



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.09.1996
SEC(96) 1605 final - COD 288

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 189 b (2) of the EC-Treaty

ON THE COMMON POSITION OF THE COUNCIL

ON THE PROPOSAL FOR A

**Directive of the European Parliament and the Council concerning the processing of
personal data and the protection of privacy in the telecommunications sector, in
particular in the Integrated Services Digital network (ISDN) and in digital mobile
networks**

1. BACKGROUND

On 27 July 1990 the Commission presented a 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 (COM(90)314 final- SYN 288). This formed part of a package of measures including the proposal for a general data protection directive (Directive 95/46/EC on the protection of individuals with regards to the processing of personal data and the free movement of such data, approved on 24 October 1995¹).

The Economic and Social Committee adopted its opinion on the proposal on 24 April 1991.

In the framework of the co-operation procedure the European Parliament delivered its opinion on 11 March 1992 including a number of proposed amendments.

In view of these amendments and taking due account of subsidiarity considerations, the Commission submitted by letter of 23 June 1994 an amended proposal for a European Parliament and Council Directive concerning the protection of personal data and privacy in the context of digital telecommunications networks, in particular the integrated services digital network (ISDN) and digital mobile networks (COM(94)128 final COD 288 of 13.06.1994).

The Council adopted its common position on 12 September 1996.

2. PURPOSE OF THE COMMISSION PROPOSAL

The proposal for a Directive (concerning the protection of personal data and privacy in the telecommunications sector, in particular the integrated services digital network (ISDN) and digital mobile networks) intends to ensure the free movement of data and of telecommunications equipment and services in the Community by harmonising the level of protection of the processing of personal data in the telecommunications sector and of the legitimate interests of subscribers to public telecommunications services who are legal persons.

The Directive will specify, for the telecommunications sector, the general rules as laid down by the general Directive on the processing of personal data and it will enhance the protection of privacy of individuals and of the legitimate interests of subscribers to telecommunications services who are legal persons.

In a rapidly expanding telecommunications sector it is of great importance that subscribers to public telecommunications services can rely on it that their communications and related

¹OJ L 281 of 23 November 1995, p 31.

data are safe and are not used for other purposes than those for which they were intended. A sound development of new telecommunications services depends to a great extent on consumer confidence.

3. AMENDMENTS SUBMITTED BY THE EUROPEAN PARLIAMENT IN THE FIRST READING

How the amendments submitted by the European Parliament in the first reading were taken into account, was already explained in the introduction to the revised proposal of the Directive as submitted by the Commission in June 1994. However, in the past two years various new legislative acts have been adopted which required an alignment of the present proposal for a Directive and which also had a bearing on the incorporation of amendments as proposed by the European Parliament.

Since the general Directive on data protection already offers a cross-sectoral coverage it is not necessary for the present Directive to cover other than public telecommunications services. In fact by focusing on the public telecommunications sector the Directive can offer the necessary precision which it could not have had if various related sectors with different requirements would have to be covered. (amendments 96, 107, 108).

In the new EC telecoms legislation, definitions have been changed to adapt to changing market realities in which 'telecommunications organisations' and 'exclusive and special rights' are no longer part of applicable terminology (amendments 98, 99).

The development of public telecommunications networks over the past few years has resulted in the coexistence and interconnectability of different technologies within one network rather than in the roll-out of an ISDN network to all termination points. Therefore it was necessary to redraft some of the requirements of the Directive in such a way that their implementation is not depending on a specific technology in order to achieve the widest possible coverage. (amendments 97, 105)

The provisions on processing of traffic and billing data have been redrafted to take account of the protection already provided by the general Directive (amendments 101, 102, 103, 104).

Finally, the article on Directories, as proposed by the European Parliament (amendment 100) has been maintained and completed with two further options. In addition, in line with the Recommendation of the Council of Europe on the protection of personal data in the telecommunications sector of February 1995, it is no longer mandated that the option not to be in a public directory should be free of charge.

4. COMMENTS ON THE COMMON POSITION

- (1) Article 1 has been aligned with the general Directive. The second paragraph of Article 1 states how the present Directive relates to the general Directive which it particularises and complements. However, unlike the general Directive, this Directive also covers legal persons and protects their legitimate interests. Paragraph 3 is based on Article 3 of the general Directive and recalls the boundaries between Community law and areas which fall outside Community law.

- (2) In Article 2 the definitions have been aligned with those currently included in other telecommunications legislation. The concept of a 'telecommunications organisation' is no longer used and has been replaced by providers of 'publicly available telecommunications services'.
- (3) Article 3 has been simplified because there no longer is a need to distinguish between telecommunications organisations and other public service providers. The economic and technical feasibility test for the application of the Directive to subscriber lines linked to analogue exchanges, has been limited to Articles 8, 9 and 10.
- (4) Article 4 reaffirms the obligation flowing from the general Directive for data controllers to ensure the security of processing. The provision makes it clear that the public service provider is responsible for taking such security measures, if necessary in conjunction with the network provider. In addition, the service provider must inform the subscribers of any particular (residual) risks for a breach of the security. The original requirement to offer remedies such as encryption facilities in cases of a particular risk, has been deleted with a view to reach a compromise.
- (5) Article 5, previously Article 12, has been redrafted to avoid certain ambiguities in the original text which could be interpreted as a requirement for Member States to regulate the conduct of private persons in household situations or which would interfere with Member States law on the admissibility of certain types of evidence in court procedures.
- (6) Article 6 combines the previous Articles 5 and 6. Two elements have been added, firstly the possibility for service providers to use traffic and billing data for the marketing of their own services, subject to prior consent of the subscriber, in conformity with the general Directive on data protection. Secondly, the possibility for authorities charged with settling billing or interconnection disputes, to be informed of traffic data.
- (7) Article 7 on itemised billing has been made more explicit to clarify that Member States must ensure a good balance between the right to privacy of calling users and called subscribers on the one hand and the rights of subscribers, who have to pay their telephone bills, to verify the correctness of the amounts charged by the service provider. As is explained in a recital, one way to balance these rights is to ensure that there are sufficient alternative payment facilities (other than by subscription). This will allow users private access to telecommunications services without their calls figuring on other peoples bills.
- (8) Article 8 on the presentation and restriction of calling line identification (CLI) was redrafted to make the required options less dependent from a particular technology or terminal equipment. A paragraph on connected line identification (CoLI) was added. Although this service is not yet widely available, it is important that when it is offered the called party has the option to withhold information about the number of the connected line which may be different from the number called (e.g. in case of call forwarding). Furthermore, a requirement was added obliging service providers to inform their subscribers of the existence of CLI and CoLI services and to explain to them which privacy options are available. The requirement of offering privacy options free of charge has been maintained except for the service

by which calls where the CLI has been eliminated, can be rejected (so-called block-blocking).

- (9) The text of Article 9 on exceptions has been redrafted. The provision which charged the telecommunications organisations with taking the necessary steps to ensure that the override function would be operational on a national and Community wide basis, has been deleted. There are both legal and technical aspects to the override function being operational on a Community wide basis, neither of which can be made the responsibility of public service providers.
- (10) Article 10 on automatic call forwarding was simplified in order to ensure a broader coverage regardless of the technological means used for forwarding. Therefore the requirement that automatic forwarding may only take place if the party to whom the calls will be forwarded has agreed, was deleted. The implementation would only be possible for certain types of forwarding. However, the more important requirement that the party to whom calls are automatically forwarded must be able to stop this, has been strengthened and a 'free of charge' provision was added.
- (11) Two additional options for subscribers have been added to Article 11 on Directories, namely the possibility to omit part of their address and the option to indicate in the public directory, that they do not want to be contacted for direct marketing purposes. Furthermore, it has been made explicit that a refusal to figure in a public directory can cover a printed or electronic directory or both. This is particularly important because of the risks for privacy of electronic directories where automatic searches can be performed (e.g. obtaining names and addresses on the basis of telephone numbers). The basic principle for the ex-directory and other privacy options to be available free of charge remains, but Member States will have the possibility to allow service providers to charge a reasonable sum to subscribers who do not want to figure in the public directory. This solution mirrors the relevant provision in the Recommendation N° R(95) 4 of the Council of Europe on the protection of personal data in the telecommunications sector. Furthermore, it has been specified that Member States may limit the application of the article to natural persons only.
- (12) Article 12 on Unsolicited calls was aligned with the draft text for the Directive on distance selling, in particular its Article 10 on unsolicited calls. The proposed Distance selling directive determines that Member States ensure that the wish of subscribers who have objected to receiving unsolicited calls, shall be respected. Member States may however offer a higher level of protection (e.g. an opt-in system). Similarly the present directive allows Member State to choose between an opt-out or an opt-in system. As for Article 11, Member States may decide to limit the application of this article to natural persons.
- (13) In Article 13 on technical features and standardisation the reference to Council Directive 91/263 has been deleted because this Directive does not, at present, include data protection of data and privacy as an essential requirement.
- (14) Former Article 14 on technical adjustment was deleted and in reduced form, inserted in new Article 14.4. After the redrafting of the directive in view of making its provisions less dependent on a specific technology, it was no longer considered desirable to extend the scope of the technical adjustment procedure to the Directive as a whole. The annex which lists traffic data which may be used for

billing purposes was considered the only part of the Directive where further technical specification might be necessary. The Commission assisted by the management Committee created by the general directive, may therefore technically specify the categories of data listed in the annex in order to guarantee a coherent application of article 6 in case of changes in technology. The procedure for the said Committee (IIb) was proposed by Parliament in the second reading of the General directive.

- (15) After the adoption of the general Directive on data protection, a number of the provisions necessary for this Directive could be simplified by reference to existing provisions in the general Directive. For this purpose former Articles 16, 17 and 18 have been merged into new Article 14. In addition, Article 14 par.1 contains the exceptions previously included in Article 9(1)(b), 12(1) and 12(3).
- (16) In Article 15 two paragraphs with transitional arrangements have been added. Paragraph 2 foresees an information and opt-out procedure for processing of data for marketing purposes by an operator, already underway when national legislation to implement the Directive enters into force. Furthermore, paragraph 3 exempts existing editions of directories from the application of the Directive.

5. COMMISSION POSITION ON THE COMMON POSITION

The amendments made by the Council common position to the Commission proposal had the following objectives : simplification and clarification of the text (various articles), alignment with the general Directive (various articles), alignment with new terminology and realities in telecommunications legislation (Articles 2 and 3), alignment with proposed Distance Selling Directive (Article 12), diminishing the dependence on a particular technology (Articles 3, 8, 10, 14), strengthening of the level of protection (Articles 3, 8, 10), taking account of legitimate interests of public service providers (Articles 6 and 15), deletion of unintended effects (Articles 5 , 7 and 9).

The Commission considers that the Council's work has resulted in useful contributions to its proposal and finds the overall balance of the amendments a positive one. The Commission can therefore give its support to the common position as adopted by the Council.