NOTE

from : Presidency

to : Internal Market Council

No. prev. doc.: 11369/94 ECO 272
No. Com pr. : 9400/94 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 a draft Presidency compromise package in preparation for the Internal Market Council's discussions at its meeting on 8 December 1994 regarding the above proposal.
Problem: sounds and images (Article 2(a))

- recitals relating to Article 2(a) (see 11369/94 of 30.11.1994, point B.I.2)

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

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

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 or national security or in the course of State activities relating to the area of criminal law or 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 journalistic purposes or the purposes of literary or artistic expression is concerned, the principles of the Directive are to apply in a restricted manner according to the provisions laid down in Article 9;"

- review clause in Article 36 (new)

"The Commission shall report to the Council and the European Parliament at regular intervals, starting not later than three years after the date referred to in Article 35(1), on the implementation of this Directive, attaching to its report, if necessary, suitable proposals for amendments. The report shall be made public.

The Commission shall examine, in particular, the application of this Directive to the processing of sound and image data relating to natural persons and shall submit any appropriate proposals which prove to be necessary, taking account of developments in information technology."
Problem: manual filing systems (Article 2(c))

- definition of "filing system" in Article 2(c) (this term being used in English instead of "file")
- recital 14b, clarifying the interpretation of the definition and distinguishing the term from folders
- Article 35(2), second subparagraph (new in part)

"By way of derogation from the preceding subparagraph, Member States may provide that the processing of data already held in manual filing systems 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 within 10 years of the date on which this Directive is adopted. Member States shall, however, grant the data subject the right to obtain, at his request, the rectification, erasure or blocking of data which are incomplete, inaccurate or stored in a way incompatible with the legitimate purposes pursued by the controller."
**Problem: research and statistics** (Articles 6, 8 and 14 and recitals 15a and 17a)

- **addition to Article 6(1)(b)** (see 11369/94 of 30.11.1994, point B.I.3)

  "...; further processing of data for historical, statistical or scientific purposes shall not be considered incompatible, provided that Member States establish appropriate safeguards."

- **similar clarification in recitals 15a and 17a** (see 11369/94 of 30.11.1994, point B.I.3)

- **statement for the minutes re recital 17a** (see 11369/94 of 30.11.1994, point B.I.3): "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 in order to comply with the Directive."

- **amended Article 14(2) (new):** "Subject to adequate legal guarantees, in particular that the data are not used for taking measures or decisions regarding any particular individual data subject, Member States may restrict the rights provided for in Article 13 when data are processed solely for purposes of scientific research or are temporarily kept in personal form for the sole purpose of creating statistics, in cases in which there is obviously no risk of an infringement of the privacy of the data subject."
Problem: electoral canvassing (Article 8(3))

- recital 17c (new)

"Whereas, where in the course of electioneering the operation of the democratic system requires that political parties compile data on people's political opinions, the processing of such data can be permitted for reasons of important public interest, provided that appropriate safeguards are established;"
**Problem: the press (Article 9)**

- **Article 9** (see 11369/94 of 30.11.1994, point B.I.5)

  "Member States shall provide for exemptions or derogations from the provisions of this Chapter and Chapters IV and VI for the processing of personal data carried out solely for journalistic purposes or the purposes of artistic or literary expression which prove necessary to reconcile the right to privacy with the rules governing freedom of expression. However, Member States shall lay down the supervisory measures essential to ensure the right to privacy."

- **amended recital 18 (new in part)**

  "Whereas the processing of personal data for purposes of journalism or for purposes of literary or artistic expression should qualify for exemptions or derogations from the requirements of certain provisions of this Directive insofar as this is necessary to reconcile the fundamental rights of individuals with freedom of expression 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; whereas Member States should therefore lay down exemptions and derogations necessary for the purposes of balance between fundamental rights as regards general measures on the legitimacy of data processing, measures on the transfer of data to third countries and the powers of the supervisory authority; whereas this should not, however, lead Member States to lay down exemptions from the measures to ensure security of processing; whereas the supervisory authority responsible for this sector should also be provided at least with certain ex-post powers, e.g. to publish a regular report or to refer matters to the judicial authorities;"

- **statement for the minutes re Article 9 (new in part)**

  "The supervisory measures referred to in the second sentence of Article 9 may be organized in a manner specific to this sector. This may also take the form of self-regulation by the press."
Problem: Commission implementing powers (Article 33)

- amended Article 33 (see 11369/94 of 30.11.1994, point B.I.7)

"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 to 8, 11 to 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."