Item 8: Preparation for the Council meeting (Internal Market) on 16 June 1994

2. 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 Committee began discussing this matter on the basis of the report drafted by the Chairman of the Working Party on Economic Questions (Data Protection): 6865/94 ECO 103.
Before examining the major issues outstanding which were pinpointed in that report (1), the Committee held a general discussion on the approach advocated in the draft Directive submitted to it (consolidated text set out in 6285/1/94 REV 1 ECO 76).

During the discussion some delegations (IRL/DK and UK in particular) voiced their concern at the cumbersome, bureaucratic nature of many provisions in the draft, which would impose considerable costs on undertakings covered by such provisions and substantial charges on the authorities responsible for monitoring compliance. (2)

However, other delegations (B/F/E/L and P in particular) stressed the need for a high level of protection on the rights of the individual and for provision for an adequate degree of harmonization to ensure the proper functioning of the internal market and in particular to prevent distortions of competition between undertakings.

As regards the major issues outstanding, the Committee conducted a preliminary examination of the three questions regarded by the Presidency as vital to the structure of the Directive, namely the notification of processing operations to the national authorities, the rights of individuals to information and the arrangements applicable to sensitive data.

(1) There are 8 such issues, which were spelt out by the Chairman of Coreper, viz.: the scope of the Directive, the arrangements applicable to sensitive data, to the press and to transfers of data to third countries, the rights of individuals to information, the notification of processing operations to national supervisory authorities, the independence of those authorities and the committee procedure.

(2) UK submitted a note on the costs in the United Kingdom which application of the Directive on data protection would entail (7301/94).
The preliminary results of the examination are set out below, although some delegations upheld general scrutiny reservations at that stage (DK/D and IRL).

(i) **Notification of processing operations to the supervisory authorities**
(Articles 18, 19 and 21 of the Directive)

- As regards the scope of the obligation to notify, 5 delegations (DK/D/IRL/NL and UK) expressed a preference for a positive list of processing operations to be notified rather than an obligation to notify in principle coupled with exemptions, as provided for in the Presidency compromise text (Article 18(2)). D in particular put forward detailed amendments to Article 18, set out in the Annex hereto.

  The other delegations supported the Presidency's approach, subject, in E's case, to the exemptions provided for being left to the Member States and, in F's case, to it being clearly stipulated that processing operations concerning sensitive data could not under any circumstances be the subject of an exemption;

- as regards the list of information to be notified (Article 19(1) and (2)), IRL and UK felt that the list was too long (UK suggested restricting it to the information referred to in subparagraphs (a) and (d); D suggested deleting subparagraphs (e) and (f); NL, which also wanted subparagraph (f) deleted, also had doubts as to whether subparagraph (c) should be retained; L, on the other hand, wanted to add to the list of information the right of the data subject to access the data and to correct them.

  It should also be noted that B wanted to strengthen Article 19(2), which concerns the notification of changes to such information.

- as regards prior examination by the national authorities
(Aricle 19(3))

  E opposed prior examination (thus joining D/DK/IRL and UK, which had already entered reservations on this point); the other delegations raised no objections to the Presidency text, although E wanted it to be specified that such prior examination must in every case be carried out for processing operations concerning sensitive data (moreover, E agreed to the two-month deadline laid
(ii) the right to information of individuals concerned by a data processing operation (Articles 11 and 12)

Four delegations (DK/IRL/NL and UK) maintained reservations on the provisions of Articles 11 and 12.

With particular reference to the list of minimum details to be supplied (Article 11), D suggested that the items of information under subparagraphs (c) and (d) be provided only at the request of the data subject, whilst B/E/L and P requested that the present list be supplemented by the existence of right of access to data and of the right to correct them (F suggested stipulating that the latter information be provided at the data subject's request).

(iii) arrangements applicable to sensitive data

– as regards the scope of the ban on the processing of sensitive data (Article 8(1)), NL joined the five delegations (B/E/F/I and L) already in favour of an exhaustive list of categories of sensitive data to be prohibited. (Most delegations nevertheless accepted the present list in Article 8(1), provided that it could not be extended by certain Member States);

– as regards the exceptions to the ban, the following remarks were made (3):

= subparagraph 2(a): reservation by B on the present (excessively general) wording;

= subparagraph 2(aa): F prepared to give this point favourable consideration if it were amended to read:

"Processing is necessary for the purpose of fulfilling the labour law obligations of the controller, insofar as it is authorized by legislation providing for adequate guarantees".

B and I immediately stated that they were favourably included towards that suggestion. (D stated that the German version of the current text was incorrect).

(3) DK and IRL maintained general scrutiny reservations on the provisions concerning derogations.
= subparagraph 2(c): B's suggestion that "manifestly public" be replaced by "made public by the data subject" was accepted by F/L and I and favourably received by NL;

= paragraph 3: it was agreed to improve the wording of this paragraph to make it clearer that the derogations in question in this point were additional to those already provided for in paragraph 2.

In any event, B and E, supported by UK, could not settle for scientific research and statistics being covered only by this paragraph, and wanted a separate Article for those fields. (E made particular reference to the need for legal certainty in those two areas).
Amendments proposed by the German delegation

Article 18
Obligation to notify the supervisory authorities

1. Member States shall provide that the controller or his representative, if any, must notify the supervisory authorities 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 may provide for the taking of measures to simplify or exempt from the obligation to notify.

To this end Member States may:

– in the case of categories of processing operation which are not likely to affect adversely the rights and freedoms of data subjects, taking into account the data which are to be processed, in particular those data referred to in Article 8(1), specify 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; and/or

– make the exemption or simplification conditional on the appointment by the controllers, in compliance with the national law that governs them, of a data protection official, responsible in particular for ensuring in an independent manner the internal application
of the national provisions taken pursuant to this Directive, and for holding the register of processing operations undertaken within the organization including the items of information listed in Article 19(1); and/or

– provide for exemptions or simplifications in cases of processing operations whose object is the holding of registers intended, according to national law, to provide information to the public or to categories of individuals having a legitimate interest.

3. Member States may provide for an exemption from the obligation to notify or a simplification of the notification in the case of processing operations referred to in Article 8(2)(b).

4. Member States may stipulate that non-automatic processing operations involving personal data shall be notified, or provide for these processing operations to be subject to a simplified notification.