonably identified.
Section VIII
Notification
Article 18
Obligation to notify the supervisory authority

1. Member States shall provide that the controller or his representative, if any, must notify the supervisory authority referred to in Article 30 before carrying out any wholly or partly automatic processing operation or set of such operations intended to serve a single purpose or several related purposes.

2. Member States shall provide for exemptions from the obligation to notify

(a) in the case of processing operations referred to in Article 8(2)(b),

(b) in the case of certain categories of processing operation which are not likely adversely to affect the rights and freedoms of data subjects.

For the purposes of the first subparagraph, Member States shall take measures specifying for each category of processing operation to which an exemption applies, the purposes of the processing, the data or categories of data undergoing processing, the category or categories of data subject, the recipients or categories of recipient to whom the data are to be disclosed and the length of time the data are to be stored.

3. Member States may stipulate that non-automatic processing operations involving personal data shall be notified.
Article 19
Examination of notified processing operations

1. Member States shall specify the information to be given in the notification. It shall include at least:

   (a) the name and address of the controller and of his representative, if any;

   (b) the purpose or purposes of the processing;

   (c) the category or categories of data subject;

   (d) a description of the data or of the categories of data to which the processing relates;

   (e) the recipients or categories of recipient to whom the data might be disclosed;

   (f) proposed transfers of data from or to States of the Union or third countries;

   (g) a description allowing an assessment to be made of the appropriateness of the measures taken pursuant to Article 17 to ensure security of processing.

2. Member States shall specify the conditions under which any change affecting the information referred to in paragraph 2 must be notified to the supervisory authority.

3. The supervisory authority shall examine the lawfulness of the processing operations within a period laid down by the Member States in accordance with Article 30.
Section VIII
Publicizing of processing operations

Article 21

1. Member States shall take measures to ensure that processing operations are publicized.

2. Member States shall provide that a register of processing operations notified in accordance with Article 18 shall be kept by the supervisory authority.

   The register shall contain at least the information listed in Article 19(1)(a) to (f).

   The register may be inspected by any person.

3. Member States shall ensure that controllers give adequate publicity to the information referred to in Article 19(1)(a) to (f) regarding processing operations exempted from notification so that all may be aware of it.
Add the following to the second indent of Article 30(2):

"..... delivering opinions before processing operations are carried out and ensuring appropriate publication of such opinions.".
1. Under the Commission proposal for an EC data protection Directive, German courts and authorities responsible for public registers would find themselves facing obligations and restrictions that would sometimes be impossible to comply with, making it difficult for such registers to function properly. In Germany, properly functioning public registers are an essential pre-requisite for the orderly conduct of law and the economy. The German delegation would like to draw attention to this problem; it feels that the Directive should make special provision for public registers.

2. The Federal Ministry of Justice alone is responsible for a number of public registers that fall within the scope of the Directive, and would become difficult to operate if they had to comply with the obligations to inform and the restrictions on disclosure abroad that are laid down in the Directive. They include the land register, the ship register, the civil aircraft register, the commercial register, the co-operative societies register, the marriage property register, the patent register, the register of patented designs and the trade marks register.

3. The example of the commercial register shows what problems can arise with a number of the provisions in the Commission proposal:
(a) As the law stands at present the commercial register contains the name, first name, occupation (status) and place of residence (not: address) of natural persons acting as traders, company members, managers, board members, etc. In future legislation it is intended to include dates of birth in the commercial register as well, in order to be able to identify registered persons more easily, although the extent of the requirement is as yet undecided.

At present the relevant district courts still keep commercial registers in the form of manual records. Preparations for the conversion to automatic data processing are under way; the requisite changes to domestic law have already been brought in.

(b) With a few exceptions, entries in the commercial register are made public in their entirety and are also open to inspection by everyone, without any legitimate interest needing to be proved. Unrestricted right of inspection covers not only the data entered in the register itself, but also the documents submitted to the commercial register (e.g. lists of members of limited companies, contracts, articles of association, balance sheets, etc.).

The very public nature of the data in the register is part of the commercial register's purpose, i.e. to reveal facts and legal relationships relating to registered traders, partnerships and limited companies etc. that are significant for the conduct of law and trade. To a large extent such disclosure is also required by Community law, e.g. for limited companies, by the first Council Directive of 9 March 1968 co-ordinating company law (68/151/EEC) (OJ No L 65, p. 8) [Special edition, 1968 (I) p. 41].
In practice, very frequent use is made of the right of inspection. The large courts of registration receive up to 250 applications daily, and in some cases as many as 700 applications on one day.

4. The following provisions of the Commission proposal are not compatible with the working requirements of the commercial register or, mutatis mutandis, with the other registers listed above:

   (a) Article 6(d)

   Public registers, e.g. the land register, may, on legal grounds, have to contain data that are "inaccurate" in purely objective terms; only legally permitted measures may be used to rectify them. This being the case, it should be made clear that the word "accurate" is to be taken in the sense of "legitimate" and that instead of "every step" only "every reasonable step" must be taken. Agreement was reached on this at the meeting of the Council Working Party on 30 September and 1 October 1993.

   (b) Article 7(f)

   As regards the processing of data from public registers, the initial Commission proposal (9400/92) is to be preferred to the Belgian Presidency’s proposal (7695/93 ADD 1).

   Placing a duty on notaries to weigh their own legitimate interests against the fundamental rights and freedoms of the data subject in individual cases would
create unacceptable legal uncertainty in respect of storage and processing.

In cases concerning a deed of gift, an inheritance agreement or a contract for a property transaction, notaries or lawyers may take data on persons not party to the contract from the land register or, in a case concerning articles of association, from the commercial register; they must be able to store these data in order to work on their legal cases, unless this would run counter to a data subject’s interests which have to be protected, i.e., subject to the law in force.

(c) Article 10(1)

The requirement in Article 10(1) that everyone must be informed, on request, of the third parties or categories of third party to whom the data are to be disclosed, would create too much work for the courts of registration; it should be left to Member States to determine how they intend to satisfy the requirement for transparency.

(d) Article 12(2)

It is not feasible for registration authorities and courts to inform data subjects when data in public registers is disclosed to third parties, nor is there any objective justification for doing so. Under the Greek Presidency’s proposal of 21 January 1994, the data subject could be informed either on storage or on first disclosure. This would not apply if the data subject was already aware of the information listed in paragraph 1(a) to (d). If the data subject has applied for registration, this must be presumed to be the case. The Presidency proposal of 21 January 1994 for Article 12(2) is therefore accepted.
(e) Article 13(4)

It is not possible for registration authorities and courts to notify third parties of any rectification, erasure, etc., as no records are kept of those inspecting the registers. Paragraph 4 should therefore specify "have third parties .... notified, as far as possible, of any rectification".

(f) Article 17(3)

The third paragraph is worded ambiguously ("within the limits of the lawfulness of the processing"); at any rate, with on-line access registration authorities and courts cannot guarantee the legality of processing by on-line users. They can only check access entitlement. Accordingly, it can only be required that "access takes place within the limits of the lawfulness of the terms of access".

(g) Article 18

The notification obligation should not apply where, as is the case with public registers, the authority or court holding the data collection is determined by law. It should be specified that the provision is not applicable to data collections which have been set up by law of the Member States.
(h) Article 26

Restrictions on the transfer of data from public registers to third countries are not acceptable; it must still be possible to deal with legal matters even where the applicant has his place of residence in a third country with a lower level of data protection. Accordingly, special provision should also be made in Article 26 to the effect that rules on the transfer of personal data to third countries do not apply to public data collections which are intended by law or regulation of the Member States for public inspection or, where there is a legitimate interest, for inspection by third parties.