NOTE

from: Presidency

dated: 18 May 1994

to: Working Party on Economic Questions (Data Protection)

No. prev. doc.: 5575/94 ECO 49
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, in preparation for the Working Party's forthcoming discussions, the Presidency proposals for Articles 23, 25 and 28 (former Articles 28 and 29) of the above proposal.
Article 23

Liability

1. Member States shall provide that any person having suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to this Directive is entitled to receive compensation from the controller for the damage suffered.

2. Member States shall provide that the controller may be exempted, in whole or in part, from liability incurred as a result of paragraph 1, if he proves that the occurrence leading to the damage is not attributable to him, in particular when it relates to an error on the part of the data subject or, in respect of damage resulting from the loss or destruction of data or from unauthorized access, when he proves that he has taken suitable steps to satisfy the requirements of Articles 17 and 17a.

Article 25

Member States shall take the appropriate measures to ensure that the provisions of this Directive are applied in full and in particular shall determine the penalties applicable in cases where the provisions adopted to implement this Directive are infringed.

NB: Amendment of the text to take account of the requests made in the first reading under the Danish presidency.
Article 28
Codes of conduct

1. Member States and the Commission shall encourage trade organizations or any other organization representing controllers to participate in drawing up codes of conduct intended to contribute, in the light of the specific characteristics of each sector, to the proper application of the national measures taken pursuant to this Directive.

2. Member States shall provide that the organization which has drawn up a draft national code or which intends to amend or extend an existing national code, may submit it for examination by the national supervisory authority.

Member States shall provide that this authority in particular ensures that the draft codes submitted to it are in accordance with the national measures taken pursuant to this Directive and that the organizations which have prepared the drafts are representative. The authority shall seek the views of data subjects or their representatives.

3. Draft Community codes, as well as amendments or extensions to existing Community codes, may be submitted to the Working Party provided for in Article 31, which shall give its opinion in particular on the content of the draft and on the representativeness at Community level of the organizations which have drawn it up. The Working Party shall seek the views of data subjects or their representatives.

NB: These amendments aim to take account of the Working Party's discussions under the Danish Presidency.

Article 29 is deleted.