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INTERIM REPORT

drawn up on behalf of the Legal Affairs Committee

on the/ protection of the rights of the individual
in the face of developing technical progress in
the field of automatic data processing

Rapporteur : Lord MANSFIELD

PE 39.608/fin.

At its meeting on 11 October 1974, the enlarged Bureau of the European Parliament authorized the Legal Affairs Committee to prepare an 'own initiative' report on the protection of the rights of the individual in the face of developing technical progress in the field of automatic data processing.

The Legal Affairs Committee appointed Lord MANSFIELD rapporteur on 6 November 1974.

It considered the draft report at its meeting of 6 February 1975 and adopted the motion for a resolution and the explanatory statement with nine votes in favour and one abstention.

The following were present : Mr Schuijt, Chairman; Lord Mansfield, rapporteur; Mr Adams (deputizing for Mr Calewaert), Mr Broeksz, Mr Brugger, Mr Espersen, Mr Outers, Mr Santer, Mr Scelba, Mr Springorum.

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement

MOTION FOR A RESOLUTION

on the protection of the rights of the individual in the face of developing technical progress in the field of automatic data processing

The European Parliament,

- having regard to the Communication of the Commission of the European Communities to the Council (Doc. SEC(73) 4300),
- having regard to the report of the Legal Affairs Committee (Doc. 487/74),
- having regard to Rule 37 of the Rules of Procedure,

1. Considers that a directive on 'individual freedom and data processing' is an urgent necessity, not only to ensure that Community citizens enjoy maximum protection against abuses or failures of data processing procedures, but also to avoid the development of conflicting national legislation;
2. Gives its approval to the establishment of a special committee of members of the European Parliament which shall be authorized to examine this problem and to consider proposals relating to:
 - (a) the methods of gathering personal information stored in data banks,
 - (b) the right of the individual to see and dispute the stored information,
 - (c) the desirability of applying common standards to private and national data banks,
 - (d) the prevention of unauthorized access to and use of stored information,
 - (e) the control of dissemination of information contained in data banks,
 - (f) the effective application of sanctions for infringement of individual privacy,
 - (g) such related matters as may be thought relevant;
3. Recommends that (a) this committee should be composed of 9 members including a chairman and a rapporteur and that it should be provided with adequate secretarial services;
 - (b) this committee should, on completion of its preparatory studies, invite written representations from interested parties and proceed to public hearings of relevant expert witnesses at such place as this committee may deem opportune, and report;

4. Invites the cooperation of the Commission and of all other interested bodies in the preparation and presentation of evidence to this committee;
5. Urges the Commission, in the light of the special committee report, to give early attention to the preparation of a directive designed to protect the individual Community citizen from abuses in the storing, processing and dissemination of personal information by means of automatic data banks in both the public and the private sectors;
6. Invites its President to consider the implementation of paragraphs 2 and 3 of this Resolution;
7. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

EXPLANATORY STATEMENT

1. When this matter was discussed in the plenary sessions of the European Parliament on 13 March and 8 July 1974 and in the Legal Affairs Committee on 10 April, 9 May and 12 September 1974, there was complete unanimity on the importance of collective Community action to protect the privacy of the individual Community citizen, and of pooling the expertise of Parliament and Commission to achieve this before individual national legislatures had introduced a mass of conflicting statutory measures.
2. Already one can identify differing approaches to the problem and differing degrees of legislative or constitutional protection for the citizen in Member States:
 - (a) The German Land of Hesse has four years' practical experience of parliamentary control of electronic data banks, and an independent 'Ombudsman' has been appointed. Other German Länder have followed this lead;
 - (b) Proposals for national legislation have been made in Germany, Belgium and the United Kingdom while high-level committees exist in other Community countries to give effect to public concern that this problem should be kept under continuous review;
 - (c) Outside the European Communities, notably within the framework of both the OECD and the Council of Europe, a number of studies have been carried out and resolutions have been made aimed at counteracting abuse of the rights of the individual by misuse of computerised personal information.
3. It is therefore opportune for the European Parliament to advance the public debate of this important subject which may directly affect the daily life of every Community citizen. It should define its objectives and propose means of achieving them.
4. Objectives:
 - (a) It is not at the present moment a question of achieving an overall definition of the right of personal privacy, but of examining the more restricted field of intrusion on privacy by misuse of automatic data processing techniques, of identifying the dangers and studying the ways in which they may be minimised.

- (b) The principal questions to be answered are:
- (i) in what manner and by what means personal information may legitimately be collected,
 - (ii) under what conditions such information should be stored,
 - (iii) to whom and for what reasons stored information may be disseminated,
 - (iv) what safeguards can be provided for the individual; how can he know what information is recorded; how can he ensure that it is corrected if need be; how can he prevent the use of stored information by a user to whom it was not given.
- (c) The ultimate objective must be the elaboration of suitable Community legislation which will establish common means for the protection of the individual.

5. Means:

- (a) It is the firm conviction of your committee that a special committee should be established without delay and provided with an adequate secretariat of appropriate seniority to deal with the complex detailed technical studies which will be required.

Your committee has given much thought to the composition and modus operandi of the proposed special committee. Bearing in mind that this committee will have to deal with a wide spectrum of difficult legal and economic problems, your committee inclines to the view that the special committee should be made up from members of the Legal Affairs Committee, the Committee on Economic and Monetary Affairs and the Committee on Energy, Research and Technology. It must be emphasized that particularly in the field of privacy and the rights of the individual the special committee will have to examine problems which have successfully defied many efforts on the part of member countries to overcome them.

- (b) This committee should be recommended to avail itself to the full of the considerable expertise already available, not only in the Commission, but also in the Council of Europe (both of whom have expressed their readiness to provide all possible assistance).
- (c) Your committee is of the opinion that the special committee should be composed of enough members to reflect the differing political opinions of the groups but should not be so large as to be cumbersome or unwieldy. The work of this committee is likely to continue for at least a year and consideration should be given to the election of a president and also a general rapporteur within it. Bearing all these factors in mind, your committee recommends that the number of members of the special committee should be in the region of nine.

- (d) There is every reason to think that the necessary support for this project will be given by the relevant professional organisations and the computer industry itself.
- (e) It is desirable that the special committee should have reasonable freedom to determine the frequency and location of its meetings. When the time is opportune for the organisation of public hearings, it is desirable that there should be the fullest and most complete liaison between the special committee and the Commission. It should be noted that many of the experts in the field of data processing are American or come from countries and institutions not conveniently accessible to Brussels and Luxembourg. The cost of the organisation and holding of public hearings and the gathering of detailed and technical information is beyond the means and resources of the European Parliament. Funds for the efficient and reasonable expeditious work of the special committee will therefore have to be found from within the Communities, and to this end some pooling of resources as between the European Parliament and the Commission may be deemed necessary.

6. The European Parliament has consistently sought to defend the rights of the individual Community citizen. The possible dangers of misuse of advanced methods of mechanisation and computer technology when applied to the collection, storage, collation and distribution of personal information are clearly seen to exist; the opportunity to make a positive contribution to the Community's legislative processes should be accepted willingly.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Lord MANSFIELD

By letter of 13 February 1974 the President of the European Parliament invited the Legal Affairs Committee to deliver an Opinion for the Economic and Monetary Affairs Committee on the Communication of the Commission to the Council concerning Commission Policy on Data Processing.

The Legal Affairs Committee appointed Lord Mansfield draftsman on 20 February 1974.

The Committee discussed this subject at its meetings of 10 April and 9 May 1974 and approved the following draft opinion unanimously at the latter meeting.

The following were present: Mr Héger (Acting Chairman), Lord Mansfield (Draftsman), Mr Berthoin (substituting for Mr Jozeau-Marigne), Mr Brewis, Mr Broeks, Mr Brugger, Mr Lautenschlager, Mr Schwörer, Mr Vernaschi, Sir Derek Walker-Smith and Mr Yeats.

I. SUMMARY OF COMMISSION POLICY ON PRIVACY AND AUTOMATIC
DATA PROCESSING

1. The Commission's Scientific and Technical Policy Programme¹ emphasises that its primary objective is the progressive implementation of a common policy on scientific research and technological development with a view to achieving the fundamental aims set out in Article 2 of the Treaty establishing the European Economic Community.
2. The programme
 - (a) draws attention to the fact that modern companies are increasingly dependent on a broad range of information which is of great importance where decision-making is concerned,
 - (b) undertakes to consider whether to create a permanent surveillance service in the sensitive field of information management, and
 - (c) affirms that the improvement of technological standards in the data processing sector, requires a close link between research and development aspects and policy in general, in view of the speed at which techniques are developing.
3. The Commission proposal to the Council for a Community policy on data processing²
 - (a) points out that the structure of society may be determined in the future by the way it uses information systems,
 - (b) calls for a Community policy which will
 - (i) develop the capacity of the European based industry and
 - (ii) promote the effective use of data processing.
4. The attention of the Legal Committee is directed specifically to paragraph 39 of the Commission's proposal for a Community policy on data processing which relates to the protection of the citizen.
5. The growing concern about the problems of individual privacy vis-à-vis computerised data storage is reflected in the parallel studies carried out by the Organisation for Economic Cooperation and Development and by the Council of Europe.

¹
COM(73) 1250 final 25.7.73

²
Doc. SEC(73) 4300 final 21.11.73

II. REVIEW OF CURRENT LEGISLATIVE PROPOSALS WITHIN THE MEMBER STATES OF THE COMMUNITY AND IN NORTHERN AMERICA

6. The attention of the Legal Affairs Committee was specifically directed to the dangers to the privacy of the individual Community citizen inherent in the storage of personal information in electronic data banks.

7. This problem has already received and is receiving varying degrees of parliamentary attention in the individual member states. In most cases there already exists some legal protection against misuse of census information, of taxation returns and of the postal and telegraphic services. Some countries have taken steps to protect the secrecy of computerised information while others have such legislation under active review at the present time.

8. Outside the Communities (for example, in the North American continent where automatic data processing and data storage is extensively used) public concern has similarly found expression in proposals for legislation. In the United States the Citizen Privacy Act (1972) was designed to prohibit disclosure by government agencies without the consent of the individual concerned, to create a right to inspect files, and to add supplementary information.

III. CONCLUSIONS

9. The Legal Affairs Committee

- bearing in mind the evident and increasing public concern throughout the Communities at the possibility of misuse, or misapplication of personal information stored in regional, national and international data banks;
- having regard to the proposals for legislation already current in many of the Member States of the Communities;
- taking account of the unanimous support expressed in the debate of the European Parliament on Oral Question No. 193/73¹ by Mr Cousté (on behalf of the Group of Progressive Democrats) for measures protecting the privacy of the Community's citizens;
- welcomes the recognition by the Commission of its obligation to establish common measures for the protection of the individual citizen,
- supports the Commission in its endeavour to inaugurate public hearings by the appropriate parliamentary committee,
- urges
 - (i) the early inauguration of public hearings to consider the establishment of common measures for the protection of the citizen as envisaged in paragraph 39 of the Communication of the Commission relating to Community policy on data processing²,
 - (ii) consideration by the Commission of the determination of Community norms in this area, and especially of the determination of a minimum standard of protection for the privacy of the individual Community citizen;
 - (iii) that the question of the protection of the individual personal rights of Community citizens be a primary consideration in the elaboration of all Community policies.

10. Subject to the aforementioned considerations the Legal Affairs Committee is of the opinion that the proposals of the Commission to the Council on Community policy on data processing² can be approved.

¹ OJ Annex No. 173 March 1974, p.34

² SEC(73) 4300/final

ANNEX II

CHRONOLOGY OF ACTIVITY IN 1974
ON THE SUBJECT OF
INDIVIDUAL PRIVACY IN RELATION TO
AUTOMATIC DATA PROCESSING

1. The protection of the privacy of the Community's citizens was raised in the European Parliament in Oral Question No. 193/73 by Mr Cousté on 13 March 1974.
2. The enlarged Bureau of the European Parliament considered a letter from Commissioner Spinelli on 23 April 1974 and accepted in principle the establishment of a working group (i) to study the extent of current knowledge on this problem and subsequently (ii) to hold public hearings at which relevant interest groups could express their opinions (PE 36.876(BUR)).
3. Paragraph 39 of the Community Policy on Data Processing (SEC(73) 4300/final; November, 1973) gave rise to an opinion of the Legal Affairs Committee for the Committee on Economic and Monetary Affairs (PE 36.389; May, 1974).
4. As a result of detailed discussions in the Legal Affairs Committee, its Chairman, Dr Schuijt, informed the President of the European Parliament that the Committee agreed that the plenary session of the Parliament was the proper forum for a substantive debate on this subject as a preliminary to public 'hearings' at a later date; he went on to point out that the collection of facts and information as a basis on which the Commission could put forward Community legislation was a task that the Commission was better able to perform (letter, 17 May 1974).
5. The opinion of Lord Mansfield was introduced in the plenary session of the European Parliament by the rapporteur on 8 July 1974, but the debate was closed by withdrawal of the report of the Committee on Economic and Monetary Affairs.
6. On 22 July 1974 Commissioner Spinelli reaffirmed the Commission's wish that the European Parliament should express its views on this matter, **offered their full support** to this work and again recommended public hearings as a suitable means of making progress.

7. On 12 September 1974 the Legal Affairs Committee again discussed 'the protection of the rights of the individual vis-à-vis technical developments in the field of automatic data processing', and the Chairman subsequently requested permission of the enlarged Bureau to prepare an 'own initiative' report on this subject (letter, 16 September 1974).

8. This permission was accorded on 11 October 1974, and Lord Mansfield was appointed rapporteur on 6 November 1974.

