

# THE DRAFT DIRECTIVE ON THE PROTECTION OF INDIVIDUALS IN RELATION TO

## THE PROCESSING OF PERSONAL DATA

### Title

Draft proposal for a Council Directive approximating certain laws, regulations and administrative provisions of the Member States concerning the protection of individuals in relation to the processing of personal data.

### Overview

The draft directive has as its legal basis Article 100a of the Treaty as a high level of equivalent protection is essential to the creation of the internal market. Taking the Council of Europe Convention on Data Protection as a benchmark, the Commission has introduced provisions which are compatible with it but which add to these general principles, to further its aim of achieving a high level of protection.

The draft directive is ambitious in seeking to cover "every situation in which the processing of personal data involves a risk to the data subject." The text therefore covers both manual and automated files, both public and private sectors. The draft clearly goes beyond the requirements of, for example, the UK law which does not cover manual records as such.

Showing that the draft directive clearly is a serious attempt to grapple with the problem, it has a mechanism for enforcing its provisions which go beyond the Community's usual monitoring arrangements. It also has provisions on liability involving compensation for damage caused by inaccurate data.

The text recognizes that this draft directive is not the Community's definitive statement on the subject. There are provisions for industry codes for particular sectors, such as direct marketing, and a Community Data Protection Working Party to advise the Commission on how the directive is being applied and to make recommendations for amending it in the future.

### A Guide Map to the Draft Directive

#### Chapter I - General Provisions

Article 1 Objectives

Article 2 Definitions of personal data, depersonalize, personal data file, processing, controller of the file, supervisory authority, public sector and private sector

Article 3 Scope. Public sector within scope of Community law included. Private sector included, with specific exceptions.

Article 4 Determination of which Member State's law applies in particular cases, with exceptions for "sporadic" use

#### Chapter II - Lawfulness of Processing in the Public Sector

Article 5 Principles on when creating and processing a file is lawful

Article 6 Lawful conditions for the processing of personal data in the public sector for its communication to 3rd parties

Article 7 Notification of the Data Protection Authority and free access to this register

#### Chapter III - Lawfulness of Processing in the Private Sector

Article 8 Principles on when creating and processing a file is lawful

Article 9 Duty to inform the data subjects and their right of veto

Article 10 Exceptions to Article 9

Article 11 Duty to notify the Data Protection Authority in certain circumstances

#### Chapter IV - Rights of Data Subjects

Article 12 Informed consent to the processing of data relating to data subjects

Article 13 Provision of information to the data subject at the time of collection of data

Article 14 Additional rights of data subjects eg. to oppose the processing of data relating to him for legitimate reasons, rights of access and correction of data

Article 15 Exceptions to the data subject's right of access to public sector files

#### Chapter V - Data Quality

Article 16 Principles eg. the collection and processing of personal data should be carried out fairly and lawfully - not secretly, and for a specific and open purpose and use. Data must be adequate, relevant and not excessive in relation to the purposes for which it is stored. Data must be accurate and up to date.

Article 17 As a general rule, the draft directive prohibits the electronic processing of sensitive data eg. on racial origin, skin colour, political opinions, religious beliefs and philosophical convictions, information on trade union membership, physical and mental health, drug and alcohol abuse, and information on sexual life. Criminal conviction data is permitted only in public sector files.

Article 18 Data security. File controllers must take appropriate organizational and technical measures to protect the data in a file against the danger of unauthorized intrusion by third parties or accidental loss of data.

#### Chapter VI - Provisions specifically relating to certain sectors

Article 19 Member states may provide exceptions to the directive for the press and the audio-visual media to balance privacy with freedom of the press and freedom of information.

Article 20 Member states must encourage European codes of conduct by business and the professions to facilitate the application of these principles.

#### Chapter VII - Liability and Sanctions

Article 21 Liability for damages rests with the file controller who may be sued for physical and non-physical damage by data subjects.

Article 22 A third party carrying out data processing has duties, such as ensuring data security.

Article 23 Member states must lay down sanctions, such as criminal sanctions to ensure compliance with the directive.

#### Chapter VIII - Transfer of Data to Third Countries

Article 24 Principles. The transfer of personal data from a Member State to a third country may take place only if that country ensures an adequate level of protection. If it does not, the Commission may try to negotiate a solution with that third country.

Article 25 A derogation from Article 24 in certain circumstances.

#### Chapter IX - Supervisory Authorities and the Working Party on the Protection of Personal Data

Article 26 Member States to appoint an independent Data Protection Authority with powers of investigation, access and intervention, and to receive complaints.

Article 27 A Working Party on the Protection of Personal Data will consist of representatives of the national Data Protection Authorities and will advise the Commission on the application of this directive.

Article 28 Tasks of the working party are broadly defined; it may give the Commission its recommendations and it is envisaged that it will produce an annual report on data protection in the Community.

#### Chapter X - Exercise of rule-making powers

Articles 29 and 30 The Commission will have the power to adopt measures that may be necessary for certain sectors, assisted by an Advisory Committee composed of representatives of the Member States and chaired by a member of the Commission.

#### Final Provisions

Article 31 The member states are expected to adopt national laws or other provisions to enable them to comply with this directive by 1st January 1993.

Article 32 The Commission will report regularly to the Council and to the European Parliament on the implementation of the directive, making proposals for amendments, if necessary.

Article 33 This directive is addressed to the Member States.