NOTE FROM THE PRESIDENCY

on: Statistics/research problems

No. prev. doc.: 8525/94 ECO 170
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 the processing of data for the establishment of statistics, in particular for research purposes

Delegations will find in the Annex hereto proposals for texts for Articles 11, 12, 18 and 19a submitted by the Presidency.
SECTION IV

INFORMATION TO BE GIVEN TO THE DATA SUBJECT

Article 11

Information when data are collected
from the data subject

Member States shall provide that the controller or his representative must provide a data subject from whom data relating to himself are collected with at least the following information, except where it is already in his possession:

(a) the identity of the controller and of his representative, if any,

(b) the purposes of the processing for which the data are intended,

(c) any further information necessary, having regard to the specific circumstances in which the data are collected, to guarantee true and faithful processing in respect of the data subject. Such information may concern (1):

- the recipients or categories of recipients of the data;
- whether replies to the questions are obligatory or voluntary, as well as the possible consequences of the failure to reply;
- the existence of the right of access to and the right to rectify the data concerning him.

(1) alternative: "normally include"
Article 12

Information given to the data subject when data are recorded
or disclosed to a third party

1. Member States shall provide that the controller or his representative must at the time of undertaking the
recording of personal data or if a disclosure to a third party is envisaged, provide the data subject no later
than the time when the data are first disclosed with at least the following information, except where it is
already in his possession:

(a) the identity of the controller and of his representative, if any,

(b) the purposes of the processing,

(c) any further information necessary, having regard to the specific circumstances in which the data are
collected, to guarantee true and faithful processing in respect of the data subject. Such information
may concern (\textsuperscript{1}):

- the recipients or categories of recipients;

- the existence of the right of access to and the right to rectify the data concerning him.

2. Paragraph 1 shall not apply where the provision of information to the data subject proves or involves \[\text{disproportionate expenditure or where recording or disclosure to a third party is prescribed by law.}\] In these
cases Member States shall provide appropriate safeguards.

\textsuperscript{1} alternative: "normally include".
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 may provide for the simplification of or exemption from notification insofar as,

- for categories of processing operations which are unlikely, taking account of the data to be processed, in particular the data referred to in Article 8(1), to affect adversely the rights and freedoms of data subjects, they 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

- they make the exemption or simplification conditional on the appointment by controllers, in compliance with the national law which 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), in order thus to ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations.

The Member States may stipulate that paragraph 1 shall not apply to processing operations the sole purpose of which is to enable registers to be kept which, under national law, are set up for public inspection.
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 certain or all non-automatic processing operations involving personal data shall be notified, or provide for these processing operations to be subject to a simplified notification.

Article 19a

Prior checking

1. Member States shall ensure that processing operations potentially involving specific risks for the rights and freedoms of the individual are checked prior to the start of the processing operation.

2. Such prior checks shall be carried out by the supervisory authority following receipt of notification from the controller or by the data protection official.

3. Member States may also carry out such checks as part of the preparations for a legislative measure permitting the processing operation and laying down appropriate guarantees.
Amended recital 23

(23) Whereas ex post facto verification by the competent authorities must, in general, be considered a sufficient measure; whereas, however, Member States must provide for prior checking of any processing which may pose a particular threat to the rights and freedoms of data subjects by virtue of its nature, scope or purpose, such as processing of particularly sensitive data or processing which has as its object the exclusion of data subjects from a right, a benefit or a contract or processing involving the use of new and potentially dangerous technologies.