EUROPEAN UNION
THE COUNCIL

Brussels, 30 November 1994 (06.12)
(OR. f)

11099/94

RESTREINT
ECO 263

WORKING DOCUMENT

from: General Secretariat of the Council
to: delegations

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 annexed the consolidated text of the Directive as it stands following Coreper’s discussions on 24 November 1994. (1)

(1) See report from Coreper to the Council (11369/94).
DRAFT EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the protection of individuals
with regard to the processing of personal data
and on the free movement of such data

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (2),

Having regard to the Opinion of the Economic and Social Committee (3),

(1) Whereas the objectives of the Community, as laid down in the Treaty, as amended by the Treaty on European Union, include establishing an ever closer union among the people of Europe, fostering closer relations between the States belonging to the Community, ensuring economic and social progress by common action to eliminate the barriers which divide Europe, encouraging the constant improvement of the living conditions of its people, preserving and strengthening peace and liberty and promoting democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States and in the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(2) Whereas data-processing systems are designed to serve man; whereas they must, whatever the nationality or residence of natural persons, respect the fundamental freedoms and rights of individuals, notably the right to privacy, and contribute to economic and social progress, trade expansion and the well-being of individuals;

(3) Whereas the establishment and functioning of an internal market in which, in accordance with Article 7a of the Treaty, the free movement of goods, persons, services and capital is ensured require not only that personal data should be able to flow freely from one Member State to another, but also that the fundamental rights of individuals should be safeguarded;

(4) Whereas increasingly frequent recourse is being had in the Community to the processing of personal data in the various spheres of economic and social activity; whereas the progress made in information technology is making the processing and exchange of such data considerably easier;

(5) Whereas the economic and social integration resulting from the establishment and functioning of the internal market within the meaning of Article 7a of the Treaty will necessarily lead to a substantial increase in cross-border flows of personal data between all those involved in a private or public capacity in economic and social activity in the Member States; whereas the exchange of personal data between undertakings in different Member States is set to increase; whereas the national authorities in the various Member States are being called upon by virtue of Community law to collaborate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State within the context of the area without internal frontiers as constituted by the internal market;

(6) Whereas, furthermore, the increase in scientific and technical cooperation and the coordinated introduction of new telecommunications networks in the Community necessitate and facilitate cross-border flows of personal data;
(7) Whereas the difference in levels of protection of the rights and freedoms of individuals, notably the right to privacy, with regard to the processing of personal data afforded in the Member States may prevent the transmission of such data from the territory of one Member State to that of another Member State; whereas this difference may therefore constitute an obstacle to the pursuit of a number of economic activities at Community level, distort competition and impede authorities in the discharge of their responsibilities under Community law; whereas this difference in levels of protection is due to the existence of a wide variety of national laws, regulations and administrative provisions;

(8) Whereas, in order to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data must be equivalent in all the Member States; whereas this objective is vital to the internal market but cannot be achieved by the Member States alone, especially in view of the scale of the divergences which currently exist between the relevant laws in the Member States and the need to coordinate the laws of the Member States so as to ensure that the cross-border flow of personal data is regulated in a consistent manner that is in keeping with the objective of the internal market as provided for in Article 7a of the Treaty; whereas Community action to approximate those laws is therefore needed;

(8a) Whereas, given the equivalent protection resulting from the approximation of national laws, the Member States will no longer be able to inhibit the free movement between them of personal data on grounds relating to protection of the rights and freedoms of individuals, and in particular the right to privacy; whereas Member States will be left a margin for manoeuvre, which may, in the context of implementation of the Directive, also be exercised by the economic and social partners; whereas Member States will therefore be able to specify in their national law the general conditions governing the lawfulness of data processing; whereas in doing so the Member States shall strive to improve the protection currently provided by their legislation; whereas, within the limits of this margin for manoeuvre and in accordance with Community law, disparities could arise in the implementation of the Directive, and this could have an effect on the movement of data within a Member State as well as within the Community;

(9) Whereas the object of the national laws on the processing of personal data is to protect fundamental rights and freedoms, notably the right to privacy, which is recognized both in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the general principles of Community law; whereas, for that reason, the approximation of those laws must not result in any lessening of the
protection they afford but must, on the contrary, seek to ensure a high level of protection in the Community;

(10) Whereas the principles of the protection of the rights and freedoms of individuals, notably the right to privacy, which are contained in this Directive, give substance to and amplify those contained in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data;

(11) Whereas the protection principles must apply to all processing of personal data by any person whose activities are governed by Community law (\(^4\));

(11a) Whereas the activities referred to in Titles V and VI of the Treaty on European Union regarding public safety, defence, State security or the activities of the State in the area of criminal law fall outside the scope of Community law, without prejudice to the obligations incumbent upon Member States under Article 56(2), Article 57 or Article 100a of the Treaty establishing the European Community (\(^5\));

(11b) Whereas, given the importance of the developments under way, in the framework of the information society, of the techniques used to capture, transmit, manipulate, record, store or communicate sound and image data relating to natural persons, this Directive will be applicable to processing involving such data;

Whereas the processing of such data is only covered by this Directive if it is automated or if the data processed are contained or are intended to be contained in a file structured according to specific criteria relating to individuals, so as to permit easy access to the personal data in question;

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\(^4\) Statement for the minutes
"The Council and the Commission consider that in the interests of consistent and uniform application of the protection rules in the Union, processing carried out by a Member State's own authorities, organizations and bodies in the course of activities which are not governed by Community law, in particular where the purpose of processing is cooperation between Member States in such sectors, and processing carried out by European Union institutions and bodies should be subject to the same protection principles as those laid down in this Directive."

\(^5\) See 11369/94, point B.I.2.
Whereas the processing of sound and image data, such as in cases of video surveillance, does not come within the scope of this Directive if it is carried out for the purposes of public security, defence, national security or in the course of State activities relating to the area of criminal law or in the course of other activities which do not come within the scope of Community law;

Whereas, as far as the processing of sound and image data carried out for purposes of journalism or the purposes of literary or artistic expression is concerned, the principles of the Directive shall apply in a restricted manner according to the provisions laid down in Article 9;

Whereas, in order to ensure that individuals are not deprived of the protection to which they are entitled under this Directive, any processing of personal data in the Community must be carried out in accordance with the law of one of the Member States; whereas, in this connection, processing carried out under the responsibility of a controller who is established in a Member State should be governed by the law of that State;

Whereas establishment on the territory of a Member State implies the effective and real exercise of activity through the means of a stable set-up; whereas the legal form of such an establishment, whether a simple branch or a subsidiary with a legal personality, is not the determinate factor in this respect; whereas, when a single controller is established on the territory of several Member States, particularly by means of a subsidiary, he must ensure, in order to avoid any circumvention, that each of the establishments fulfils the obligations imposed by the national law applicable to its activities;

Whereas, the fact that processing is carried out by a person established in a third country must not stand in the way of the protection of individuals provided for in this Directive; whereas, in these cases, the processing should be governed by the law of the Member State in which the means used are located, and there should be guarantees to ensure that the rights and obligations provided for in this Directive are respected in practice;

Whereas this Directive is without prejudice to the rules of territoriality applicable in criminal matters;

Whereas Member States shall more precisely define in the laws they enact or when bringing into force the measures taken under this Directive, the general circumstances in which processing is lawful; whereas in particular Article 5, in conjunction with Articles 7 and 8, allows Member States, in addition to general rules, to provide for special processing conditions for specific sectors and for the various categories of data covered by Article 8;

Whereas the principles of protection must be reflected, on the one hand, in the obligations imposed on persons, public authorities, enterprises, agencies or other bodies responsible for processing, in particular regarding data quality, technical
security, notification to the supervisory authority, and the circumstances under which processing can be carried out, and, on the other hand, in the rights conferred on individuals, the data on whom are the subject of processing, to be informed that processing is taking place, to consult the data, to request corrections and even to object to processing in certain circumstances;

(14a) Whereas the principles of protection must apply to any information concerning an identified or identifiable person; whereas, to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person; whereas the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable; whereas codes of conduct within the meaning of Article 28 may be a useful instrument in providing guidance as to the way in which data may be rendered anonymous and retained in a form of which identification of the data subject is no longer possible;

(14b) Whereas the protection of individuals must apply as much to automatic processing of data as to manual processing; whereas the scope of this protection must not in effect depend on the techniques used, otherwise this would create a serious risk of circumvention; whereas, nonetheless, as regards manual processing, this Directive covers only filing systems, not unstructured files; whereas in particular the content of a file must be structured according to specific criteria relating to individuals allowing easy access to the personal data; whereas, in line with the definition in Article 2(c) the different criteria for determining the constituents of a structured set of personal data, and the different criteria governing access to such a set, can be laid down by each Member State; whereas files or sets of files as well as their cover pages, which are not structured according to specific criteria, shall under no circumstances fall within the scope of this Directive;

(15) Whereas any processing of personal data must be lawful and fair to the individual concerned; whereas, in particular, the data must be adequate, relevant and not excessive in relation to the purposes for which they are processed; whereas such purposes must be explicit and legitimate and must be determined at the time of collection of the data; whereas the purposes of processing further to collection shall not be incompatible with the purposes as they were originally specified;

(15a) Whereas the further processing of personal data for historical, statistical or scientific purposes is not generally to be considered incompatible with the purposes for which the data have previously been collected provided that Member States furnish suitable guarantees; whereas these guarantees must in particular rule out the use of data for taking measures or decisions regarding any particular individual;

(16) Whereas, in order to be lawful, the processing of personal data must in addition be carried out with the consent of the data subject or be necessary with a view to the conclusion or performance of a contract binding on the data subject, or be required by law, by the performance of a task in the public interest or in the exercise of official authority, or by the interest of a natural or legal person provided that the interests or the rights and freedoms of the data subject are not overriding; whereas, in particular, in order to maintain a balance between the interests involved while
guaranteeing effective competition, Member States remain free to determine the circumstances in
which personal data may be used or disclosed to a third party in the context of the legitimate
ordinary business activities of companies and other bodies; whereas Member States may similarly
specify the conditions under which personal data may be disclosed to a third party for the purposes
of marketing whether carried out commercially or by a charitable organization or by any other
association or foundation, of a political nature for example, subject to the provisions allowing a data
subject to object to the disclosure of data regarding him, at no cost and without having to state his
reasons;

(16a) Whereas the processing of personal data must equally be regarded as lawful where it is carried out in
order to protect an interest which is essential for the data subject's life;

(16b) Whereas it is for national legislation to determine whether the controller performing a task carried out
in the public interest or in the exercise of official authority should be a public administration or
another national or legal person governed by public law or by private law or such as a professional
association;

(17) Whereas data which are capable by their nature of infringing fundamental freedoms or privacy
should not be processed unless the data subject gives his explicit consent; whereas, however,
derogation from this prohibition must be explicitly provided for in prospect of specific needs, in
particular where the processing of these data is carried out for certain health-related purposes by
individuals subject to a legal obligation of professional secrecy or for legitimate activities by certain
associations or foundations the purpose of which is to permit the exercise of fundamental freedoms;

(17a) Whereas Member States must also be authorized, when justified by grounds of important public
interest, to derogate from the prohibition on processing sensitive categories of data where important
reasons of public interest so justify in areas such as public health and social protection, especially as
regards the assurance of quality and cost-effectiveness, as well as the procedures used for settling
claims for benefits and services in the health insurance system, scientific research and government
statistics; whereas it is incumbent on them, however, to provide specific and suitable safeguards so
as to protect the fundamental rights and the privacy of individuals (6);

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(6) Statement in the Council minutes:
"The Council and the Commission note that the elements set out in recital 17a of the Directive, which are
intended in particular to clarify the concept of public interest in Articles 7 and 8 of the Directive, derive
from the purpose of the latter and thus form an integral part of this legal act, it follows that those
elements are to be taken into consideration by the Member States when they adopt the laws, regulations
and administrative provisions required to comply with the Directive."
(17b) Whereas, moreover, the processing of personal data by official authorities for achieving aims, laid down in constitutional law or international public law, of officially recognized religious associations is carried out on important grounds of public interest;

(18) Whereas the processing of personal data for purposes of journalism or for purposes of literary or artistic expression should qualify for exemption from the requirements of certain provisions of this Directive insofar as this is necessary to reconcile the fundamental rights of individuals with freedom of information and notably the right to receive and impart information, as guaranteed in particular in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(19) Whereas, if the processing of data is to be fair, the data subject must be in a position to learn of the existence of a processing operation and, where data are collected from him, must be given accurate and full information, bearing in mind the circumstances of the collection;

(19a) Whereas certain processing operations involve data which the controller has not collected directly from the data subject; whereas, furthermore, data can be legitimately disclosed to a third party, even if the disclosure was not anticipated at the time the data were collected from the data subject; whereas, in all these cases, the data subject should be informed when the data are recorded or at the latest when the data are first disclosed to a third party; whereas, however, it is not necessary to impose this obligation if the data subject already knows the information or if the recording or disclosure are expressly provided for by law or if the provision of information proves impossible or involves disproportionate efforts, which could be the case where processing is for historical, statistical or scientific purposes; whereas, in this regard, the number of data subjects, the age of the data, and any compensatory measures adopted may be taken into consideration;

(20) Whereas any person must be able to exercise the right of access to data relating to him which are being processed, in order to verify in particular the accuracy of the data and the lawfulness of the processing; whereas, for the same reasons, every data subject must also have the right to know the logic involved in the automatic processing of data concerning him, at least in the case of the automated decisions referred to in Article 16(1); whereas this right must not adversely affect intellectual property and in particular the copyright protecting the software; whereas this must not, however, result in the data subject being refused all information;

(20a) Whereas Member States may, in the interest of the data subject or so as to protect the rights and freedoms of others, restrict rights of access and information; whereas they may, for example, specify that access to medical data may be obtained only through a health professional;

(20b) Whereas restrictions on the rights of access and information and on certain obligations of the controller may similarly be imposed by Member States insofar as
they are necessary to safeguard, for example, national security, defence, public safety, or important economic or financial interests of a Member State or the Union, as well as criminal investigations and prosecutions and action in respect of breaches of ethics in the regulated professions; whereas the list of exceptions and limitations should include the tasks of surveillance, inspection or regulation necessary in the three last-mentioned areas concerning public security, economic or financial interests and crime prevention; whereas the listing of tasks in these three areas does not affect the legitimacy of exceptions or restrictions for reasons of public security or defence;

(20c) Whereas Member States may also be lead, by virtue of the provisions of Community law, to derogate from the provisions of this Directive concerning the right of access, the obligation to inform individuals and the quality of data, in order to safeguard certain purposes among those referred to above;

(20d) Whereas in cases of processing lawfully pursued on grounds of public interest, official authority or the legitimate interests of a natural or legal person, any data subject should nevertheless be entitled, on legitimate and compelling grounds relating to his particular situation, to object to the processing of any data relating to himself; whereas Member States nevertheless have the possibility of laying down national provisions to the contrary;

(21) Whereas the protection of the rights and freedoms of data subjects with regard to the processing of personal data requires that appropriate technical and organizational measures be taken, both at the time of the design of the processing system and at the time of the processing itself, particularly in order to maintain security and thereby to prevent any unauthorized processing; whereas it is incumbent on the Member States to ensure that controllers comply with these measures; whereas these measures must ensure an appropriate level of security, taking into account the state of the technology and the cost of its use in view of the risks inherent in the processing and the nature of the data to be protected;

(21a) Whereas where a message containing personal data is transmitted by means of a telecommunications or electronic mail service, the sole purpose of which is the transmission of such messages, the controller in respect of the personal data contained in the message will normally be considered to be the person from whom the message originates, rather than the person offering the transmission services; whereas, nevertheless, those offering such services will normally be considered controllers in respect of the processing of the additional personal data necessary for the operation of the service;

(22) Whereas the notification procedures are designed to ensure disclosure of the purposes and main features of any processing operation for the purpose of verification that the operation is in accordance with the national measures taken under this Directive;

(22a) Whereas, in order to avoid unsuitable administrative formalities, exemptions from the obligation to notify and simplification of the notification required may be provided for by Member States in cases where processing is unlikely to adversely affect the rights and freedoms of data subjects, provided that it is in accordance with a measure
taken by a Member State specifying its limits; whereas in an equivalent way exemption or simplification can similarly be provided for by Member States where a person appointed by the controller ensures that the processing carried out is not likely adversely to affect the rights and freedoms of data subjects; whereas such an official, whether or not an employee of the controller, must be in a position to exercise his functions in complete independence;

(22b) Whereas exemption or simplification could be provided for in cases of processing operations whose sole purpose is the keeping of a register intended, according to national law, to provide information to the public and open to consultation by the public or by any person demonstrating a legitimate interest;

(22c) Whereas, nevertheless, simplification or exemption from the obligation to notify shall not release the controller from any of the other obligations resulting from this Directive;

(23) Whereas, in this context, ex post facto verification by the competent authorities must in general be considered a sufficient measure;

(23a) Whereas, however, certain processing operations are likely to pose specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, such as the purpose of excluding individuals from a right, benefit or a contract, or by virtue of the specific use of new technologies; whereas it is for Member States, if they so wish, to specify such risks in their legislation (7);

(23b) Whereas with regard to all the processing undertaken in society, the amount posing such specific risks should be very limited; whereas Member States must provide that the supervisory authority, or the data protection official in cooperation with the authority, check such processing prior to it being carried out; whereas following this prior check, the supervisory authority may, according to its national law, give an opinion or an authorization regarding the processing; whereas such checking may equally take place in the course of the preparation of a legislative measure adopted by the national parliament or on the basis of such an initiative, defining the nature of the processing and specifying suitable safeguards (1);

(24) Whereas, if the controller fails to respect the rights of data subjects, national legislation must provide for a judicial remedy; whereas any damage which a person may suffer as a result of unlawful processing must be compensated for by the controller, who may be exempted from liability if he proves that he is not responsible for the damage, in particular in cases where he reports an error on the part of the data subject or in a case of force majeure; whereas sanctions must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken under this Directive;

Whereas cross-border flows of personal data are necessary to the expansion of international trade; whereas the protection of individuals guaranteed in the Community by this Directive does not stand in the way of transfers of personal data to third countries which ensure an adequate level of protection; whereas the adequacy of the level of protection afforded by a third country must be assessed in the light of all the circumstances surrounding the transfer operation or set of transfer operations;

Whereas, on the other hand, the transfer of personal data to a third country which does not ensure an adequate level of protection must be prohibited;

Whereas provision should be made for exemptions from this prohibition in certain circumstances where the data subject has given his consent, where the transfer if necessary in relation to a contract or a legal claim, where protection of an important public interest so requires, for example in cases of international transfers of data between tax or customs administrations or between services competent for social security matters, or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest; whereas in this case such a transfer should not involve the entirety of the data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, it should be made only at the request of the same persons or if the latter are the recipients;

Whereas particular measures may be taken to compensate for the lack of protection in a third country in cases where the person responsible for the processing offers appropriate assurances; whereas, moreover, provision must be made for procedures for negotiations between the Community and such third countries;

Whereas, in any event, transfers to third countries may only be effected in full compliance with the provisions adopted by the Member States pursuant to this Directive, and in particular Article 8 thereof;

Whereas Member States and the Commission, in their respective spheres of competence, must encourage the trade associations and other representative organizations concerned to draw up codes of conduct so as to facilitate the application of this Directive, taking account of the specific characteristics of the processing carried out in certain sectors, and respecting the national provisions adopted for its implementation;

Whereas the establishment in Member States of supervisory authorities, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of personal data;
(29a) Whereas such authorities must have the necessary means to perform their duties, including powers of investigation and intervention, particularly in cases of complaints from individuals, and powers to engage in legal proceedings; whereas such authorities must help to ensure transparency of processing in the Member States within whose jurisdiction they fall;

(29b) Whereas the authorities in the different Member States will need to assist one another in performing their duties so as to ensure that the rules of protection are properly respected throughout the European Union;

(30) Whereas, at Community level, a Working Party on the Protection of Individuals with regard to the Processing of Personal Data must be set up and be completely independent in the performance of its functions; whereas, having regard to its specific nature, it must advise the Commission and, in particular, contribute to the uniform application of the national rules adopted pursuant to this Directive;

(31) Whereas the adoption of additional measures for applying the principles set out in this Directive calls for the conferment of powers of implementation on the Commission and the establishment of an [ ... ] in accordance with the procedures laid down in Council Decision 87/373/EEC (8);

(32) Whereas the principles set out in this Directive regarding the protection of the rights and freedoms of individuals, notably their right to privacy, with regard to the processing of personal data may be supplemented or clarified, in particular as far as certain sectors are concerned, by specific rules based on those principles;

(33) Whereas Member States should be allowed a period of not more than three years from the entry into force of the national measures transposing this Directive in which to apply such new national rules gradually to all processing operations already under way; whereas, in order to facilitate cost-efficient implementation, a further period expiring ten years after the date on which this Directive is adopted will be allowed to Member States to ensure the conformity of existing manual filing systems with certain of the Directive's provisions; whereas data contained in such filing systems actively processed during this extended transition period should nevertheless be brought into conformity with these provisions at the time of such further active processing;

(33a) Whereas it is not necessary for the data subject to give his consent again so as to allow the controller to continue to process, after the national provisions taken pursuant to this Directive enter into force, any sensitive data necessary for the performance of a contract concluded on the basis of free and informed consent before the entry into force of these provisions;

(8) OJ No L 197, 18.7.1987, p. 33.
(34) Whereas this Directive does not stand in the way of a Member State's regulating marketing activities aimed at consumers residing in its territory insofar as such regulation does not concern the protection of individuals with regard to the processing of personal data;

(35) Whereas the Directive allows the principle of public access to official documents to be taken into account when implementing the principles set out in this Directive,

HAVE ADOPTED THIS DIRECTIVE:
CHAPTER I

GENERAL PROVISIONS

Article 1

Object of the Directive

1. In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the processing of personal data. (*)

2. Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph 1.

(*)

Article 2

Definitions

For the purposes of this Directive:

(a) "personal data" means any information (*) relating to an identified or identifiable natural person (**) ("data subject"); an identifiable person is one who can be identified, directly

(*) Statement for the Council minutes
"The Council and the Commission note that the protection of rights and freedoms, of privacy in particular, with regard to the processing of personal data, includes the protection of personal identity."

(**) D would like to add a new paragraph drafted as follows:
"3. Specific legal provisions of the Community as well as intergovernmental agreements concluded among the Member States which are in accordance with Community law take precedence over the provisions of this Directive."

(1) For sounds and images, see 11369/94, point B.1.2(i).

Statement for the Council minutes:
"The Council and the Commission confirm that it is for the Member States to lay down whether and to what extent this Directive shall be applied to deceased persons." (See 11369/94, point B.II.(i)).
or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

(b) "processing of personal data" ("processing") shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, (12) recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

(c) "personal data file" ("file") shall mean any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis; (13)

(d) "controller" shall mean the natural or legal person, public authority, agency or any other body which determines the purposes and means of the processing of personal data.

(12) Reservations by IRL/NL and UK; provisional reservation by DK.
(13) Statement for the Council minutes (see 11369/94, point B.I.2(ii)):
"The Council and the Commission recognize that:
– in line with the current definition in Article 2(c), the Directive only covers filing systems, not files;
– the criteria for determining the constituents of a structured set of personal data, and the criteria governing access to such a set, can be laid down by each Member State;
– files and sets of files as well as their cover pages do not fall within the definition cited in the first indent if their content is not structured in the manner of a file.

The Council and the Commission recognize that paper documents printed by fax machine are subject to the rules applicable to manual data and that they therefore fall outside the scope of this Directive unless they are intended to form part of a filing system."
Where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by a national or Community law.

(e) "processor" shall mean the natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(f) "third party" shall mean the natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;

(fa) "recipient" shall mean the natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a one-off inquiry shall not be regarded as recipients (\(^{14}\));

(g) "the data subject's consent" shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed;

\(^{14}\) See 11369/94, point B.II.(v).
Article 3

Scope

1. This Directive shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which forms part of a file or is intended to form part of a file.

2. This Directive shall not apply to the processing of personal data: (15)

− in the course of an activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union and in any case to processing operations concerning public safety, defence, State security and the activities of the State in areas of criminal law (16);

− by a natural person in the course of a purely personal or household activity.

(15) Statement for the Council minutes:
"The Council and the Commission consider that the expression – purely personal or household activity – must not make it possible to exclude from the scope of the Directive the processing of personal data by a natural person, where such data are disclosed not to one or more persons but to an indeterminate number of persons.

(16) See 11369/94, point B.1.2(iii).
Article 4

National law applicable

1. Each Member State shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data: (17)

(a) the processing is carried out in the context of the activities of an establishment on the territory of the Member State of the controller. When the same controller is established on the territory of several Member States, he must take the necessary measures to ensure that each of these establishments complies with the obligations laid down by the national law applicable;

(aa) the controller is not established on the Member State's territory, but in a place where its national law applies by virtue of international public law;

(b) the controller is not established on Community territory and, for purposes of processing personal data makes use of equipment, automated or otherwise, situated on the territory of the said Member State, unless such equipment is used only for purposes of transit through the territory of the European Community.

2. In the circumstances referred to in paragraph 1(b) the controller must designate a representative established in the territory of that Member State, without prejudice to legal actions which could be initiated against the controller himself.

(17) See 11369/94, point B.II.(iii).
CHAPTER II

GENERAL RULES ON THE LAWFULNESS OF THE PROCESSING
OF PERSONAL DATA

Article 5

Member States shall, within the limits of the provisions of this Chapter, determine more precisely the conditions under which the processing of personal data is lawful.

SECTION I

PRINCIPLES RELATING TO DATA QUALITY

Article 6

1. Member States shall provide that personal data must be:

(a) processed fairly and lawfully;

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards (18);

(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or for which they are further processed;

(18) See 11369/94, point B.I.3.
(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.

2. It shall be for the controller to ensure that paragraph 1 is complied with.

SECTION II

PRINCIPLES RELATING TO THE GROUNDS FOR PROCESSING DATA

Article 7 (19)

Member States shall provide that personal data may be processed only if:

(19) See 11369/94, point B.1.4.
(a) the data subject has given his consent unambiguously; (20)

or

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

or

(c) processing is necessary for compliance with a legal obligation to which the controller is subject; (21)

or

(d) processing is necessary in order to protect the vital interests of the data subject; (3)

or

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;

or

(f) processing is necessary for the purposes of the legitimate interests (4) pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection under Article 1(1) of this Directive.

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(20) Reservations by IRL and UK on the word "unambiguously".
(21) Reservation by UK which suggested adding "or the data subject".
(3) IRL, supported by UK, suggested adding "or another person".
(4) Statement for the Council minutes: "The Council and the Commission recognize that the legitimate interests pursued by the controller or by the third party to whom the data are disclosed may correspond to a task carried out in the general interest."
SECTION III

SPECIAL CATEGORIES OF PROCESSING

Article 8

The processing of

special categories of data (\(^\text{22}\))

1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and data concerning health or sex life. (\(^\text{23}\))

2. Paragraph 1 shall not apply where:

   (a) the data subject has given his explicit (\(^\text{24}\)) consent to the processing of those data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be waived by the data subject giving his consent; or

   (aa) processing is necessary for the purposes of carrying out the labour law obligations and specific rights of the controller insofar as it is authorized by national law providing for adequate (\(^\text{25}\)) guarantees; or

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\(^{22}\) See 11369/94, point B.I.4.

\(^{23}\) Statement for the Council minutes:

"The Council and the Commission consider that Member States may, in conformity with Article 5, determine more precisely the categories of sensitive data provided in Article 8(1), considering the legal and sociological context of the country concerned, for example with regard to data on genetics, political membership, physical conditions, personal beliefs or habits, [trade-union membership], etc."

\(^{24}\) See 11369/94, point B.II.(iv)(a).

\(^{25}\) Reservation by IRL.
(ab) processing is necessary to protect the vital interests of the data subject or of another person; or

(b) processing is carried out in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects; or

(c) the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims.\(^{(26)}\)

(2a) \(^{(27)}\)

(2b) Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject under national law including rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

3. Subject to the provision of suitable safeguards, Member States may lay down for reasons of important public interest,\(^{(28)}\) exemptions in addition to those laid down in

\(^{(26)}\) See 11369/94, point B.II.(iv)(b).
\(^{(27)}\) Deleted.
\(^{(28)}\) Reservations by IRL and UK on the words "important public interest".
paragraph 2 either by national law or by decision of the supervisory authority. (29)

4. Processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority, or if suitable specific safeguards are provided under national law, subject to derogations which may be granted by the Member State under national provisions providing suitable specific safeguards. However, a complete register of criminal convictions may be kept only under the control of official authority. (30)

Member States may provide that data relating to administrative sanctions or civil trials shall also be processed under the control of official authority.

5. Derogations from paragraph 1 provided for in paragraphs 3 and 4 shall be notified to the Commission.

6. Member States shall (31) determine the conditions under which a national identification number or any other identifier of general application may be processed.

(29) The German delegation will be making the following statement in the Council minutes: "Data processing required to collect taxes intended, under the German constitution, to contribute towards the funding of churches, is thus carried out on important grounds of public interest and therefore comes under the provisions of Article 8(3)."
(30) See 11369/94, point B.II.(iv)(c).
(31) IRL would prefer "may".
Article 9

Processing of personal data and
freedom of expression

Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression which prove necessary to reconcile the right to privacy with the rules governing freedom of expression. However, in order to guarantee the right to privacy, the Member States shall lay down the necessary control measures. (32)

[Article 10](33)
SECTION IV

INFORMATION TO BE GIVEN TO THE DATA SUBJECT

Article 11

Information in cases of collection of data
from the data subject (34)

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 he already knows:

(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 such as

– 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

insofar as they are necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject.

(34) See 11369/94, point B.II.(vi).
Article 12

Information where the data have not been obtained from the data subject

1. Where the data have not been obtained from the data subject, 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, no later than the time when the data are first disclosed provide the data subject with at least the following information, except where he knows already:

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

(b) the purposes of the processing,

(c) any further information such as

– the categories of data concerned

– the recipients or categories of recipients;

– the existence of the right of access to and the right to rectify the data concerning him

insofar as they are necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.

2. Paragraph 1 shall not apply where, in particular for processing for statistical purposes or for the purposes of historical or scientific research, the provision of information proves impossible or involves a disproportionate effort or if recording or disclosure is expressly laid down by law. In these cases Member States shall provide appropriate safeguards.
SECTION V

THE DATA SUBJECT'S RIGHT OF ACCESS TO DATA

Article 13

Right of Access

Member States shall guarantee for every data subject the right to obtain from the controller:

1. freely and without constraint at reasonable intervals and without excessive delay or expense:

   – confirmation as to whether or not data relating to him are processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;

   – communication to him in an intelligible form of the data undergoing processing and of any available information as to their source;

   – knowledge of the logic involved in any automatic processing of data concerning him at least in the case of the automated decisions referred to in Article 16(1) \(^\text{35}\);

\(^\text{35}\) See 11369/94, point B.II.(vii).
2. as appropriate the rectification, erasure or blocking of data, the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data;

3. notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with paragraph 2, unless this proves impossible or involves a disproportionate effort.

SECTION Va

EXCEPTIONS AND RESTRICTIONS

Article 14

Exemptions and restrictions

1. Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in Articles 6(1), 11, 12(1), 13 and 21 when such a restriction constitutes a necessary measure to safeguard:

   (a) national security;

   (b) defence;

   (c) public security;

   (d) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions;

   (e) an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters;
(f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (c), (d) and (e) (36);

(g) the protection of the data subject or of the rights and freedoms of others (37).

2. Member States may limit the right of access of the data subject when the data are kept only temporarily in personal form and are intended to be processed for the sole purpose of creating statistics, particularly for purposes of scientific research, so that the data subjects can no longer be reasonably identified.

(36) See 11369/94, point B.II.(viii).
(37) Statements for the Council minutes (see 11369/94, point B.I.3):

"The Council and the Commission state that the derogation in Article 14(1)(g) does not refer to rights such as the right to carry out data processing".

"The Council and the Commission consider that the restrictions on the exercise of the right of access, which are intended to facilitate legitimate research activities, may be based on Article 14(1)(g) restrictions to protect the data subject and the rights and freedoms of others, such as the freedom to undertake research."
SECTION VI

THE DATA SUBJECT'S RIGHT TO OBJECT

Article 15 \(^{(38)}\)

The data subject's right to object

Member States shall grant the data subject the right:

(a) at least in the cases referred to in Article 7(e) and (f), to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where otherwise provided by national legislation. Where there is a justified objection, the processing instigated by the controller may no longer involve those data \(^{(39)}\);

(b) to object, on request and free of charge, to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing; or

to be informed before personal data are disclosed for the first time to third parties or used on their behalf \(^{(40)}\) for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosures or uses.

Member States shall take the necessary measures to ensure that data subjects are aware of the existence of the right referred to in the first subparagraph of (b).

\(^{(38)}\) General reservations by IRL and UK and provisional reservation by DK.

\(^{(39)}\) Reservation by UK, supported by N and S.

\(^{(40)}\) Reservation by UK on "used on their behalf".
Article 16

Automated individual decisions

1. Member States shall grant the right to every person not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc.

2. Subject to the other Articles of this Directive, Member States shall provide that a person may be subjected to a decision of the kind referred to in paragraph 1 if that decision:

(a) is taken in the course of the entering into or performance of a contract, provided the request by the data subject has been satisfied, or that there are suitable measures to safeguard his legitimate interests, such as arrangements allowing him to defend his point of view; or

(b) is authorized by a law which also lays down measures to safeguard the data subject's legitimate interests.

Reservation by UK on this Article.
SECTION VII

CONFIDENTIALITY AND SECURITY OF PROCESSING

Article 17

Confidentiality of processing

Any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller, unless he is required to do so by law.

Article 17a

Security of processing

1. Member States shall provide that the controller must implement appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss and against unauthorized alteration, disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Having regard to the state of the art and the costs of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.
2. The Member States shall provide that the controller must, where processing is carried out on his behalf, choose a processor who provides sufficient guarantees in respect of the technical security measures and organizational measures governing the processing to be carried out and must ensure compliance with those measures.

3. The carrying out of processing by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:

– the processor shall act only on instructions from the controller;

– the obligations set out in paragraph 1, as defined by the law of the Member State in which the processor is established, shall also be incumbent on the processor.

4. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in paragraph 1 shall be in writing or in another equivalent form (\(^{42}\)).

\(^{42}\) Scrutiny reservations by IRL and UK.
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 only in the following cases and under the following conditions: (43)

   – where, for categories of processing operations which are unlikely, taking account of the data to be processed, 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

   – where the controller appoints, in compliance with the national law which governs him, 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

(43) Statement for the Council minutes:

"Where a Member State applies both the first and second indents of Article 18(2) simultaneously, it may stipulate that the data protection official is not required to enter in his register the information concerning the processing operations covered by the first indent of Article 18(2)".
for keeping the register of processing operations carried out by the controller, containing the items of information referred to in Article 21(2),

and thereby ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations.

2a. Member States may provide that paragraph 1 does not apply to processing whose sole purpose is the keeping of a register, which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can provide proof of 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 or processing operations referred to in Article 8(2)(b). (£4) (£5)

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 19**

Contents of notification

1. Member States shall specify the information to be given in the notification. It shall include at least:

(a) the name and address of the controller and of his representative, if any;

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(£4) Statement for the Council minutes:

"The Republic of Austria considers that only processing operations which are unlikely to affect adversely the rights and freedoms of data subjects may be exempted from the notification requirement."

(£5) See 11369/94, point B.II.(ix).
(b) the purpose or purposes of the processing;

(c) a description of the category or categories of data subject and of the data or categories of data relating to them;

(d) the recipients or categories of recipient to whom the data might be disclosed;

(e) proposed transfers of data to third countries;

(f) a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to Article 17a to ensure security of processing.

2. Member States shall specify the procedures under which any change affecting the information referred to in paragraph 1 must be notified to the supervisory authority.

**Article 19a**

Prior checking (46)

1. Member States shall ensure that processing operations potentially involving specific risks for the rights and freedoms of data subjects 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 a notification from the controller or by the data protection official, who in cases of doubt must consult the supervisory authority.

3. Member States may also carry out such checks in the context of preparation of a measure decided on by the Parliament or based on such a decision, defining the nature of the processing operation and laying down appropriate safeguards.

Article 20 (47)  

Article 21

Publicizing of processing operations

1. Member States shall take measures to ensure that processing operations are publicized.

2. Member States shall provide that a register of processing operations notified in accordance with Article 18 shall be kept by the supervisory authority.

The register shall contain at least the information listed in Article 19(1)(a) to (e) (48).

The register may be inspected by any person.

3. Member States shall provide, in relation to processing operations not subject to notification, that controllers or another body appointed by the Member States make available at least the information referred to in Article 19(1)(a) to (e) in an appropriate fashion to any person on request.

Member States may provide that this provision does not apply to processing whose sole (49) purpose is the keeping of a register, which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can provide proof of a legitimate interest.

(47) Article deleted.
(48) Statement for the Council minutes:
"The Council and the Commission specify that the rights referred to in Article 21(3) should not be exercised improperly, giving as an example of improper use the instance of a request made where it was common knowledge that the processing of data did not concern the person making the request."
(49) UK called for the deletion of "sole".
CHAPTER III

JUDICIAL REMEDIES, LIABILITY AND PENALTIES

Article 22

Remedies

Without prejudice to any administrative remedy for which provision may be made, inter alia before the supervisory authority referred to in Article 30, prior to referral to the judicial authority, Member States shall provide for the right of every person to a judicial remedy for any breach of the rights guaranteed him by the national law applicable to the processing in question.

Article 23

Liability (50) (51)

1. Member States shall provide that any person who has 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. The controller may be exempted from this liability, in whole or in part, if he proves that he is not responsible for the event giving rise to the damage.

(50) Reservation by DK and scrutiny reservation by IRL.
(51) Statement by A for the Council minutes:

"Concerning the matter of national law as it applies to questions of liability, Austria starts from the principle that, as regards the liability of employees, Austrian law applies in each case where a work contract is governed by Austrian law."
Article 25

Sanctions

The Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular lay down the sanctions to be imposed in case of infringement of the provisions adopted pursuant to this Directive.

CHAPTER IV

TRANSFER OF PERSONAL DATA TO THIRD COUNTRIES

Article 26 (53)

Principles

1. Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection.

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(52) Article deleted.
(53) See 11369/94, point B.II.(x).
2. The adequacy of the level of protection afforded by a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose or purposes and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in those countries.

3. Member States and the Commission shall inform each other of cases where they consider that a third country does not ensure an adequate level of protection within the meaning of paragraph 2.

4. Where the Commission finds, under the procedure provided for in Article 34(2), that a third country does not ensure an adequate level of protection within the meaning of paragraph 2, Member States shall take the measures necessary to prevent the transfer of data of the same type to the third country in question. (54)

[4a. (55) At the appropriate time, the Commission shall enter into negotiations with a view to remedying the situation resulting from the finding made pursuant to paragraph 4.]

5. The Commission may find, in accordance with the procedure referred to in Article 34(2), that a third country ensures an adequate level of protection within the meaning of paragraph 2, by reason of its domestic law or of the international commitments it has entered into, particularly upon conclusion of the negotiations referred to in paragraph 4a, for the protection of the private lives and basic freedoms and rights of individuals.

Member States shall take the measures necessary to comply with the Commission's decision.

(54) Reservation by UK.
(55) See 11369/94, point B.II.(x).
Article 27

Derogations

1. By way of derogation from Article 26 and save where otherwise provided by domestic law governing particular cases, Member States shall provide that a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 26(2) may take place on condition that:

1) the data subject has given his consent unambiguously, or

2) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of preliminary measures taken in response to the data subject's request, or

3) the transfer is necessary for the conclusion or for the performance of a contract concluded in the interest of the data subject between the controller and a third party, or

4) the transfer is necessary on important public interest grounds, or for the establishment, exercise or defence of legal claims, or

5) the transfer is necessary in order to protect the vital interests of the data subject, or

6) the transfer is made from a register which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can provide proof of legitimate interest, to the extent that the conditions laid down in law for consultation are fulfilled in the particular case.
2. Subject to paragraph 1, a Member State may authorize a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 26(2), where the controller adduces sufficient guarantees with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such guarantees may in particular result from appropriate contractual clauses.

3. The Member State shall inform the Commission and the other Member States of the authorizations granted pursuant to paragraph 2.

If a Member State or the Commission objects on justified grounds involving the protection of the privacy and fundamental rights and freedoms of individuals, the Commission shall take appropriate measures in accordance with the procedure laid down in Article 34(2).

Member States shall take the necessary measures to comply with the Commission's decision.

4. Where the Commission decides, in accordance with the procedure referred to in Article 34(2), that certain standard contractual clauses offer sufficient guarantees required by paragraph 2, Member States shall take the necessary measures to comply with the Commission's decision.
CHAPTER V

CODES OF CONDUCT

Article 28

1. The Member States and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper implementation of the national provisions adopted by the Member States pursuant to this Directive, taking account of the specific features of the various sectors.

2. Member States shall make provision for professional associations and other bodies representing other categories of controllers which have drawn up draft national codes or which have the intention of amending or extending existing national codes to be able to submit them to the opinion of the national authority.

Member States shall make provision for this authority to ascertain, among other things, whether the drafts submitted to it are in accordance with the national provisions adopted pursuant to this Directive. If it sees fit, the authority shall seek the views of data subjects or their representatives.

3. Draft Community codes, and amendments or extensions to existing Community codes, may be submitted to the Working Party referred to in Article 31. This Working Party shall determine, among other things, whether the drafts submitted to it are in accordance with the national provisions adopted pursuant to this Directive. If it sees fit, the authority shall seek the views of data subjects or their representatives. The Commission may ensure appropriate publicity for the codes which have been approved by the Working Party.
CHAPTER VI

SUPERVISORY AUTHORITY AND WORKING PARTY ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA

Article 30

Supervisory authority

1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive.

These authorities shall act with complete independence in exercising the functions entrusted to them.

1a. Each Member State shall provide that the supervisory authorities are consulted when drawing up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data.

2. Each authority shall in particular be endowed with:

– investigative powers, including powers of access to data forming the subject-matter of processing operations and powers to collect all the information necessary for the

\(^{\text{56}}\) Article deleted.
performance of its supervisory duties \(^{(57)}\);

– effective powers of intervention, such as, for example, that of delivering opinions in accordance with Article 19a, before processing operations are carried out and ensuring appropriate publication of such opinions, or that of ordering the blocking, erasure or destruction of data, or of imposing a temporary or definitive ban on processing, or that of warning or admonishing the controller or that of referring the matter to national parliaments or other political institutions;

– the power to engage in legal proceedings where the national provisions adopted pursuant to this Directive have been violated or to bring these violations to the attention of the judicial authorities.

Decisions by the supervisory authority which give rise to complaints may be appealed against through the courts.

3. Each supervisory authority shall hear claims lodged by any person, or by an association representing that person, concerning the protection of his rights and freedoms in regard to the processing of personal data. The person concerned shall be informed of the outcome of the claim.

Each supervisory authority shall, in particular, hear claims for checks on the lawfulness of data processing lodged by any person when the national provisions adopted pursuant to Article 14 of this Directive apply. The person shall at any rate be informed that a check has taken place.

4. Each supervisory authority shall draw up a report on its activities at regular intervals. The report shall be made public.

\(^{(57)}\) Reservation by IRL.
5. Each supervisory authority is competent, whatever the national law applicable to the processing in question, for exercising, on the territory of its own Member State, the powers attributed to it in accordance with paragraph 2 of this Article. Each authority may be requested to exercise its powers by an authority of another Member State.

The supervisory authorities shall cooperate with one another to the extent necessary for the performance of their duties, in particular by exchanging all useful information.

6. Member States shall provide that the members and staff of the supervisory authority, even after their employment has ended, are to be subject to a duty of professional secrecy with regard to confidential information to which they have access.

Article 31

Working Party on the Protection of Individuals with regard to the Processing of Personal Data

1. A Working Party on the Protection of Individuals with regard to the Processing of Personal Data, hereinafter referred to as "the Working Party", is hereby set up.

It shall have advisory status and act independently.
1a. The Working Party shall be composed of a representative of the supervisory authority or authorities designated by each Member State and of a representative of the authority or authorities established for Community institutions and bodies, and of a representative of the Commission.

Each member of the Working Party shall be designated by the institution, authority or authorities which he represents. Where a Member State designates more than one supervisory authority, they shall nominate a joint representative. The same shall apply for the authorities established for Community institutions and bodies.

1b. The Working Party shall take decisions by a simple majority of the representatives of the supervisory authorities.

2. The Working Party shall elect its chairman. The chairman's term of office shall be two years. His appointment shall be renewable.

3. The Working Party's secretariat shall be provided by the Commission.


5. The Working Party shall consider items placed on its agenda by its chairman, either on his own initiative or at the request of a representative of the supervisory authorities or at the Commission's request.

**Article 32**

1. The Working Party shall:

(a) examine any question covering the application of the national measures adopted under this Directive in order to contribute to the uniform application of such measures;
(b) give the Commission an opinion on the level of protection in the Community and in third countries;

(c) advise the Commission on any proposed amendment of this Directive, on any additional or specific measures to safeguard the rights and freedoms of natural persons with regard to the processing of personal data and on any other proposed Community measures affecting such rights and freedoms;

(d) give an opinion on codes of conduct drawn up at Community level.

2. If the Working Party finds that divergences likely to affect the equivalence of protection for persons with regard to the processing of personal data in the Community are arising between the laws or practices of Member States, it shall inform the Commission accordingly.

3. The Working Party may, on its own initiative, make recommendations on all matters relating to the protection of persons with regard to the processing of personal data in the Community.

4. The Working Party's opinions and recommendations shall be forwarded to the Commission and to the committee referred to in Article 34.

5. The Commission shall inform the Working Party of the action it has taken in response to its opinions and recommendations. It shall do so in a report which shall also be forwarded to the European Parliament and the Council. The report shall be made public.
6. The Working Party shall draw up an annual report on the situation regarding the protection of natural persons with regard to the processing of personal data in the Community and in third countries, which it shall transmit to the Commission, the European Parliament and the Council. The report shall be made public.

CHAPTER VII

COMMUNITY IMPLEMENTING MEASURES

Article 33 (58)

The Commission's implementing powers

The Commission shall, in accordance with the procedure laid down in Article 34(2), adopt such technical measures as are necessary to apply Articles 4, 6, 7, 8, 11, 12, 13 and 15 to 21 of this Directive to the specific characteristics of particular types or classes of processing in order to ensure the consistent application of those provisions as part of the proper operation of the internal market.

Article 34

The Committee (59)

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

(58) See 11369/94, point B.II.7.
(59) See 11369/94, point B.I.8.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter.

The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee or if no opinion is delivered the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If within three months of the referral to it the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

FINAL PROVISIONS

Article 35 (60)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest at the end of a period of three years from the adoption of the Directive. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

(60) See 11369/94, point B.I.2(ii).
2. Member States shall ensure that processing already underway on the date the national provisions adopted pursuant to this Directive enter into force, is brought into conformity with these provisions within 3 years of this date.

By way of derogation from the preceding subparagraph, Member States may provide that the processing of data already held in manual files on the date of entry into force of the national provisions adopted in implementation of this Directive shall be brought into conformity with Articles 6, 7 and 8 of this Directive as and when those data are the subject of further processing operations, other than the simple storage of the data. Such conformity shall, however, be fully effected within 10 years of the date on which this Directive is adopted.

2a. By way of derogation from paragraph 2, Member States may provide, subject to suitable safeguards, that data stored for the sole purpose of historical research are not brought into conformity with Articles 6, 7 and 8 of this Directive.

3. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 36

The Commission shall report to the Council and the European Parliament at regular intervals on the implementation of this Directive, attaching to its report, if necessary, suitable proposals for amendments. The report shall be made public. (61)

Article 37

This Directive is addressed to the Member States.

(61) See 11369/94, point B.II.2(i).