EUROPEAN UNION
THE COUNCIL

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OUTCOME OF PROCEEDINGS

of : Working Party on Economic Questions (Data Protection)
on : 24 and 25 February 1994

No. prev. doc.: 4522/94 ECO 14
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 below the outcome of the meeting on 24 and 25 February 1994 which the Working Party devoted to examining the drafts of Articles 18, 19 and 21 proposed by the Presidency (4522/94 ECO 14).

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1. Article 18 - Obligation to notify the supervisory authority

The wording proposed by the Presidency gave rise to the following reactions:

- **Eight delegations** agreed to paragraph 1:
  4 delegations (DK/IRL/NL and UK) considered, however, that this draft made the obligation to notify too wide-ranging.

- re paragraph 2, most of the delegations wished exemption from the obligation to notify to be left to the discretion of the Member States and that simplification be re-introduced, on the understanding that exemption or simplification could be subject to certain conditions (for example, to verification within the organization as happens in Germany).

  Several delegations (B/E/L/F/P) thought, however, that no exemption should be laid down for the processing of sensitive data, in particular that referred to in Article 8(1). D, for its part, favoured the possibility of exempting processing for the purposes of public registers.

- **IRL** entered a reservation on paragraph 3 since it wanted non-automatic processing to be excluded from the scope of the Directive.

- In addition, the majority of the delegations wanted Article 19(3) of the amended Commission proposal to be re-incorporated.

Following this examination, the Presidency presented the Working Party with a new draft of Article 18 taking the delegations' remarks into account as far as possible. This draft which is appended hereto, has not yet been discussed.
2. Article 19 - Examination of notified processing operations

- reactions to the list of minimum information to be given in the notification in accordance with paragraph 1 were as follows:

  = subparagraph (c) : D/DK/IRL/NL and UK supported by P wished it to be deleted (1)

  = subparagraph (d) : I suggested a description of the nature of the processing;

  = subparagraph (e) : a large number of delegations wanted to replace the words "the recipients or categories of recipient" by "the third parties or categories of third parties".

  = subparagraph (f) : B proposed the following wording: "where appropriate, data flows from one Member State of the Union to a third country and vice versa". This wording has already been agreed to by F and P.

  = subparagraph (g) : D/DK/IRL/NL and UK wanted it to be deleted; I proposed the following text: "a generic description of the measures taken pursuant to Article 17 to ensure security of processing".

- the present wording of paragraph 2 was thought too binding by several delegations. B, on the other hand, suggested that the following sentence be added: "In any case notification shall be required if the change affects the information referred to in paragraph 1(b), (d) or (e)". This proposal was accepted by E/I and P.

- regarding paragraph 3, eight delegations (B/E/F/GR/I/L/NL and P) were in favour of the principle of the supervisory authority examining certain categories of processing prior to their implementation, on the understanding that the consequences of such verification should be examined under Article 30 rather than here.

  All these delegations urged that this prior examination be selective so as not to impose an excessive load on the supervisory authorities; most considered that it should be directed mainly at the processing of sensitive data. Furthermore, most of these delegations thought that paragraph 3 should specify the period. (E proposed a maximum of two months).

(1) It was also proposed that this subparagraph be merged with subparagraph (d).
D/DK/IRL and UK were not in favour of compulsory prior examination.

The Presidency announced at the end of this discussion that it would submit a new draft of Article 19.

3. Article 21 - Publicizing of processing operations

Paragraph 1: IRL and UK were not satisfied with the wording of this paragraph, and in particular wanted manual card indexes not to be covered by this Article.

Paragraph 2: I asked that it be stated in a recital (or a statement for the Council minutes) that the register of notified processing operations was to be kept in computerized form.

Paragraph 3: The DK/IRL and UK delegations entered reservations on the wording of this text. The Commission representative proposed that the words "ensure that controllers" in the first line be deleted, that the words "exempted from notification" in the second and third lines be replaced by "not subject to notification" and that the words "at least upon request" be added at the end of the paragraph. However, some delegations (B/F/GR/L and P) objected to the deletion of "controllers" and B entered a reservation on the addition at the end, with I entering a scrutiny reservation on it.

The Presidency announced that it would redraft this Article in the light of the delegations' remarks.

4. Other Articles

The Presidency said that the delegations would have an opportunity when the proceedings continued to comment on the drafts of Articles 11, 12, 13 and 14.
DK submitted the following drafting proposal in the meeting:

"Proposal for a new paragraph 3 of Article 12

3. Furthermore the Member States may provide exemptions from the obligations mentioned in paragraph 1

   1) where the processing is not likely to affect adversely the rights and freedoms of data subjects,

   2) where the processing is required by a legal provision, or

   3) where the data involved are already in the public domain."