

Wednesday, 11 March 1992

**19. Personal data and information security \*\*I/\*\***

— Proposal for a directive I COM(90) 0314 — C3-0323/90 — SYN 287

**Proposal for a Council directive concerning the protection of individuals in relation to the processing of personal data****Approved with the following amendments:**TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES (\*)TEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

## (Amendment No 1)

*Recital (9)*

(9) Whereas the protection principles must apply to all data files where the activities of the controller of the file are governed by Community law; whereas public-sector files which are not governed by Community law should, as is provided for in the resolution of the representatives of the Governments of the Member States of the European Communities meeting within the Council of ..., be subject to the same protection principles set forth in national laws; whereas, however, data files falling exclusively within the confines of the exercise of a natural person's right to privacy, such as personal address files, must be excluded;

(9) Whereas the protection principles must apply to all data; whereas suitable derogations must be provided for in those matters which fall within exclusively national competences, such as national security or defence; whereas, data falling exclusively within the confines of the exercise of a natural person's right to privacy, such as personal address files, must be excluded;

## (Amendment No 2)

*Recital (10)*

(10) Whereas any processing of personal data in the Community should be carried out in accordance with the law of the Member State in which the data file is located so that individuals are not deprived of the protection to which they are entitled under this directive; whereas, in this connection, each part of a data file divided among several Member States must be considered a separate data file and transfer to a non-member country must not be a bar to such protection;

(10) Whereas any processing of personal data in the Community should be carried out in accordance with the law of the Member State in which the data is located so that individuals are not deprived of the protection to which they are entitled under this directive; whereas, in this connection, each part of the collection of data divided among several Member States must be considered a separate data and transfer to a non-member country must not be a bar to such protection;

## (Amendment No 3)

*Recital (12)*

(12) Whereas national laws may, under the conditions laid down in this directive, specify rules on the lawfulness of processing; whereas, however, such a possibility cannot serve as a basis for supervision by a Member State other than the State in which the data file is located, the obligation on the part of the latter to ensure, in

(12) Whereas national laws may, under the conditions laid down in this directive, specify rules on the lawfulness of processing; whereas, however, such a possibility cannot serve as a basis for supervision by a Member State other than the State in which the data is located, the obligation on the part of the latter to ensure, in

(\*) OJ No C 277, 5.11.1990, p. 3.

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accordance with this directive, the protection of privacy in relation to the processing of personal data being sufficient, under Community law, to permit the free flow of data;

(Amendment No 4)

*Recital (13)*

(13) Whereas the procedures of notification in respect of *public or private sector data files*, and provision of information at the time of first communication, in respect of *private sector data files*, are designed to ensure the transparency essential to the exercise by the data subject of the right of access to data relating to him;

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accordance with this directive, the protection of privacy in relation to the processing of personal data being sufficient, under Community law, to permit the free flow of data;

(Amendment No 5)

*Recital (19)*

(19) Whereas the Member States must encourage the drawing-up, by the business circles concerned, of European codes of conduct of professional ethics relating to certain specific sectors; whereas the Commission will support such initiatives and will take them into account when it considers the appropriateness of new, specific measures in respect of certain sectors;

(19) Whereas the Member States must encourage the drawing-up, by the business circles concerned, of European codes of conduct of professional ethics relating to certain specific sectors; **whereas more specific guidelines should be laid down for the establishment of such codes;** whereas the Commission will support such initiatives and will take them into account when it considers the appropriateness of new, specific measures in respect of certain sectors;

(Amendment No 6)

*Recital (20)*

(20) Whereas, in the event of non-compliance with this directive, liability in any action for damages must rest with the controller of the *file*; whereas dissuasive sanctions must be applied in order to ensure effective protection;

(20) Whereas, in the event of non-compliance with this directive, liability in any action for damages must rest with the controller of the **data**; whereas dissuasive sanctions must be applied in order to ensure effective protection;

(Amendment No 7)

*Recital (21a) (new)*

**(21a) Whereas the provisions contained in this directive will have to be put into practice; whereas Member States, industries concerned and the Community institutions will cooperate in developing and manufacturing the relevant technologies necessary to implement controls mentioned below and to enforce law;**

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(Amendment No 8)

*Recital (24)*

(24) *Whereas the adoption of additional measures for applying the principles set forth in this directive calls for the conferment of rule-making powers on the Commission and the establishment of an Advisory Committee in accordance with the procedures laid down in Council Decision 87/373/EEC,*

**Deleted**

(Amendment No 9)

*Recital (24a) (new)*

**(24a) Whereas automatic data-processing systems are designed to serve society; whereas they must respect individual rights and freedoms, human identity and privacy, and contribute to economic and social progress, trade expansion and the well-being of individuals;**

(Amendment No 10)

*Article 1(1)*

1. The Member States shall ensure, in accordance with this directive, the protection of the privacy of individuals in relation to the processing of personal data, *contained in data files;*

1. The Member States shall ensure, in accordance with this directive, the protection of the privacy of individuals in relation to the **collection and processing** of personal data;

(Amendment No 11)

*Article 1(2a) (new)*

**2a. The Member States shall therefore reconcile a high level of protection in relation to the processing, collection and communication of personal data with the principle of the free flow of personal data throughout the Community.**

(Amendment No 12)

*Article 2(a)*

(a) 'personal data' means any information relating to an identified or identifiable individual ('data subject'); an identifiable individual is notably an individual who can be identified by reference to an identification number or a similar identifying particular;

(a) 'personal data' means any information relating to an identified or identifiable individual ('data subject'); an identifiable individual is notably an individual who can be identified **directly or indirectly** by reference to an identification number or a similar identifying particular **or by reference to one or more factors specific to his physical, mental, economic, cultural or social identity**; 'personal data' also includes any set of personal data, networks of data, profiles, integrated sound systems, images, numerical data or texts, whether centralized or geographically dispersed, undergoing automatic or

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other processing or which, although not undergoing processing, are structured and accessible in an organized collection according to specific criteria in such a way as to facilitate their use or combination;

(Amendment No 13)

Article 2(b)

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| <p>(b) 'depersonalize' means modify personal data in such a way that the information they contain can no longer be associated with a specific individual or an individual capable of being determined <i>except at the price of an excessive effort in terms of staff, expenditure and time</i>;</p> | <p>(b) 'depersonalize' means modify personal data in such a way that the information they contain can no longer be associated with a specific individual or an individual capable of being determined;</p> |
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(Amendment No 14)

Article 2(c)

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| <p>(c) 'personal data file' (file) means any set of personal data, whether centralized or geographically dispersed, undergoing automatic processing or which, although not undergoing automatic processing, are structured and accessible in an organized collection according to specific criteria in such a way as to facilitate their use or combination;</p> | <p><b>Deleted</b></p> |
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(Amendment No 15)

Article 2(d)

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| <p>(d) 'processing' means the following operations, whether or not performed by automatic means: the recording, storage or combination of data, and their alteration, use or communication, including transmission, dissemination, retrieval, blocking or erasure;</p> | <p>(d) 'processing' means the following operations, whether or not performed by automatic means: the collection, recording, organizing, storage or combination of data, and their alteration, use or communication, including consultation, transmission, dissemination, retrieval, blocking or erasure;</p> |
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(Amendment No 16)

Article 2(da) (new)

- (da) 'communication' means the dissemination, disclosure, transmission or making available of personal data to a natural or legal person; communication shall not include the dissemination or making available of personal data to other persons within the organization or undertaking in which the controller of the data operates, if such persons receive such data in the course of their duties within the framework of the principles laid down in Article 8(1) hereafter;

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(Amendment No 17)

*Article 2(e)*

- (e) 'controller of the *file*' means the natural or legal person, public authority, agency or other body competent *under Community law or the national law of a Member State* to decide *what will be* the purpose of the *file*, which categories of personal data will be stored, which operations will be applied to them and which third parties may have access to them;
- (e) 'controller of the **data**' means the natural or legal person, public authority, agency or other body, **which processes personal data either on its own account or by a processor and is competent to decide the purpose or purposes for which the personal data are processed**, which categories of personal data will be stored, which operations will be applied to them and which third parties may have access to them;

(Amendment No 18)

*Article 2(ea) (new)*

- (ea) '**processor**' means a natural or legal person who **processes personal data on behalf of the controller of the data**;

(Amendment No 19)

*Article 2(ha) (new)*

- (ha) '**automatic data-processing system**' means a system composed of one or more processing units, memories, software packages, input-output units and links which combine to produce a specific result;

(Amendment No 134)

*Article 2(hb) (new)*

- (hb) '**third parties**' means natural or legal persons other than the controller of the data. The following shall not be considered third parties: employees of the companies which hold the data, to the exclusion of those in their branches, or in companies belonging to the same holding company, if they receive such data in the course of their work.

(Amendment No 21)

*Article 3(1)*

1. The Member States shall apply this directive to *files in the public and private sectors with the exception of files in the public sector where the activities of that sector do not fall within the scope of Community law.*

1. The Member States shall apply this directive to **personal data held by all authorities and organizations constituted under public law, and by other natural and legal persons, without prejudice to the provisions laid down pursuant to paragraph 2 of this article.**

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(Amendments Nos 22 and 130)

## Article 3(2)

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| <p>2. This directive shall not apply to <i>files held by</i>:</p> <p>(a) an individual solely for private and personal purposes;</p> <p>or</p> <p>(b) non-profit-making bodies, notably of a political, philosophical, religious, cultural, trade union, sporting or leisure nature, as part of their legitimate aims, on condition that <i>they</i> relate only to those members and corresponding members who have consented to being included therein and that they are not communicated to third parties.</p> | <p>2. This directive shall not apply to <b>personal data</b>:</p> <p>(a) <b>held by</b> an individual solely for private and personal <b>activities</b>;</p> <p>or</p> <p>(b) <b>held by foundations and</b> non-profit-making bodies, notably of a political, <b>charitable</b>, philosophical, religious, <b>professional</b>, cultural, trade union <b>or trade or staff association</b>, sporting or leisure nature, as part of their legitimate aims, on condition that <b>the data</b> relate only to those members and corresponding members who have consented to being included therein and that they are not communicated to third parties;</p> <p>or</p> <p>(ba) <b>held by press, photography, cinematography, radio or television undertakings and by journalists, programme makers, publishers and contributors to the extent that such personal data is used for the public supply of information, where compatible with individuals' right to privacy.</b></p> |
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(Amendment No 23)

## Article 3(2)(bb) to (bf) (new)

- (bb) **held under an obligation laid down by statute on condition that the personal data are not communicated to third parties;**
- (bc) **held in the archives of a person or entity either for purposes of reconstruction or for use as evidence;**
- (bd) **held in compliance with legal obligations, whether of a fiscal or an accounting nature;**
- (be) **from sources or registers whose object is to ensure publicity for such data;**
- (bf) **held for payroll, pensions and accounts purposes on condition that the data are not communicated to third parties except as necessary for those others to carry out statutory duties.**

**Such sets of data shall not require registration with the supervisory authority.**

(Amendment No 24)

## Article 4(1)

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| (a) all <i>files</i> located in its territory; | (a) all <b>personal data</b> located in its territory; |
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- (b) the controller of *a file* resident in its territory who uses from its territory *a file* located in a third country whose law does not provide an *adequate* level of protection, *unless such use is only sporadic*.

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- (b) the controller of **data** resident in its territory who uses from its territory **data** located in a third country whose law does not provide an **equivalent** level of protection.

(Amendment No 25)

## Article 4(2)

2. Each Member State shall apply Articles 5, 6, 8, 9, 10, 17, 18 and 21 of this directive to a user consulting *a file* located in a third country from a terminal located in the territory of a Member State, *unless such use is only sporadic*.

2. Each Member State shall apply Articles 8, 9, 10, 17, 18 and 21 of this directive to a user consulting **data** located in a third country from a terminal located in the territory of a Member State.

(Amendment No 26)

## Article 4(3)

3. Where *a file* is moved temporarily from one Member State to another, the latter shall place no obstacle in the way and shall not require the completion of any formalities over and above those applicable in the Member State in which the file is normally located.

3. Where **data** is moved temporarily from one Member State to another **for a purpose in accordance with the declared purpose of the data**, the latter shall place no obstacle in the way and shall not require the completion of any formalities over and above those applicable in the Member State in which the data is normally located.

(Amendment No 27)

## Article 5

1. *Subject to Article 6, the Member States shall, with respect to files in the public sector, provide in their law that:*

**Deleted**

(a) *the creation of a file and any other processing of personal data shall be lawful in so far as they are necessary for the performance of the tasks of the public authority in control of the file;*

(b) *the processing of data for a purpose other than that for which the file was created shall be lawful if:*

— *the data subject consents thereto,*

*or*

— *it is effected on the basis of Community law, or of a law, or a measure taken pursuant to a law, of a Member State conforming with this directive which authorizes it and defines the limits thereto,*

*or*

— *the legitimate interests of the data subject do not preclude such change of purpose,*

*or*

— *it is necessary in order to ward off an imminent threat to public order or a serious infringement of the rights of others.*

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(Amendment No 28)

## Article 6

1. *The Member States shall provide in their law that the communication of personal data contained in the files of a public-sector entity shall be lawful only if:* Deleted

(a) *it is necessary for the performance of the tasks of the public-sector entity communicating or requesting communication of the data;*

or

(b) *it is requested by a natural or legal person in the private sector who invokes a legitimate interest, on condition that the interest of the data subject does not prevail.*

2. *Without prejudice to paragraph 1, the Member States may specify the conditions under which the communication of personal data is lawful.* Deleted

3. *The Member States shall provide in their law that, in the circumstances referred to in paragraph 1(b), the controller of the file shall inform data subjects of the communication of personal data. The Member States may provide for the replacing of such provision of information by prior authorization by the supervisory authority.* Deleted

(Amendment No 29)

## Article 7

1. *The Member States shall provide in their law that the creation of a public-sector file the personal data in which might be communicated shall be notified in advance to the supervisory authority and recorded in a register kept by that authority. The register shall be freely available for consultation.* Deleted

2. *The Member States shall specify the information which must be notified to the supervisory authority. That information shall include at least the name and address of the controller of the file, the purpose of the file, a description of the types of data it contains, the third parties to whom the data might be communicated and a description of the measures taken pursuant to Article 18.* Deleted

3. *The Member States may provide that paragraphs 1 and 2 shall apply to other public sector files and that consultation of the register may be restricted for the reasons stated in Article 15(1).* Deleted

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(Amendment No 30)

*Article 8(1)*

1. The Member States shall provide in their law that, *without the consent of the data subject, the recording in a file and any other processing of personal data shall be lawful only if it is effected in accordance with this directive and if:*

- (a) the processing is carried out under a contract, or in the context of a quasi-contractual relationship of trust, with the data subject and is necessary for its discharge; or
- (b) the data come from sources generally accessible to the public and their processing is intended solely for correspondence purposes; or
- (c) *the controller of the file is pursuing a legitimate interest, on condition that the interest of the data subject does not prevail.*

1. The Member States shall provide in their law that **personal data may be processed** only if it is effected in accordance with this directive.

**Processing of personal data may only be carried out if:**

- (-a) the data subject has given his consent, explicitly or implicitly, in a previous contract; or**
- (a) the processing is carried out under a contract or in the context of a quasi-contractual relationship of trust with the data subject and is necessary for its discharge **or is inherent in the nature of the relationship between the controller of the data and the data subject; or**
- (b) the data come from sources generally accessible to the public and their processing is intended solely for correspondence, **marketing or credit referencing** purposes; or
- (c) **processing of the data is mandatory under national law;**

(Amendment No 31)

*Article 8(1)(ca) (new)*

- (ca) **the data subject has been given an opportunity to object to the processing and has not done so.**

(Amendment No 32)

*Article 8(2)*

2. *The Member States shall provide in their law that it shall be for the controller of the file to ensure that no communication is incompatible with the purpose of the file or is contrary to public policy. In the event of on-line consultation, the same obligations shall be incumbent on the user.*

2. **The controller of the data may only communicate personal data in the following cases:**

- (a) **if it is necessary for the performance of a statutory duty,**
- (b) **if it is requested by a natural or legal person, whether or not governed by public law, who must demonstrate convincingly that his interest in the data to be communicated is justified,**
- (c) **with the consent express or implied of the data subject,**
- (d) **to a processor,**
- (e) **if the purpose of a contractual relationship or of a quasi-contractual relationship of trust with the data subject is thereby served,**

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- (f) the data comes from sources generally accessible to the public and their processing is intended solely for correspondence purposes,
- (g) insofar as it is necessary to safeguard the legitimate interests of a third party or the general public, provided that the interests of the data subject that warrant protection are not harmed,
- (h) for direct marketing or similar purposes; in such cases lists of members of a group of persons giving their names, addresses and occupation or profession may be disclosed,
- (i) for research and statistical purposes on condition that the personal data is depersonalized.

In the event of on-line consultation, the same obligations shall be incumbent on the user.

(Amendment No 33)

*Article 8(2a) (new)*

**2a. The controller of the data shall inform the data subjects of the communication of the data including details of the name and the address of the receiver.**

(Amendment No 34)

*Article 8(3)*

3. Without prejudice to paragraph 1, the Member States may specify the conditions under which the processing of personal data *is* lawful.

3. Without prejudice to paragraphs 1 and 2, the Member States may specify the conditions under which **collection, processing, inspection and communication of personal data are** lawful.

(Amendment No 35)

*Article 9*

1. The Member States shall, *with respect to the private sector*, provide *in their law* that at the time of first communication or of the affording of an opportunity for on-line consultation the controller of the *file* shall inform the data subject accordingly, indicating also the purpose of the *file*, the types of data stored therein and his name and address.

1. The Member States shall provide that **in the cases referred to in Article 8(2)(a), (b), (e), (g) and (h), either prior to first communication or at the time of first communication or of the affording of an opportunity for on-line consultation the controller of the data or his agent shall inform the data subject accordingly, indicating also the purpose of the collection of the data, the types of data stored and his name and address.**

2. *The provision of information under paragraph 1 shall not be mandatory in the circumstances referred to in Article 8(1)(b).* There shall be no obligation to inform where communication is required by law.

2. There shall be no obligation to inform where communication is required by law, **or is covered by one of the reasons stated in Article 15(1).**

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3. If the data subject objects to communication or *any other processing*, the controller of the *file* shall *cease the processing objected to unless he is authorized by law to carry it out*.

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3. If the data subject objects to communication or **on-line consultation**, the controller of the **data or his agent** shall **abstain from communication or from affording the opportunity of on-line consultation**.

**Such opposition shall have no effect where communication is required or authorized by law.**

(Amendment No 36)

Article 10

If the provision of information to the data subject provided for in Article 9(1) proves impossible or involves a disproportionate effort, or comes up against the overriding legitimate interests of the controller of the *file* or a similar interest of a third party, the Member States may provide in their law that the supervisory authority may authorize a derogation.

If the provision of information to the data subject provided for in Article 9(1) proves impossible or involves a disproportionate effort, or comes up against the overriding legitimate interests of the controller of the **data** or a similar interest of a third party, the Member States may provide in their law that the supervisory authority may authorize a derogation.

(Amendment No 37)

Article 11(1)

1. The Member States shall provide in their law that the controller of the *file* shall notify the creation of a personal data *file*, where the data are intended to be communicated and do not come from sources generally accessible to the public, to the supervisory authority of the Member State in which the *file* is located, or if it is not located in a Member State, to the supervisory authority of the Member State in which the controller of the *file* resides. *The controller of the file shall notify to the competent national authorities any change in the purpose of the file or any change in his address.*

1. The Member States shall provide in their law that the controller of the **data** shall notify the **collection** of personal **data**, where the data are intended to be communicated and do not come from sources generally accessible to the public, to the supervisory authority of the Member State in which the **data** is located, or if it is not located in a Member State, to the supervisory authority of the Member State in which the controller of the **data** resides. **The supervisory authority shall record the collection of such data in a register, which shall be freely available for consultation; data collected before the entry into force of this directive will be recorded in the same public register.**

**The Member States may lay down special provisions to govern processing operations carried out by bodies covered by Article 2(h) or which infringe a civil liberty or privacy.**

(Amendment No 39)

Article 11(2) and (3)

2. *The Member States shall specify the information which must be notified to the supervisory authority. That information shall include at least the name and address of the controller of the file, the purpose of the file, a description of the types of data it contains, the third parties to whom the data might be communicated and a description of the measures taken pursuant to Article 18.*

2. **Notification shall include at least:**
- (a) the name and address of the controller of the **data**,
  - (b) the purpose of the **data**,
  - (c) a **simplified** description of the types of data,
  - (d) the **categories of possible users of the communication**,
  - (e) a **general** description of **security** measures taken pursuant to Article 18.

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3. The Member States may *provide that paragraphs 1 and 2 shall apply to other private sector files and that the information referred to in paragraph 2 shall be accessible to the public.*

3. The Member States may **determine the contents of the register referred to in paragraph 1 and the extent to which the information referred to in paragraph 2 shall be accessible to the public. The Member States may restrict the application of paragraphs 1 and 2 to personal data whose purpose is covered by any one of the reasons stated in Article 15(1).**

**3a. The Member States may provide that the formality referred to in paragraph 1 shall be simplified by legal acts such as simplified standards, specimen models, and codes of ethics or good conduct. An annex to the directive shall lay down the categories of processing to which the simplified formalities may apply, subject to the opinion of the Working Party on the Protection of Personal Data.**

**Application of the simplified formalities shall not exempt the controller of the data from any of the obligations laid down in this directive, in particular that of informing subjects whose data is being processed.**

**3b. The register in which the processing operations referred to in paragraphs 1 and 2 are entered may be consulted by any individual. Consultation of the register may be restricted for the reasons stated in Article 15(1).**

**3c. The Member States shall specify the information which, pursuant to paragraph 2, must be notified to the supervisory authority.**

(Amendment No 40)

*Article 11(3d) (new)*

**3d. The Member States shall provide in their law that the controller of the data shall seek the opinion of the supervisory authority in cases where the ability to consent of the party concerned is reduced and the risk of exclusion is significant.**

(Amendment No 41)

*Article 11(3e) (new)*

**3e. The Member States shall provide in their law that the controller of the data shall seek prior authorization in cases where the data assembled is particularly sensitive.**

(Amendment No 118)

*Article 11(3f) (new)*

**3f. Before personal data involving the census of a whole population or of a type of population are processed, a request for authorization must be submitted to the national supervisory authority.**

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(Amendment No 119)

*Article 11 (3g) (new)*

**3g. Other processing operations registered with the national supervisory authority may be checked subsequently, particularly if:**

- (a) the person in question has only one possible co-contracting party, who has a *de jure* or *de facto* monopoly or a dominant position;
- (b) the processing establishes a personality project, represents an aid to decision-making or even takes a decision in lieu of a human being.

(Amendment No 42)

*Article 12(a), (b) and (c)*

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| <p>(a) the data subject is supplied with the following information:</p> <ul style="list-style-type: none"> <li>— the purposes of the <i>file</i> and the types of data stored,</li> <li>— the type of use and, where appropriate, the recipients of the personal data <i>contained in the file</i>,</li> <li>— the name and address of the controller of the <i>file</i>;</li> </ul> <p>(b) <i>it is specific and express and specifies the types of data, forms of processing and potential recipients covered by it;</i></p> <p>(c) it may be withdrawn by the data subject at any time without retroactive effect.</p> | <p>(a) the data subject is supplied with the following information:</p> <ul style="list-style-type: none"> <li>— the purposes of the <b>collection of the data</b> and the types of <b>personal data about the data subject stored or intended to be stored</b>,</li> <li>— the type of use and, where appropriate, the <b>types of potential</b> recipients of the personal data,</li> <li>— the name and address of the controller of the <b>data</b>;</li> </ul> <p>(b) <b>the data subject is given a specific and express opportunity to object to any type of processing or use in respect of that personal data by the controller of the data which requires consent under this directive;</b></p> <p>(c) it may be withdrawn by the data subject at any time without retroactive effect;</p> <p><b>(ca) The consent of the data subject must also be obtained whenever the purpose of the data is changed.</b></p> |
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(Amendment No 145)

*Article 12, second paragraph (new)*

**The right to object to the processing of personal data may be exercised at any time.**

(Amendment No 43)

*Article 13(1), introductory phrase*

1. The Member States shall guarantee individuals from whom personal data are collected the right to be informed at least about:

1. The Member States shall guarantee individuals or **groups of individuals** from whom personal data are collected the right to be informed at least about:

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BY THE EUROPEAN PARLIAMENT

(Amendment No 44)

*Article 13(1)(a)*

- |  |  |
|--|--|
| (a) the purposes of the <i>file</i> for which the information is intended; | (a) the purposes of the <b>collection of the data</b> for which the information is intended; |
|--|--|

(Amendment No 45)

*Article 13(1)(f)*

- |   |   |
|---|---|
| (f) the name and address of the controller of the <i>file</i> . | (f) the name and address of the controller of the <b>data</b> . |
|---|---|

(Amendment No 46)

*Article 14(2)*

2. Not to be subject to an administrative or private decision involving an assessment of his *conduct* which has as its sole basis the automatic processing of personal data defining his profile or personality.

2. Not to be subject to an administrative or private decision involving an assessment of his **character** which has as its sole basis the automatic processing of personal data defining his profile or personality, save where the data subject has requested or given his consent to such assessment in accordance with the provisions of Article 12 or in the circumstances described in Article 8(1)(-a) and (a).

**2a. To be informed of and to challenge the information and arguments used in the automatic processing whose outcome is detrimental to him.**

(Amendment No 47)

*Article 14(3)*

3. To know of the existence of a *file* and to know its main purposes and the identity and habitual residence, headquarters or place of business of the controller of the *file*.

3. To know of the existence of a **collection of data** and to know its main purposes and the identity and habitual residence, headquarters or place of business of the controller of the **data**.

(Amendment No 48)

*Article 14(4), first subparagraph*

4. To obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored *in a file* and communications to him of such data in an intelligible form.

4. To obtain, **upon request**, at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored and communications to him of such data **and information on their general origin and their exact use** in an intelligible form.

**No charge may be levied where the data subject has reasonable grounds for believing that a breach of his rights under this directive has occurred.**

Wednesday, 11 March 1992

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES

TEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 49)

*Article 14(5)*

5. To obtain, *as the case may be*, rectification, erasure or *blocking* of such data if they have been processed in violation of the provisions of this directive.

5. To obtain **the rectification of inaccurate data and the addition of data which have been wholly or partially omitted, as well as the erasure of such data** if they have been processed in violation of the provisions of this directive.

(Amendment No 50)

*Article 14(6)*

6. To obtain upon request and free of charge the erasure of data relating *to him held in files* used for *market research* or advertising purposes.

6. To obtain upon request and free of charge the erasure of data relating to him used for **direct marketing** or advertising purposes. **Personal employment data shall be erased within a reasonable period following cessation of the employment in question. The former employee shall be notified that this is being done.**

(Amendment No 51)

*Article 14(7)*

7. To obtain, in the event of the application of paragraph 5 and if the data have been communicated to third parties, notification to the latter of the rectification, erasure or *blocking*.

7. To obtain, in the event of the application of paragraph 5 and if the data have been communicated to third parties, notification to the latter of the rectification or erasure.

(Amendment No 52)

*Article 14(8)*

8. To have a judicial remedy if the rights guaranteed in this *Article* are infringed.

8. To have a judicial remedy if the rights guaranteed in this **directive** are infringed.

(Amendment No 53)

*Article 14a (new)***Article 14a**

**The right laid down in Article 14(3) shall be available to any individual.**

(Amendment No 54)

*Article 15, Title*

Exceptions to the data subject's right of access *to public sector files*.

Exceptions to the data subject's right of access.

Wednesday, 11 March 1992

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIESTEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 55)

*Article 15(1)(ga) (new)*

**(ga) the collection of personal data solely for research and/or statistical purposes and which cannot be related to individuals, or are transmitted to a third party for that reason only.**

(Amendment No 56)

*Article 15(2)*

2. In the circumstances referred to in paragraph 1, the supervisory authority shall be empowered to carry out, at the request of the data subject, the necessary checks on the *file*.

2. In the circumstances referred to in paragraph 1, the supervisory authority shall be empowered to carry out, at the request of the data subject, the necessary checks on the **data unless access is denied to the supervisory authority by the Member State concerned for reasons of national security, defence or public safety.**

(Amendment No 57)

*Article 15(3)*

3. *The Member States may place limits on the data subject's right of access to data compiled temporarily for the purpose of extracting statistical information therefrom.*

**Deleted**

(Amendment No 58)

*Article 15a (new)***Article 15a**

**1. Member States may restrict by statute the rights provided for in Article 14(3) and (4) for reasons relating to an equivalent right of another person or to the general interest.**

**2. In the cases referred to in paragraph 1 the supervisory authority must be empowered to make the necessary checks on the data at the request of the person concerned.**

(Amendment No 132)

*Article 15b (new)***Article 15b****Rights in relation to third parties**

**The Member States shall provide in their law that a data subject may not be required by any legal or natural person as a precondition for employment, continued employment or any other purpose to exercise his right of access to his own personal data in order to disclose it to that third party.**

Wednesday, 11 March 1992

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIESTEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 59)

*Article 16(1)(b)*

- |   |   |
|---|---|
| (b) stored for specified, explicit and lawful purposes and used <i>in a way compatible</i> with those purposes; | (b) stored for specified, explicit and lawful purposes and used <b>in conformity</b> with those purposes;                 |
|   | (ba) <b>the determining purpose for which the data are to be collected shall be established before collection begins;</b> |

(Amendment No 60)

*Article 16(1)(e)*

- |   |   |
|---|---|
| (e) kept in a form which permits identification of the data subjects for no longer than is necessary for the purpose for which the data are stored. | (e) kept in a form which permits identification of the data subjects for no longer than is necessary for the purpose for which the data are stored. <b>Exceptions may be laid down by law in the case of personal data transferred to archives and used for historical, statistical or scientific purposes.</b> |
|---|---|

(Amendment No 61)

*Article 16(1a) (new)*

- 1a. It shall be possible to trace all data back to the original owner of the data, so that the data can be corrected if errors are found. It shall be incumbent on the owner of the data to ensure that these corrections are made by all who have acquired the data by combining files.**

(Amendment No 62)

*Article 16(2)*

- |   |   |
|---|---|
| 2. It shall be for the controller of the <i>file</i> to ensure that paragraph 1 is complied with. | 2. It shall be for the controller of the <b>data</b> to ensure that paragraph 1 is complied with. |
|---|---|

(Amendment No 63)

*Article 17(1) and (2)*

- |   |  |
|---|--|
| 1. The Member States shall prohibit the automatic processing of data revealing ethnic or racial origin, political opinions, religious or philosophical beliefs or trade union membership, and of data concerning health or sexual life, without the express and written consent, freely given, of the data subject. | 1. The Member States shall prohibit the <b>manual or automatic</b> processing of data revealing ethnic or racial origin, political opinions, religious or philosophical beliefs or trade union membership, and of data concerning health or sexual life, <b>or significant social circumstances including criminal convictions as well as any identification number issued by the public authorities</b> without the express and written consent, freely given, of the data subject. |
| 2. The Member States <i>may, on important public interest grounds, grant derogations from paragraph 1 on the basis of a law specifying the types of data which may be stored and the persons who may have access to the file and providing suitable safeguards against abuse and unauthorized access.</i>           | 2. The Member States <b>shall provide in their law for a ban on the processing of data of a strictly private nature in the private sector.</b>   |

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TEXT PROPOSED BY THE COMMISSION  
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BY THE EUROPEAN PARLIAMENT

(Amendments Nos 64 and 149)

*Article 17(2a) (new)*

**2a. Non-profit-making bodies, notably of a political, philosophical, religious, cultural, trade union, sporting or leisure nature, may collect data of a strictly private nature for the purposes of achieving their legitimate object and on condition that the data relate solely to members and corresponding members who have consented thereto and that they are not communicated to third parties. The processing of such data shall be exempt from the requirement to register with the supervisory authority, pursuant to the provisions of the second subparagraph of Article 11(1). However, they shall be subject to all other relevant provisions of this directive.**

(Amendment No 65)

*Article 17(3)*

3. Data concerning criminal convictions shall be held only *in public sector files*.

**3. Data concerning criminal convictions shall be held only by judicial authorities; the supervisory authority may nevertheless grant authorization to certain undertakings, having regard to the nature of their activities, to hold data concerning criminal convictions.**

**3a. The Member States shall lay down in their law the conditions under which the national identification number or other identifying particular of a general nature may be used.**

(Amendment No 66)

*Article 18(1), first subparagraph*

1. The Member States shall provide in their law that the controller of *a file* shall take appropriate technical and organizational measures to protect personal data *stored in the file* against accidental or unauthorized destruction or accidental loss and against unauthorized access, modification or other processing.

**1. The Member States shall provide in their law that the controller of **data** shall take appropriate technical and organizational measures to protect personal data against accidental or unauthorized destruction or accidental loss and against unauthorized access, modification or other processing.**

(Amendment No 67)

*Article 18(1), second subparagraph*

Such measures shall ensure, in respect of *automated files*, an appropriate level of security having regard to the state of the art in this field, the cost of taking the measures, the nature of the data to be protected and the assessment of the potential risks. To that end, the controller of the *file* shall take into consideration any recommendations on data security and network interoperability formulated by the Commission in accordance with the procedure provided for in Article 29.

Such measures shall ensure, in respect of **automatic processing of data**, an appropriate level of security having regard to the state of the art, the nature of the data to be protected and the assessment of the potential risks. To that end, the controller of the **data** shall take into consideration any recommendations on data security and network interoperability formulated by the Commission in accordance with the procedure provided for in Article 29.

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TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES

TEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 68)

*Article 18(3)*

3. In the event of on-line consultation, the hardware and software shall be designed in such a way that the consultation takes place within the limits of the authorization granted by the controller of the *file*.

3. In the event of on-line consultation, the hardware and software shall be designed in such a way that the consultation takes place within the limits of the authorization granted by the controller of the **data and it is possible to make random checks of consultations and authorizations.**

(Amendment No 69)

*Article 18(4)*

4. The obligations referred to in paragraphs 1, 2 and 3 shall also be incumbent on persons who, either de facto or by contract, control the operations relating to a *file*.

4. The obligations referred to in paragraphs 1, 2 and 3 shall also be incumbent on persons who, either de facto or by contract, control the operations relating to **data**.

(Amendment No 70)

*Article 18(5)*

5. Any person who in the course of his work has access to information *contained in files* shall not communicate it to third parties without the agreement of the controller of the *file*.

5. Any person who in the course of his work has access to information shall not communicate it to third parties without the agreement of the controller of the **data**.

(Amendment No 71)

*Article 19*

*The Member States may grant, in respect of the press and the audiovisual media, derogations from the provisions of this directive in so far as they are necessary to reconcile the right to privacy with the rules governing freedom of information and of the press.*

**Deleted**

(Amendment No 72)

*Article 20*

The Member States shall encourage the business circles concerned to participate in drawing up European codes of conduct or professional ethics in respect of certain sectors on the basis of the principles set forth in the directive.

The Member States shall encourage the business circles concerned to participate in drawing up European codes of conduct or professional ethics in respect of certain sectors on the basis of the principles set forth in the directive. **Such codes shall be reviewed by the Working Party on the protection of personal data mentioned in Article 27, which shall ensure the adequacy of the code, and the representative nature of those organizations proposing it. Third parties shall be given the necessary opportunity to comment or to object to the proposed code. The opinion of the Working Party shall be published in the Official Journal, along with the final version of the code, which shall have a maximum duration of five years. Any prolongation or modification of the code shall again be**

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TEXT PROPOSED BY THE COMMISSION  
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BY THE EUROPEAN PARLIAMENT

subject to the above procedures. Codes shall be drawn up on the basis of the fundamental rights flowing from the constitutions of the Member States and from the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(Amendment No 73)

*Article 21*

1. The Member States shall provide in their law that any individual whose personal data have been stored *in a file* and who suffers damage as a result of processing or of any act incompatible with this directive shall be entitled to compensation from the controller of the *file*.

2. *The Member States may provide that the controller of the file shall not be liable for any damage resulting from the loss or destruction of data or from unauthorized access if he proves that he has taken appropriate measures to fulfil the requirements of Articles 18 and 22.*

1. The Member States shall provide in their law that any individual whose personal data have been stored and who suffers damage as a result of **unlawful** processing or of any act incompatible with this directive shall be entitled to compensation from the controller of the **data**.

2. The controller of the **data** shall **compensate the data subject** for any damage resulting from **storage of his personal data that is incompatible with this directive**.

(Amendment No 74)

*Article 22, title*Processing on behalf of the controller of the *file*Processing on behalf of the controller of the **data**

(Amendment No 75)

*Article 22(1) and (2)*

1. The Member States shall provide in their law that the controller of the *file* must, where processing is carried out on his behalf, ensure that the necessary security and organizational measures are taken and choose a *person or enterprise* who provides sufficient guarantees in that respect.

2. *Any person who collects or processes personal data on behalf of the controller of the file shall fulfil the obligations provided for in Article 16 and 18 of this directive.*

1. The Member States shall provide in their law that the controller of the **data** must, where processing is carried out on his behalf, ensure that the necessary security and organizational measures are taken and choose a **processor** who provides sufficient guarantees in that respect.

2. **The processor shall only carry out that processing of personal data laid down contractually by the controller of the data and shall take instructions only from the controller.**

(Amendment No 76)

*Article 22(3)*

3. The contract shall be in writing and shall stipulate, in particular, that the personal data may be divulged by the person providing the service or his employees only with the agreement of the controller of the *file*.

3. The contract shall be in writing and shall stipulate, in particular, that the personal data may be divulged by the person providing the service or his employees only with the agreement of the controller of the **data**.

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TEXT PROPOSED BY THE COMMISSION  
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(Amendment No 77)

*Article 23*

Each Member State shall make provision in its law for the application of dissuasive sanctions in order to ensure compliance with the measures taken pursuant to this directive.

Each Member State shall make provision in its law for the application of dissuasive sanctions, **applicable to both authorities and organizations governed by public law and other natural or legal persons**, in order to ensure compliance with the measures taken pursuant to this directive.

(Amendments Nos 78 and 127)

*Article 24(1)*

1. The Member States shall provide in their law that the transfer to a third country, whether temporary or permanent, of personal data which have been gathered with a view to processing may take place only if that country ensures an adequate level of protection.

1. The Member States shall provide in their law that the transfer to a third country, whether temporary or permanent, of **particular categories of specified personal data which are undergoing processing** or which have been gathered with a view to processing may **be prohibited in order to prevent damage to data subjects' interests from an inadequate level of protection**. The transfer of personal data to a third country may require the express consent of the data subject.

(Amendment No 79)

*Article 24(2)*

2. The Member States shall inform the Commission of cases in which an importing third country does not ensure an adequate level of protection.

2. The Member States shall inform the Commission of cases in which they consider an importing third country does not ensure an adequate level of protection **for particular categories of specified personal data**.

(Amendment No 80)

*Article 24(3)*

3. Where the Commission finds, either on the basis of information supplied by Member States or on the basis of other information, that a third country does not have an adequate level of protection and that the resulting situation is likely to harm the interests of the Community or of a Member State, it may enter into negotiations with a view to remedying the situation.

3. Where the Commission finds, **after consulting the body referred to in Article 27**, either on the basis of information supplied by Member States or on the basis of other information, that a third country does not have an adequate level of protection **for particular categories of specified personal data** and that the resulting situation is likely to harm the interests of the Community or of a Member State, it may enter into negotiations with a view to remedying the situation.

(Amendment No 81)

*Article 24(4) and (5)*

4. The Commission may decide, *in accordance with the procedure laid down in Article 30(2) of this directive*, that a third country ensures an adequate level of protection by reason of the international commitments it has entered into or of its domestic law.

4. The Commission may decide that a third country ensures an adequate level of protection **of particular categories of specified personal data** by reason of the international commitments it has entered into or of its domestic law. Measures taken pursuant to this article

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5. Measures taken pursuant to this Article shall be in keeping with the obligations incumbent on the Community by virtue of international agreements, both bilateral and multilateral, governing the protection of individuals in relation to the automatic processing of personal data.

shall be in keeping with the obligations incumbent on the Community by virtue of international agreements, both bilateral and multilateral, governing the protection of individuals in relation to the automatic processing of personal data.

(Amendment No 82)

*Article 25(1)*

1. A Member State may derogate from Article 24(1) in respect of a given export on submission by the controller of the *file* of sufficient proof that an adequate level of protection will be provided. The Member State may grant a derogation only after it has informed the Commission and the Member States thereof and in the absence of notice of opposition given by a Member State or the Commission within a period of 10 days.

1. A Member State may derogate from Article 24(1) in respect of a given export **or type of export of personal data** on submission by the controller of the **data** of sufficient proof that an adequate level of protection will be provided. The Member State may grant a derogation only after it has informed the Commission and the Member States thereof and in the absence of notice of opposition given by a Member State or the Commission within a period of 10 days.

(Amendment No 83)

*Article 25(2)*

2. Where notice of opposition is given, the Commission shall adopt appropriate measures *in accordance with the procedure laid down in Article 30(2)*.

2. Where notice of opposition is given, the Commission shall adopt appropriate measures **after consulting the Working Party on the Protection of Personal Data**.

(Amendment No 84)

*Article 26(1)*

1. The Member States shall ensure that an independent competent authority supervises the protection of personal data. The authority shall monitor the application of the national measures taken pursuant to this directive and perform all the functions that are entrusted to it by this directive.

1. The Member States shall ensure that an independent competent authority **(or authorities)** supervises the protection of personal data. The authority **(or authorities)** shall monitor the application of the national measures taken pursuant to this directive and perform all the functions that are entrusted to it by this directive.

(Amendment No 85)

*Article 26(2)*

2. The authority shall have investigative powers and effective powers of intervention against the *creation* and exploitation of files which do not conform with this directive. To that end, it shall have inter alia the right of access to *files* covered by this directive and shall be given the power to gather all the information necessary for the performance of its supervisory duties.

2. The authority shall have investigative powers and effective powers of intervention against the **collection** and exploitation of **data** which do not conform with this directive. To that end, it shall have inter alia the right of access to **data** covered by this directive and shall be given the power to gather all the information necessary for the performance of its supervisory duties.

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TEXT PROPOSED BY THE COMMISSION  
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BY THE EUROPEAN PARLIAMENT

## Amendment No 86)

*Article 26(3a) (new)*

**3a. The Member States shall provide that the supervisory authority has appropriate powers of sanction such as ordering the blocking and erasure of data, a temporary or definitive ban on processing, destruction of the processing operation, or sending a warning to the controller of the data.**

## (Amendment No 87)

*Article 26(3b) (new)*

**3b. The supervisory authority shall issue annual reports on its activities. These reports shall be made public.**

## (Amendments Nos 88 and 128)

*Article 27(1)*

1. A Working Party on the Protection of Personal Data is hereby set up. The Working Party, which *shall have advisory status and shall act independently*, shall be composed of representatives of the supervisory authorities provided for in Article 26 of all the Member States and shall be chaired by *a representative of the Commission*.

1. A Working Party on the Protection of Personal Data is hereby set up. The Working Party, which shall act independently **shall monitor, in conjunction with the national supervisory authorities, the cross-border data flows within the Community and between the Community and third countries.** It shall be composed of representatives of the supervisory authorities provided for in Article 26 of all the Member States **as well as representatives of consumers, employers, trade unions and civil liberty groups and a representative of the Commission** and shall be chaired by **one member elected annually from the Group.** It shall have **investigative powers and effective powers of intervention analogous to those in Article 26(2) and (3).**

## (Amendment No 89)

*Article 27(2)*

2. The secretariat of the Working Party on the Protection of Personal Data shall be provided by the Commission's departments.

2. The secretariat of the Working Party on the Protection of Personal Data shall be provided by the Commission's departments, **which shall be allocated the necessary funds.**

## (Amendment No 90)

*Article 28(1), (2) and (3)*

1. The Working Party on the Protection of Personal Data shall:

- (a) *contribute to the uniform application of the national rules adopted pursuant to this directive;*

1. The Working Party on the Protection of Personal Data shall:

- (a) **give an opinion at the request of the Commission on the application of this directive in the Member States;**

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TEXT PROPOSED BY THE COMMISSION  
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- (b) give an opinion on the level of protection in the Community and in third countries;
- (c) *advise the Commission on any measures to be taken to safeguard the protection of privacy.*

- (b) give an opinion, **which shall also be forwarded to the European Parliament**, on the level of protection in the Community and in third countries **and on the measures to be taken concerning the protection of privacy;**
- (c) **draw up recommendations on its own initiative on all matters relating to the protection of personal data in the Community;**

2. *If the Working Party on the Protection of Personal Data finds that significant divergences are arising between the laws or practices of the Member States in relation to the protection of personal data which might affect the equivalence of protection in the Community, it shall inform the Commission accordingly.*

Deleted

3. *The Working Party on the Protection of Personal Data may formulate recommendations on any questions concerning the protection of individuals in relation to personal data in the Community. The recommendations shall be recorded in the minutes and may be transmitted to the Advisory Committee referred to in Article 30. The Commission shall inform the Working Party on the Protection of Personal Data of the action it has taken in response to the recommendations.*

Deleted

(Amendment No 91)

Article 28(1a) (new)

**1a. The Working Party on the Protection of Personal Data shall be heard by the Commission in respect of:**

- **all codes of conduct and professional ethics covered by Article 20,**
- **any decision proposed pursuant to Article 24(4),**
- **any measure or decision proposed pursuant to Article 25(2),**
- **any measure proposed pursuant to Article 29 of the directive.**

**In urgent cases the Commission may either refrain from hearing the Working Party or set a deadline for its opinion.**

(Amendment No 92)

Article 28(4)

4. *The Working Party on the Protection of Personal Data shall draw up an annual report on the situation regarding the protection of individuals in relation to the processing of personal data in the Community and in third countries, which it shall transmit to the Commission.*

**4. The opinions and recommendations shall be recorded in the minutes and shall be forwarded to the Commission. The Commission shall inform the Working Party of the action it has taken in response to these opinions and recommendations. It shall do so in a report which shall also be transmitted to the European Parliament and the Council. This report shall be made public.**

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 TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES
 

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 TEXT AMENDED  
BY THE EUROPEAN PARLIAMENT
 

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Parliament shall examine this report. The Working Party on the Protection of Personal Data shall take the utmost account of Parliament's observations.

(Amendment No 93)

## Article 29

*The Commission shall, in accordance with the procedure laid down in Article 30(2), adopt such technical measures as are necessary to apply this directive to the specific characteristics of certain sectors having regard to the state of the art in this field and to the codes of conduct.*

**The Commission shall, after consulting the Working Party on the Protection of Personal Data pursuant to Article 28(1)(c), submit appropriate legislative proposals to apply this directive to the specific characteristics of certain sectors having regard to the state of the art in the field, and to the codes of conduct published in the Official Journal pursuant to Article 20, (Minor technical adaptations of existing directives may be adopted directly by the Commission after consulting the Working Party and forwarding the draft decision to the European Parliament for its comments).**

**In particular the Commission shall report back within a year to the Council and Parliament on the advisability of submitting a specific directive for the protection of personal data and privacy in the context of integrated services digital networks, having borne in mind the work of the Council of Europe in this area.**

(Amendment No 94)

## Article 30

*1. The Commission shall be assisted by a Committee of an advisory nature composed of the representatives of the Member States and chaired by a representative of the Commission.*

**Deleted**

*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, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.*

**Deleted**

(Amendment No 95)

## Article 32

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 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 published.**

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Wednesday, 11 March 1992

— A3-0010/92

**LEGISLATIVE RESOLUTION**  
(Cooperation procedure: first reading)

**embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a directive concerning the protection of individuals in relation to the processing of personal data**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(90) 0314 — SYN 287) <sup>(1)</sup>,
- having been consulted by the Council pursuant to Article 100A of the EEC Treaty (C3-0323/90),
- having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Energy, Research and Technology, the Committee on Budgets and the Committee on the Environment, Public Health and Consumer Protection (A3-0010/92),

1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
4. Instructs its President to forward this opinion to the Council and Commission.

<sup>(1)</sup> OJ No C 277, 5.11.1990, p. 3.

— Proposal for a directive II COM(90) 0314 — C3-0324/90 — SYN 288

**Proposal for a Council directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks**

**Approved with the following amendments:**

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES (\*)

TEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 96)

*Title*

Proposal for a Council directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks

Proposal for a Council directive concerning the protection of personal data and privacy in the context of public **and private** digital telecommunications networks, in particular the integrated services digital network (ISDN) and public **and private** digital mobile networks **and public and private value added services**

(\*) OJ No C 277, 5.11.1990, p. 12.

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TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIESTEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 97)

*Recital (21a) (new)*

**(21a) Whereas the provisions contained in this directive will have to be put into practice, whereas Member States, industries concerned and the Community institutions will cooperate in developing and manufacturing the relevant technologies necessary to implement controls mentioned below and to enforce law;**

(Amendment No 98)

*Article 2(2a) (new)*

**2a. 'special or exclusive rights' means the rights granted by a Member State or a public authority to one or more public or private bodies through any legal, regulatory or administrative instrument reserving them the right to provide a service or undertake an activity;**

(Amendment No 99)

*Article 2(2b) (new)*

**2b. 'service providers' means those natural or legal persons providing services whose provision consists wholly or partly in the transmission and routing of signals on a public telecommunications network, with the exception of radio broadcasting and television;**

(Amendment No 100)

*Article 4(1), second subparagraph (new)*

**Personal data contained in a directory should be limited to what is strictly necessary to identify a particular subscriber, unless the subscriber requests additional personal data to be published. The subscriber shall be entitled not to have his or her sex indicated and to be omitted from the directory at his or her request, free of charge.**

(Amendment No 101)

*Article 4(2)*

2. The telecommunications organization shall not use such data to set up electronic profiles of the subscribers or classifications of individual subscribers by category.

2. The telecommunications organization shall not use such data to set up electronic profiles of the subscribers or classifications of individual subscribers by category, **unless the subscriber has given his informed consent, as provided for in Article 9 of Council Directive ... concerning the protection of individuals in relation to the processing of personal data.**

Wednesday, 11 March 1992

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIESTEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 102)

*Article 5(2)*

2. The contents of the information transmitted must not be stored by the telecommunications organization after the end of the transmission, except where required by obligations imposed by the law of the Member State, in conformity with Community law.

2. The contents of the information transmitted must not be stored by the telecommunications organization after the end of the transmission, except where required by obligations imposed by the law of the Member State, in conformity with Community law **or where the telecommunications organization has contracted with a service provider to store such information.**

(Amendment No 103)

*Article 9(1)*

1. Billing data containing the telephone number or identification of the subscriber station, the address of the subscriber and the type of station, the total number of units to be charged for the accounting period, the called telephone number, the type and duration of the calls made and/or the data volume transmitted as well as other information needed for billing such as advance payment, payment by instalments, disconnection and reminders, may be stored and processed.

1. Billing data containing the telephone number or identification of the subscriber station, the address of the subscriber and the type of station, the total number of units to be charged for the accounting period, the called telephone number, the type and duration of the calls made and/or the data volume transmitted as well as other information needed for billing such as advance payment, payment by instalments, disconnection and reminders, may be stored and processed, **as long as no other technological means of storage are available. Access to the storage of billing data has to be restricted and subject to control by the working party referred to in Article 22, in accordance with the procedure laid down in Article 23.**

(Amendment No 104)

*Article 10*

1. *Traffic data containing the personal data necessary to establish calls, or required for billing or other operational purposes, such as the telephone number of the calling and of the called subscriber, the time each call started and finished and the telecommunications service used by the subscriber, may be collected, stored and processed as far as this is necessary to provide the telecommunications service required.*

**Traffic data other than billing data may be collected, stored and processed after termination of the call on condition that the data is depersonalized within the meaning of Article 2(b) of Council Directive ... concerning the protection of individuals in relation to the processing of personal data, unless the data is required for other legitimate purposes within the meaning of Article 4.**

2. *The traffic data stored in the switching centres of the telecommunications organization must be erased after termination of the call unless the data are anonymized or are required for billing or other legitimate purposes in the meaning of Article 4.*

(Amendment No 105)

*Article 14(1)*

1. Calls may be forwarded from the called subscriber to a third party only if this party has agreed; *the third*

1. Calls may be forwarded from the called subscriber to a third party only if this party has agreed; **for this**

Wednesday, 11 March 1992

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 TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES
 

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*party may limit automatic forwarding to those calls which identify the calling subscriber's number; the third party must be informed via a specific signal of the message that the call has been forwarded.*

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 TEXT AMENDED  
BY THE EUROPEAN PARLIAMENT
 

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**purpose ways and means of agreement by a third party will have to be developed and made available as well as the possibility of stopping automatic forwarding.**

(Amendment No 106)

## Article 16

1. *The telecommunications organization must ensure that the telephone number as well as other personal data of the subscriber, in particular concerning the quantity and nature of his/her orders when using a teleshopping service or concerning the information requested via a videotex service, is stored only to the extent strictly necessary to supply the service and is only used by the service provider for purposes authorized by this subscriber.*

**Deleted**

2. *Subject to the provisions of Article 20, the service provider may not set up electronic profiles of the subscribers or classifications of individual subscribers by category, without their prior consent.*

**Deleted**

(Amendment No 107)

## Article 19

1. *The provisions of this directive relating to the telephone service shall be applied to other public digital telecommunications services to the extent that these services present similar risks for the privacy of the user.*

**1. Articles 4 to 10, 13 and 17 of this directive shall apply mutatis mutandis to other public digital telecommunications services and to other service providers.**

2. *The measures necessary for the implementation of paragraph 1 shall be adopted by the Commission after consultation of the Working Party referred to in Article 22 and in accordance with the procedure laid down in Article 23.*

**2. The measures necessary for the application of other provisions of this directive to service providers or measures that may prove necessary to give better effect to the application of paragraph 1 shall be adopted by the Commission after consultation of the Working Party referred to in Article 22 and in accordance with the procedure laid down in Article 23.**

(Amendment No 108)

## Article 20

*To the extent that the full achievement of the objectives of this directive requires the application of its provisions to service providers other than telecommunications organizations, the Commission may adopt the measures necessary for the application of this directive to those service providers after consultation of the Working Party referred to in Article 22 and in accordance with the procedure laid down in Article 23.*

**Deleted**

Wednesday, 11 March 1992

— A3-0010/92

**LEGISLATIVE RESOLUTION**  
(Cooperation procedure: first reading)

**embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(90) 0314 — SYN 288) <sup>(1)</sup>,
- having been consulted by the Council pursuant to Article 100A of the EEC Treaty (C3-0324/90),
- having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Energy, Research and Technology, the Committee on Budgets and the Committee on the Environment, Public Health and Consumer Protection (A3-0010/92),

1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
4. Instructs its President to forward this opinion to the Council and Commission.

<sup>(1)</sup> OJ No C 277, 5.11.1990, p. 12.

— **Proposal for a decision III COM(90) 0314 — C3-0325/90: approved**

— A3-0010/92

**LEGISLATIVE RESOLUTION**

**embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a decision in the field of information security**

*The European Parliament,*

- having regard to the proposal from the Commission to the Council (COM(90) 0314) <sup>(1)</sup>,
- having been consulted by the Council pursuant to Article 235 of the EEC Treaty (C3-0325/90),
- having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Energy, Research and Technology, the Committee on Budgets and the Committee on the Environment, Public Health and Consumer Protection (A3-0010/92),

<sup>(1)</sup> OJ No C 277, 5.11.1990, p. 18.

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1. Approves the Commission proposal in accordance with the vote thereon;
2. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
3. Instructs its President to forward this opinion to the Council and the Commission.

## 20. Freedom of movement for workers \*\* I

— Proposal for a regulation COM(91) 0316 — C3-0368/91 — SYN 359

**Proposal for a Council regulation changing Part II of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community**

**Approved with the following amendments:**

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES (\*)

TEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 1)

*ARTICLE 1(-1) (new)*

- 1) Throughout Part II the reference to 'manpower services' is replaced by 'employment services'.

(Amendment No 2)

*ARTICLE 1(2)*

*Article 15(1), introductory phrase (Regulation No 1612/68)*

1. The specialist service of each Member State shall regularly send to the specialist services of the other Member States and to the European Coordination Office:

1. **At the request of the national or regional employment authorities**, the specialist service of each Member State shall regularly send to the specialist services of the other Member States and to the European Coordination Office:

(Amendment No 3)

*ARTICLE 1(2)*

*Article 15(1)(a) (Regulation No 1612/68)*

(a) the vacancies likely to be filled by Community nationals from other Member States;

(a) **at the express request of the employer**, the vacancies likely to be filled by Community nationals from other Member States;

(Amendment No 4)

*ARTICLE 1(2)*

*Article 15(1), second subparagraph (Regulation No 1612/68)*

The specialist service of each Member State shall forward such information to the appropriate employment services and agencies.

The specialist service of each Member State shall forward, **as soon as possible**, such information to the appropriate employment services and agencies.

(\*) OJ No C 254, 28.9.1991, p. 9.

Wednesday, 11 March 1992

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIESTEXT AMENDED  
BY THE EUROPEAN PARLIAMENT

(Amendment No 5)

## ARTICLE 1(2)

Article 15(2) (Regulation No 1612/68)

2. The vacancies and applications messages referred to in paragraph 1 shall be circulated according to a uniform system to be established by the European Coordination Office in collaboration with the Technical Committee.

2. The vacancies and applications messages referred to in paragraph 1 shall be circulated according to a uniform system to be established by the European Coordination Office in collaboration with the Technical Committee **within six months. Whenever necessary the European Coordination Office can adapt this system in collaboration with the Technical Committee.**

(Amendment No 6)

## ARTICLE 1(3)

Article 16(2) (Regulation No 1612/68)

2. The applications referred to in subparagraph 1(b) of Article 15 shall be responded to by the receiving services of the Member States within a reasonable *delay*.

2. The applications referred to in subparagraph 1(c) of Article 15 shall be responded to by the receiving services of the Member States within a reasonable **period, which may under no circumstances exceed one month.**

(Amendment No 7)

ARTICLE 1(4), second indent a (new)

— the following subparagraph is added to subparagraph (b):

**These services in border areas will also develop, when necessary, methods of cooperation and service which will provide users with the widest possible range of practical information concerning the different aspects of mobility, and which will also provide both sides of industry and the social services concerned with a framework for agreement concerning any additional measures necessary for mobility.**

(Amendment No 8)

ARTICLE 1(5a) (new)

5a) In Article 19 the following paragraph 2a is inserted:

**2a. The Commission will address to the European Parliament every two years a report on the implementation of Part II of this Regulation, summarizing the information obtained, the data arising out of the studies and research carried out and bringing to light any useful facts about the development of the Community labour market.**

(Amendment No 9)

ARTICLE 2, first paragraph

This regulation shall enter into force on ...

This regulation shall enter into force on **1 January 1993.**