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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 the question of the processing of such data for statistical purposes, particularly in the area of scientific research

Presidency proposal

It is proposed that the following recital concerning Article 6(1)(b) be inserted into the Directive:

"The processing of personal data for historical, statistical or scientific purposes is not incompatible with Article 6(1)(b) provided that Member States furnish suitable guarantees that any subsequent processing will be carried out exclusively for such purposes. These guarantees must in particular rule out the use of data for taking measures or decisions regarding any particular individual."

Reasons

1. Several delegations, the Belgian Presidency and the national Statistical Offices have informed the Working Party on Economic Questions (Data Protection) in writing (1) of their concerns regarding the processing of personal data for statistical purposes or for purposes of scientific research.

Some of these concerns overlap with those expressed by certain research centres, particularly in the field of epidemiology.

(1) List of documents
- SN 2161/92: Danish delegation note and the Danish proposal made in the Working Party meeting on 4 and 5 July 1994
- 8217/93: Danish delegation note
- 7859/93: Irish delegation note
- 7695/93 ADD 3: Belgian Presidency addendum
- 10242/93: French delegation note
The Health Council discussed these issues at its meetings on 27 May 1993 and 13 December 1993.

2. This Working Paper sets out to examine the needs of the Statistical Offices and research establishments and to show to what extent the Directive caters for their legitimate concerns.

**Article 6**

3. The experience of statisticians and research establishments demonstrates that the end-purpose principle makes it impossible to process data subsequently for different purposes.

A number of points must be borne in mind here.

4. Article 6(1)(b) of the proposal affords some measure of flexibility in that it allows an extension of the purposes for which data are collected to cover any subsequent processing for purposes which would not be incompatible with the initial purposes.

The provision does not therefore require all processing to conform strictly to the purposes envisaged at the time of collection, but simply its compatibility with them. It would seem difficult to support the view that analysis for the purposes of statistics or research is incompatible by nature with the commercial or administrative purpose originally underlying the processing.

5. It is precisely on the basis of compatibility with the original purpose that Member States which have existing data protection legislation and which have adhered to the Council of Europe Convention 108, have operated up to now in this area. Article 9 of the Convention does not allow any derogation for the specific purposes of research or statistics from the principle that data must be collected for specified purposes. It is essential in modern-day society that research be carried out and statistics which are of public interest compiled, but these activities do not necessarily confer on researchers or statisticians any right to a derogation from the principle of respect for privacy.

6. Article 6(1)(b) is to be interpreted strictly only insofar as it prohibits data concerning a particular individual, collected simply for the purposes of research or statistics, to be used for decisions or measures affecting that individual (for instance, if the data from a general census were used for the purpose of tax inspection).

7. This Presidency proposal renders the sentence in square brackets in Article 6(1)(e) superfluous.

8. There is a further question as to the circumstances in which data can be disclosed to third parties, researchers or statisticians for the purposes of their activities. The answer to this question is provided by the other provisions of the Directive, particularly Articles 7 and 8.
Articles 7 and 8

9. Some researchers interpret the amended proposal as meaning that their data-processing operations require the consent of the data subjects, and they feel that this would seriously hinder them in their work.

10. Article 7 of the amended proposal provides a clear response to this.

The processing of data needed for research or statistical purposes will either require the consent of the data subject, be covered by the "balance of interest" clause or be necessary for a task in the public interest that is to be performed by the controller. Processing undertaken for the purpose of compiling statistics in the public interest - an exercise in which data subjects are obliged to take part - within the framework of programmes being implemented by the national statistical offices is obviously regarded as a task in the public interest.

11. Furthermore, the prohibition on the processing of sensitive data, particularly concerning health, can be lifted either where the data subject has given his written consent (Article 8(2)) or on grounds of important public interest (Article 8(3)).

This criterion of important public interest, applied to research and statistics, refers precisely to the areas covered by the Danish delegation in the expression "scientific and statistical research of major importance to society as a whole".

It is for the Member States to specify both the suitable safeguards and the decision-making procedures for such processing as is provided for in Article 8(3) (authorization by law or by a supervisory authority).

Articles 11 and 12

12. A number of positions have been expressed suggesting that the provisions governing the information to be given to data subjects (Articles 11 and 12) should not apply to processing carried out for research or scientific purposes.

13. The Presidency does not share this view, given the legitimate interests of the data subject and the derogations for which provision has already been made.

14. Where data are collected from the data subjects direct (Article 11), they must be informed of the intended use of the data being collected. This transparency is, in practice, the key to better co-operation; it is particularly useful where the subject has a right of objection (voluntary research) or even where replies are obligatory. It does not appear fair, in effect, for data subjects to be kept in the dark about research to which they would unknowingly be contributing. This information could be provided, without incurring unacceptable additional costs, at the time the data were collected and in ways not prejudicial to the research or statistics concerned.
15. Where data are provided by a third party (Article 12) and not collected from the data subjects, a number of practical difficulties can arise: it may be impossible to locate the data subject (address unknown, subject deceased) or substantial extra costs may be incurred. Thus Article 12 allows a derogation in cases where the provision of information to the data subject proves impossible or involves a disproportionate effort given the risks entailed. Application of this derogation presupposes that the Member States have laid down suitable safeguards. For example, in some cases data subjects could, if necessary, be provided with information of a more collective nature in order to achieve the desired level of transparency.

16. This derogation, which does not apply specifically to research or statistics but clearly covers such cases, would seem sufficient to deal with the difficulties raised, without there being any need for more specific measures to be taken.

**Article 14(3)**

17. The statistical offices would like to do away with all rights of access to data intended to serve statistical ends and, for a period of 100 years, to census data on the ground that the relevant documents contain information relating to more than one person.

18. Such a wide-ranging derogation would not be compatible with Council of Europe Convention No 108. It would appear that, as regards rights of access to personal data contained in documents relating to more than one person, certain practical measures could be taken to satisfy the demands of individuals exercising their rights while not adversely affecting the rights of the other individuals concerned by the same documents.

**Notification of the supervisory authorities**

19. Whereas the statistical offices seek simplification of, or exemption from, the notification formality, the proposals of the Belgian Presidency and the Danish delegation render notification or even authorization by the supervisory authority a condition for carrying out processing.

Data processing for research or statistical purposes is, by its nature, very varied: sometimes it is highly repetitive, involving small numbers of people and non-sensitive data, the converse is also possible.

The draft Directive, with the flexibility already offered on notification requirements, contains a solution which makes it possible to take account of this diversity.