

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 13.06.1994

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

(presented by the Commission pursuant to Article 189a(2) of the EC Treaty)

EXPLANATORY MEMORANDUM

1. Introduction

The Commission has submitted to the Council on 27 July 1990 a number of proposals, including in particular a proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data¹ and 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.²

The Economic and Social Committee has adopted its opinion on these proposals on 24 April 1991.³

In the framework of the cooperation procedure the European Parliament has, on the basis of the Report of its Committee on Legal Affairs and Citizen's Rights of 15 January 1992 (Rapporteur: Mr. Hoon), approved on 11 March 1992 the Commission proposals as amended by it in numerous points.

On 15 October 1992 the Commission presented an 'Amended proposal for a Council directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data'.⁴

This modified proposal takes, in particular, account of the opinion of the European Parliament as well as of the amended proposal for a general Directive on data protection.

Subsequent to the announcement by the Commission to review this Directive under the perspective of subsidiarity, the modified draft is based on a thorough re-assessment of the approach. A substantial number of provisions of the original proposal have been suppressed and other provisions have been substantially simplified. The Commission

1 OJ No C 277, 5.11.1990, p. 3

2 OJ No C 277, 5.11.1990, p. 12

3 OJ No C 159, 17.6.1991, p. 38

4 OJ No C 311, 27.11.1992, p. 30

considers that the new draft represents a streamlined approach, fully respecting the principle of subsidiarity.

In a Resolution of 16 September 1993 the European Parliament invited the Commission to submit this proposal without delay.⁵

2. The need for action at Community level

With the rapidly increasing digitisation of the public telecommunications networks⁶ in the European Community it could become possible - without adequate data protection measures - to store and monitor systematically specific call-related data, such as origin of call.

At the same time, digitised networks allow for the introduction of new intelligent telecommunications functions, such as defined by the ISDN 'supplementary services'. These functions offer substantial additional service features to the subscriber which will enhance service quality as well as consumer protection, such as detailed billing and call-forwarding. The new functions, however, will require new specific measures and regulations, if the protection of privacy is to be guaranteed in the new environment.

The general provisions for the protection of personal data, such as initiated by the Council of Europe Convention and to be established for the Community by Council Directive .../.../EEC [on the protection of individuals with regard to the processing of personal data and the free movement of such data] provide a broad framework, but do not make provisions to the specific details required for addressing issues relevant for the protection of personal data and privacy in the context of telecommunications networks.

The general provisions concerning the protection of personal data and privacy cannot prevent the current emergence of divergent legislation, regulations and administrative action in the Member States concerning the operation of the future digital networks. A comparison of the existing national provisions shows considerable discrepancies concerning both the contents and the nature of the legal instruments used. Under these circumstances, a situation of legal uncertainty is developing in the Community concerning

⁵ OJ No C 268, 04.10.1993, P. 166

⁶ Digitization means the introduction of fully computer-based exchanges and the processing and transmission of all information transmitted via telecommunications networks - voice, data and image - in the form of binary digits. The 'bit-streams' thus generated can be acted upon directly by the intelligence of computers, both inside the network as well as in the subscriber terminal. This leads to a new level of quality of service which cannot be achieved with traditional 'analogue' techniques, as well as a large number of new 'intelligent' functions which opens a broad range of new activities via telecommunications networks. Full 'end-to-end' (subscriber-to-subscriber) digital communication is offered by the evolving Integrated Services Digital Network and the new public digital mobile communications systems.

telecommunications networks, services and equipment.

The development of diverging national legislation in this area seriously threatens the development of an internal market for both telecommunications services and telecommunications equipment.

Without a Directive it would be impossible to prevent a fragmentation of the services and equipment markets in the Community.

3. Subsidiarity

- a) What are the objectives of the action envisaged in relation to the obligations of the Community?

The objective of the directive is to harmonize the conditions for the provision of services in the context of digital telecommunications networks with regard to the protection of personal data and privacy in order to facilitate the creation of an internal market in the telecommunications sector.

- b) Does the envisaged action fall under an exclusive Community competence or a competence shared with the Member States?

The envisaged action falls under an exclusive competence of the Community (approximation of the laws of the Member States for the achievement of the internal market, Article 100a of the Treaty).

- c) What forms of action can the Community dispose of?

The issue could be dealt with at Community level in a regulation or a directive. Any other form of action would present the disadvantage of not being legally binding (Article 189 of the Treaty) and would therefore not ensure the achievement of the objective of harmonization aimed at with this action. Harmonisation is strictly limited to the specific requirements which have arisen as a result of the introduction of new functionalities in telecommunications networks.

- d) Is a uniform regulation necessary or is a directive sufficient which sets out the general objectives and leaves their execution to the Member States?

A directive is considered as being sufficient. The proposed directive is limited to setting the broad principles and leaves the greatest possible freedom to the Member States for implementation.

4. Approach chosen

The proposed directive aims at implementing the general principles of the protection of personal data and privacy with regard to the specific requirements of digital telecommunications networks in order to prevent divergent developments in the Community which could endanger the common market for both telecommunications services and terminal equipment.

The modified proposal provides essentially for the harmonization of the provisions strictly necessary to guarantee that the promotion and development of new transeuropean digital telecommunications services and networks will not be hindered. The measures proposed are essentially limited to those that are indispensable for the provision of new pan-European digital telecommunications services involving the transmission of personal data from one Member State to another, as the level of protection of data and privacy varies from one Member State to the other.

For the purposes of this modified proposal the initial Commission proposal of 1990 was substantially simplified. In particular the modified proposal avoids, where possible, to impose specific technical solutions upon the Member States and leaves the greatest possible degree of freedom to the Member States for its implementation.

5. Structure and principal modifications

The modified proposal maintains the basic structure of the initial proposal taking into account modifications proposed by the European Parliament. It is based on a thorough re-examination of the Commission's initial proposal with regard to the principle of subsidiarity which leads to the deletion of a number of provisions initially proposed. In addition, a clear distinction between the protection of subscribers and the protection of users, and provisions on judicial remedy and sanctions in the case of violation of the

directive have been introduced.

A number of Articles had to be redrafted for reasons of clarification and in order to conform with the terminology used in the modified proposal for a Council Directive concerning the protection of individuals with regard to the processing of personal data and the free movement of such data to which the present directive is complementary.

The modified proposal also aims at avoiding redundancies. It therefore makes, where appropriate, reference to the provisions of the proposed general Directive on data protection mentioned above.

Finally, titles have been introduced in the Articles in order to enhance the transparency of the proposed Directive.

6. Comments on the modifications made with regard to the original proposal

a) Title and Recitals

The Title of the proposed Directive has been modified by the deletion of the word "public" in order to take into account an amendment adopted by the European Parliament (Amendment No. 96).

The recitals have been modified in accordance with the modifications introduced in the provisions of the proposed Directive. In addition, the recitals of the initial proposal dealing with the Convention of the Council of Europe for the Protection of individuals with regard to automatic processing of personal data have been deleted as these aspects are already covered by the recitals of the proposed general directive on data protection.

Two new recitals were introduced in order to justify the proposed directive with regard to the principle of subsidiarity (recitals 7 and 8).

Following a proposal of the European Parliament (Amendment No. 97) a new recital 18 on the necessity of cooperation for the implementation of the Directive was introduced.

The recital on activities in areas which are not governed by Community law (recital 19 of the present proposal) was redrafted in accordance with the relevant recital of the modified proposal for a general Council Directive on data protection.

b) Articles**Article 1** *Objective*

As regards the objective of the proposed Directive the Commission maintains its initial proposal in a clarified version.

Article 2 *Definitions*

This Article corresponds to Article 3 of the initial proposal. Articles 2 and 3 of the initial proposal have been interchanged because the definitions are basic for the understanding of the following Articles and in order to conform with the structure of the proposed general Directive.

Article 2 now contains only definitions which are not already provided by the modified proposal for a Council Directive concerning the protection of individuals with regard to the processing of personal data and the free movement of such data.

A definition of 'service providers' was added in accordance with Amendment 98 of the European Parliament's resolution. Additional definitions of the terms 'user' and 'subscriber' were added since a distinction between these two groups was introduced in several Articles.

Article 3 *Scope*

This Article corresponds to the initial Article 2.

The wording of Article 3 (1) is brought into line with the terminology of the proposed general Directive on data protection.

A new paragraph (2) was added concerning the application to other service providers and other services which corresponds to Article 19 and 20 of the initial proposal. Because of their general importance the provisions of these Articles are now placed at the beginning of the directive. They have been modified in order to take into account Amendment No 107 adopted by the European Parliament. The paragraph now explicitly enumerates the provisions applicable to service providers other than telecommunications organizations.

In Article 3 (3) the scope of application of this Directive is now generally extended, where this is technically possible, to services provided via analogue networks.

Articles 4, 5 and 7 of the initial proposal were deleted in order to take account of the principle of subsidiarity.

Article 4 *Security*

This Article corresponds to Article 8 in the initial proposal.

Paragraph (1) was deleted with regard to Article 17 of the amended proposal for a Council directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The words "end-to-end encryption service" have been replaced by "encryption facilities". The modification takes into account technical problems in the offer of end-to-end encryption.

Article 5 *Billing Data*

Article 5 corresponds to Article 9 of the initial proposal.

In paragraph (1) a provision on the restriction of access to billing data was introduced following a proposal of the European Parliament (Amendment 103).

As regards paragraph (2) the Commission maintains its initial proposal.

Article 6 *Traffic Data*

This Article corresponds to Article 10 of the initial proposal. Paragraph (1) of the original proposal was deleted with regard to the provisions of the amended general directive. The former paragraph (2) was clarified but maintained in substance.

Article 7 *Itemized billing*

This Article corresponds to Article 11 of the initial proposal. The provision has been clarified and the requirement of the suppression of the last four digits of the called subscriber's number for itemized bills was deleted. In conformity with the principle of subsidiarity the provision no longer prescribes a specific method of protection and leaves Member States more freedom in implementing the provision.

Article 8 *Calling-line identification*

Article 8 corresponds to Article 12 of the initial proposal.

Paragraph (3) of this Article has been substantially modified with regard to the principle of subsidiarity. It no longer requires the offer of the possibility of an elimination of the identification of incoming calls on a case-by-case basis.

In addition, the provision on the possibility of limiting the acceptance of incoming calls has been clarified. This option shall exist for cases where the identification of incoming calls was eliminated.

A new paragraph (4) clarifies that the provisions of this Article also apply to calls to third countries originating in the Community.

It was also clarified in a new paragraph that the options for subscribers concerning the elimination of the transmission of the identification have to be offered free of charge.

Article 9 *Exceptions*

This article corresponds to the initial Article 13. The Commission maintains its initial proposal.

Article 10 *Call Forwarding*

This Article corresponds to Article 14 of the initial proposal.

Paragraph 1 of this provision was modified in accordance with the amendments adopted by the European Parliament (Amendment 105).

The second paragraph of the Article providing for the automatic information on call forwarding during the establishment of the connection was deleted in order to take into account the principle of subsidiarity.

Article 11 *Directories*

Following a proposal of the European Parliament (Amendment 100) a new provision on directory information was added.

Article 12 *Surveillance of communications*

A new first sentence was introduced in the first paragraph of this Article, corresponding to the old Article 15, obliging Member States to make any surveillance of communications subject to authorization of the competent national authority. The degree of detail of the provision on access of third parties to the content of telephone calls was reduced taking into account the principle of subsidiarity.

Article 13 *Unsolicited calls*

This Article corresponds to Article 17 of the initial proposal and extends in paragraph (1) the scope of the provision to unsolicited calls of a promotional and of an advertising/research character. It is also clarified that the proposed directive on distance-selling applies to unsolicited calls.

Paragraph (2) authorizes limits the use of automatic call devices to subscribers who have given their consent.

Paragraph (3) extends the scope of paragraphs (1) and (2) to telefax messages.

Article 16 of the initial proposal was deleted following the opinion of the European Parliament (Amendment 106).

Article 14 *Technical features and standardization*

Article 14 corresponds to the original Article 18. The Commission maintains its initial proposal.

Article 15 *Technical application and modification*

This Article corresponds to the original Article 21. The Commission maintains its initial proposal.

Article 16 *Rectification, Judicial remedy and sanctions*

This article has been introduced in order to ensure a sufficient level of individual protection in the context of this directive. It aligns the proposed Directive with the modified proposal for a Council Directive concerning the protection of individuals with regard to the processing of personal data and the free movement of such data, which sets out corresponding provisions in its Articles 22 and 25.

Articles 17 to 19 *(Working Party on the protection of individuals with regard to the processing of personal data, Procedure, Implementation of the Directive)*

These Articles correspond to the Articles 22 to 24 of the initial proposal. The wording of these Articles has been adapted to the proposed Council Directive concerning the protection of individuals with regard to the processing of personal data and the free movement of such data. The deadline for compliance in Article 19 was modified.

Article 20 of the initial proposal was deleted as proposed by the European Parliament (Amendment No 108).

Article 20 *Addressees*

This Article corresponds to Article 25 of the initial proposal. The Commission maintains its initial proposal.

7. Conclusion

The proposed directive aims at the implementation of the general principles of protection of personal data and privacy with regard to the specific requirements of public digital telecommunications networks in order to prevent divergent developments in the Community which could endanger the common market for both telecommunications services and terminal equipment.

This modified proposal takes account of the Opinion of the European Parliament of 11 March 1992 as well as of the Opinion of the Economic and Social Committee of 24 April 1991 and takes full account of the principle of subsidiarity.

The European Parliament and the Council are requested to adopt the attached proposal for a Directive.

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Initial ProposalModified Proposal

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

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof;

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

(1) Whereas Council Directive .../.../EEC [concerning the protection of individuals in relation to the processing of personal data] exhorts Member States to ensure the protection of privacy;

Modified Proposal for a Directive of the European Parliament and the Council 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

THE EUROPEAN PARLIAMENT AND THE
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof;

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the Economic and Social Committee,²

(1) Whereas Council Directive .../.../EEC [concerning the protection of individuals with regard to the processing of personal data and the free movement of such data]³ exhorts Member States to ensure the rights and freedom of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community.

1 OJ No C 277, 5.11.1990, p. 12

2 OJ No C 159, 17.6.1991, p. 38

3 OJ No L

(2) Whereas currently in the European Community new advanced digital public telephone networks are emerging which give rise to specific requirements concerning the protection of personal data and privacy of the user;

(3) Whereas this is the case, in particular, with the introduction of the Integrated Services Digital Network (ISDN) and public digital mobile networks;

(4) Whereas the Council, in its resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992¹, has called for steps to be taken to protect personal data, in order to create an appropriate environment for the future development of telecommunications in the Community; whereas the Council has re-emphasized the importance of the protection of personal data and privacy in its resolution of 18 July 1989 on the strengthening of the coordination for the introduction of the integrated services digital network (ISDN) in the European Community²;

(5) Whereas the European Parliament has underlined the importance of the protection of personal data and privacy in telecommunications networks, in particular with regard to the introduction of the integrated services digital network (ISDN)^{3,4,5}

(6) Whereas Commission recommendation 81/679/EEC calls for the adoption and ratification by Member States of the Council of Europe Convention for the Protection of individuals with regard to automatic processing of personal data which spells out general principles for the protection of personal data;

(7) Whereas a number of Member States have adopted and ratified this Convention;

(2) Whereas currently in the European Community new advanced digital public telecommunications networks are emerging which give rise to specific requirements concerning the protection of personal data and privacy of the user;

(3) Whereas this is the case, in particular, with the introduction of the Integrated Services Digital Network (ISDN) and digital mobile networks;

(4) Whereas the Council, in its resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992⁴ has called for steps to be taken to protect personal data, in order to create an appropriate environment for the future development of telecommunications in the Community; whereas the Council has re-emphasized the importance of the protection of personal data and privacy in its resolution of 18 July 1989 on the strengthening of the coordination for the introduction of the integrated services digital network (ISDN) in the European Community⁵;

(5) Whereas the European Parliament has underlined the importance of the protection of personal data and privacy in telecommunications networks, in particular with regard to the introduction of the integrated services digital network (ISDN)^{6,7,8}

1 OJ No C 257, 4.10.1988, p. 1

2 OJ No C 196, 1.8.1989, p. 4

3 OJ No C 7, 12.1.1987, p. 334

4 OJ No C 12, 16.1.1989, p. 69

5 OJ No C 12, 16.1.1989, p. 66

4 OJ No C 257, 4.10.1988, p. 1

5 OJ No C 196, 1.8.1989, p. 4

6 OJ No C 7, 12.1.1987, p. 334

7 OJ No C 12, 16.1.1989, p. 69

8 OJ No C 12, 16.1.1989, p. 66

(8) Whereas Council Decision ... opens negotiations with a view to the accession of the European Economic Community, in the fields in which it is competent, to the Convention of the Council of Europe for the Protection of individuals with regard to automatic processing of personal data;

(9) Whereas Council Directive ... [concerning the protection of individuals in relation to the processing of personal data] implements the adoption of these general principles in the Community;

(10) Whereas in the case of public digital networks, specific legal, regulatory, and technical provisions must be made in order to protect personal data and the privacy of users with regard to the increasing risks connected with computerized storage and processing of personal data in such networks;

(11) Whereas Member States are currently developing divergent provisions in this area;

(12) Whereas given the obstacles resulting from these divergent legal, regulatory and technical provisions concerning the protection of personal data and privacy in the context of the implementation of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks, the full establishment of a Community-wide market in telecommunications services and equipment requires the rapid introduction of harmonized provisions;

(6) Whereas in the case of telecommunications networks, specific legal, regulatory, and technical provisions must be made in order to protect personal data and the privacy of users with regard to the increasing risks connected with computerized storage and processing of personal data in such networks;

(7) Whereas several Member States have already adopted diverging provisions in this area; whereas a number of Member States are currently developing legislation which bears the risk to increase the existing differences;

(8) Whereas these divergent legal, regulatory, and technical provisions concerning the protection of personal data and privacy in the context of the implementation of telecommunications networks in the Community, in particular the integrated services digital network (ISDN) and digital mobile networks, create obstacles to the creation of an internal market for telecommunications in conformity with the objective set out in Article 8A of the Treaty; whereas the importance of these differences and the necessity to ensure the freedom of transborder telecommunications within the Community require specific harmonization at Community level; whereas the harmonisation envisaged is strictly limited, pursuant to the principle of subsidiarity, to the specific requirements which have arisen as a result of the introduction of new functionalities in telecommunications networks;

(9) Whereas for all matters concerning protection of personal data and privacy in the context of telecommunications networks, which are not covered by the provisions of this Directive, including the rights of individuals, the Council Directive .../.../EEC [concerning the protection of individuals with regard to the processing of personal data and the free movement of such data] shall apply;

(13) Whereas this Directive should determine the extent to which personal data may be collected, stored and processed in connection with the provision of telecommunications services;

(14) Whereas the collection, storage and processing of personal data by a telecommunications organisation is justified for the purposes of the provision of the intended service only and may not be used without specific authorization by law or the subscriber's prior consent for any other purpose; whereas such collection, storage and processing of personal data may, in particular, not be used to give such telecommunications organization any undue competitive advantage over other service providers;

(15) Whereas this Directive should implement in the telecommunications sector the general principles concerning the subscriber's right to inspect the personal data stored about him/her, his right to request the rectification or erasure of such data, if necessary, as well as his right to prevent non-authorized disclosure of his personal data;

(16) Whereas this Directive must provide for harmonization of the Member States' rules concerning the privacy in the field of itemized call statements;

(17) Whereas, it is necessary, as regards the calling line identification, to protect both the right of the calling party to remain anonymous and the privacy of the called party with regard to unidentified calls;

(10) Whereas the personal data processed to establish calls are highly sensitive, in particular in the case of digital mobile networks; whereas the storage of these data should be limited to the period strictly necessary for the provision of the service;

(11) Whereas currently diverging rules exist in the Member States with regard to the provision of itemized bills; whereas this Directive must provide for harmonization of the Member States' rules concerning the privacy in the field of itemized billing in order to avoid obstacles to the development of transeuropean services;

(12) Whereas, it is necessary, as regards the calling line identification, to protect both the right of the calling party to remain anonymous and the privacy of the called party with regard to unidentified calls; whereas, however, it is justified to override the elimination in specific exceptional cases;

(13) Whereas directories are widely distributed and publicly available; whereas the right to privacy requires that the subscriber himself is able to determine to which extent his personal data are published in a directory;

(14) Whereas measures must be taken to prevent the unauthorized access to communications in order to protect the confidentiality of communications;

(18) Whereas safeguards must be provided for the users of teleshopping and videotex services against unauthorized use of their personal data as well as for the subscribers in general against intrusion into their privacy by means of unsolicited calls;

(15) Whereas safeguards must be provided for the users against intrusion into their privacy by means of forwarded calls as well as unsolicited calls and telefaxes;

(19) Whereas it is necessary to ensure that the introduction of technical features of telecommunications equipment for data protection purposes is harmonised in order to be compatible with the implementation of the internal market of 1992;

(16) Whereas it is necessary to ensure that the introduction of technical features of telecommunications equipment for data protection purposes is harmonised in order to be compatible with the implementation of the internal market of 1992;

(17) Whereas where the rights of the users and subscribers are not respected, national legislation must provide for judicial remedy; whereas sanctions must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken under this Directive;

(20) Whereas the implementation of this Directive with regard to third countries must take into account the level of protection of personal data and privacy in those countries as provided for in Council Directive ... [concerning the protection of individuals in relation to the processing of personal data];

(21) Whereas all matters concerning protection of personal data and privacy in the context of public digital telecommunications networks, which are not covered by the provisions of this Directive, the Council Directive mentioned above shall apply;

(18) Whereas Member States, industries concerned and the European Community will have to cooperate in developing and manufacturing the technologies necessary for the implementation of this Directive; this cooperation will have to respect in particular the competition rules of the Treaty;

(22) Whereas this Directive does not address issues of protection of personal data and privacy related to national security;

(19) Whereas this Directive does not address issues of protection of personal data and privacy related to activities, such as national security, which are not governed by Community law; whereas processing carried out by a Member State's own authorities, organizations or other bodies in the course of activities which are not governed by Community law should be governed by the protection principles provided for in the Resolution of the representatives of the Governments of the Member States of the European Communities meeting within the Council of ...

(20) Whereas the processing of personal data may not be used to give telecommunications organizations any undue competitive advantage over other service providers;

(23) Whereas it is useful for the preparation of measures intended to implement or modify this Directive to draw on the experience of the Working Party on the Protection of Personal Data composed of representatives of the supervisory authorities of the Member States, set up by Article 27 of Council Directive ... [concerning the protection of individuals in relation to the processing of personal data];

(21) Whereas it is useful in the field of application of this Directive to draw on the experience of the Working Party on the protection of individuals with regard to the processing of personal data composed of representatives of the supervisory authorities of the Member States, set up in Article 31 of Council Directive ... [concerning the protection of individuals with regard to the processing of personal data and the free movement of such data];

(24) Whereas such measures must be prepared with the assistance of the committee composed of representatives of the Member states set up by Article 30 of Council Directive ... [concerning the protection of individuals in relation to the processing of personal data];

(22) Whereas such measures must be prepared with the assistance of the Committee composed of representatives of the Member States set up by Council Directive ... [concerning the protection of individuals with regard to the processing of personal data and the free movement of such data];

HAS ADOPTED THIS DIRECTIVE:

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive provides for the harmonization of the provisions required to ensure an equal level of protection of privacy in the Community and to provide for the free movement of telecommunications equipment and services within and between Member States.

2. The Member States shall adopt the necessary specific provisions in order to guarantee the protection of personal data and privacy in the telecommunications sector in accordance with this Directive.

Article 2

1. Without prejudice to the general provisions of Council Directive...[concerning the protection of individuals in relation to the processing of personal data], this Directive applies specifically to the collection, storage, and processing of personal data by telecommunications organizations in connection with the provision of public telecommunications services in public digital telecommunications networks in the Community, in particular via the Integrated Services Digital Network (ISDN) and public digital mobile networks.

2. In case a Member State has not yet implemented the Integrated Services Digital Network (ISDN) or public digital mobile networks, the provisions of this Directive will be implemented to the extent that they also apply to services based on analogue networks.

Article 1Objective

1. This Directive provides for the harmonization of the provisions required to ensure an equivalent level of protection of personal data and privacy in the Member States and to provide for the free movement of telecommunications equipment and services in the Community.

2. The Member States shall adopt the necessary specific provisions in order to guarantee the protection of personal data and privacy in the telecommunications sector in accordance with this Directive.

Article 3

For the purposes of this Directive,

1. 'personal data' means any information relating to an identified or identifiable individual;
2. 'telecommunications organization' means a public or private body, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, where applicable, public telecommunications services;
3. 'public telecommunications network' means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;
4. 'public telecommunications service' means a telecommunications service whose supply Member States have specifically entrusted *inter alia* to one or more telecommunications organizations.

Article 2*Definitions*

In addition to the definitions given in Directive .../.../EEC [concerning the protection of individuals with regard to the processing of personal data and the free movement of such data] for the purposes of this Directive:

1. 'telecommunications organization' means a public or private body, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, where applicable, public telecommunications services;
2. 'service provider' means a natural or legal person 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;
3. 'subscriber' means any natural or legal person having subscribed to a telecommunications service of a telecommunications organisation or another service provider;
4. 'user' means any person using a telecommunications service for private or business purposes without necessarily having subscribed to this service;
5. 'public telecommunications network' means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;
6. 'public telecommunications service' means a telecommunications service whose supply Member States have specifically entrusted *inter alia* to one or more telecommunications organizations.

Article 3*Services concerned*

1. Without prejudice to the provisions of Council Directive...[concerning the protection of individuals with regard to the processing of personal data and the free movement of such data], this Directive applies to the processing of personal data by telecommunications organizations in connection with the provision of public telecommunications services in public digital telecommunications networks in the Community, in particular via the Integrated Services Digital Network (ISDN) and public digital mobile networks.

2. The principles concerning network security, billing data, subscriber directories, technical features and standardization as well as judicial remedies and sanctions as set out in Articles 4, 5, 6, 11, 14 and 16 of this Directive shall apply mutatis mutandis to public digital telecommunications services of service providers other than telecommunications organizations and to other telecommunications services provided to the public over the public telecommunications network.

The measures necessary for the application of other provisions of this Directive to service providers other than telecommunications organizations or measures that may prove necessary to give better effect to the application of the above paragraph shall be adopted by the Commission after consultation of the Working Party referred to in Article 17 and in accordance with the procedure laid down in Article 18.

3. Member States shall ensure that the provisions of this Directive will, where technically possible, be also applied to the processing of personal data in connection with services provided via analogue networks.

Article 4

1. Collection, storage and processing of personal data by a telecommunications organization is justified for telecommunications purposes only, in particular in order to establish connections for the transmission of voice, data or image, to produce bills, to compile directories, and for other legitimate operational purposes, for example fault clearance, prevention of misuse of the telecommunications organization's equipment, or registration of incoming calls in accordance with Article 13 (1).

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

Article 5

1. Personal data of the subscriber may be collected and stored to the extent necessary to conclude, perform, amend or terminate the contract with the telecommunications organization. After termination of the contract the data are to be erased unless and for so long as they are required to deal with complaints, to recover charges or to comply with other 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.

Article 6

The subscriber is entitled :

- to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him/her are stored as well as communication to him/her of such data in an intelligible form,

- to obtain, as the case may be, rectification or erasure of such data if they have been processed in breach of the provisions which are imposed by the law of the Member State in conformity with Community law.

Article 7

1. In principle, all personal data processed in connection with telecommunication networks and services are to be kept confidential.

2. The personal data may not be disclosed outside the services or the network of the telecommunications organization without specific authorization by law or the subscriber's prior consent. A subscriber shall be held to have given such consent only where it is given by way of a specific response to a request by the telecommunications organization. Without the subscriber's prior consent, these personal data must not be disclosed to persons within the telecommunications organization who are not dealing with the relevant services provided.

3. The telecommunications organization must not make the provision of its service dependent upon such consent.

Article 8

1. The telecommunications organization must provide adequate, state-of-the-art protection of personal data against unauthorized access and use.

2. In case of particular risk of a breach of the security of the network, for example in the field mobile radio telephony, the telecommunications organization must inform the subscribers concerning such risk and offer them an end-to-end encryption service.

Article 9

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.

2. Such a general storage of billing data is permissible up to the end of the statutory period during which the bill may be challenged.

Article 10

1. Traffic data containing the personal data necessary to establish calls, or required for billing or other operational purpose, 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.

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.

Article 4*Security*

In case of particular risk of a breach of the security of the network, for example in the field mobile radio telephony, the telecommunications organization must inform the subscribers concerning such risk and offer them encryption facilities.

Article 5*Billing Data*

1. For the purpose of billing, data containing the 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 subscriber 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 processed. Access to the storage of such data has to be restricted to the persons in charge of billing.

2. Such a storage of billing data is permissible only up to the end of the statutory period during which the bill may be challenged.

Article 6*Traffic data*

Traffic data containing the personal data processed to establish calls and stored in the switching centres of the telecommunications organisations must be erased as soon as it is no longer necessary to provide the service required.

Article 11

Upon application of the subscriber an itemized call statement may be produced, containing, among other items, the telephone numbers of the called subscribers without the last four digits.

Article 12

1. With regard to communications between subscribers linked to digital exchanges, the calling subscriber must have the possibility to eliminate via a simple technical facility the identification of his/her telephone number on the display of the called subscribers' terminal equipment, or its recording in a storage facility of this terminal, on a case-by-case basis.

The transmission of the telephone number may also be permanently eliminated by the telecommunications organization upon application of the calling subscriber.

2. The called subscriber may apply for permanent elimination of the identification of all incoming calls; he/she must also be able to turn off the display of his/her terminal equipment, or to eliminate the recording in the terminal's storage facility, in order to prevent the identification of the incoming calls, on a case-by-case basis.

The called subscriber must be able to limit the acceptance of incoming calls to those which identify the calling subscriber's number.

3. With regard to communications between a subscriber linked to an analogue exchange and subscribers linked to digital exchanges, the former subscriber is to be informed of the identification of his/her telephone number and to be offered the permanent elimination of the feature upon application. This subscriber must also have the possibility to eliminate the identification on a case-by-case basis.

Article 7*Itemized billing*

Where, upon application of the subscriber, an itemized bill is produced, Member States shall ensure the privacy of calling users and called subscribers is preserved.

Article 8*Calling-line identification*

1. Where calling-line identification is offered, the calling subscriber must have the possibility to eliminate via a simple means the transmission of his/her subscriber number for the purpose of calling-line-identification on a per-call basis.

2. Member States shall ensure that, upon application, the subscriber obtains from the telecommunications organization a per-line elimination of the transmission of the subscriber number for the purpose of calling-line identification.

3. Member States shall ensure that, upon application, the subscriber obtains from the telecommunications organization a per-line elimination of the identification of all incoming calls; Member States shall ensure that in other cases the subscribers are able to prevent the access to the identification of incoming calls by unauthorized persons.

The called subscriber must be able to limit the acceptance of incoming calls to those where the identification of the calling subscriber's number has not been eliminated.

4. The provisions set out in paragraphs (1) and (2) shall also apply with regard to calls to third countries originating in the Community; the provisions set out in paragraph (3) shall also apply to incoming calls originating in third countries.

5. The options set out in this Article must be offered free of charge.

Article 13

1. For a limited period of time, the telecommunications organization may override the elimination of the calling line identification :

(a) upon application of a subscriber requesting the tracing of malicious calls. In this case, the data containing the identification of the calling subscriber will be stored by the telecommunications organization and be made available upon request to the public authority charged with the prevention or pursuit of criminal offences of the Member State concerned;

(b) upon specific court order, in order to prevent or pursue serious criminal offences.

2. A permanent override function must be made available upon request :

(a) to organizations recognized by a Member State which answer and deal with emergency calls; and

(b) to fire brigades operated or recognized by a Member State.

3. The telecommunications organizations shall take the necessary steps to ensure that the override function is operational on a national and Community-wide basis.

Article 14

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

2. The calling subscriber must be informed automatically during the establishment of the connection that the call is being forwarded to a third party.

Article 9*Exceptions*

1. Member States shall ensure that, for a limited period of time, the telecommunications organization may override the elimination of the calling line identification in exceptional cases:

(a) upon application of a subscriber requesting the tracing of malicious calls; in this case, the data containing the identification of the calling subscriber will be stored by the telecommunications organization and be made available upon request to the public authority charged with the prevention or pursuit of criminal offences of the Member State concerned;

(b) upon specific court order, in order to prevent or pursue serious criminal offences.

2. Member States shall ensure that a permanent override function is made available upon request:

(a) to organizations recognized by a Member State which answer and deal with emergency calls; and

(b) to fire brigades operated or recognized by a Member State.

3. The telecommunications organizations shall take the necessary steps to ensure that the override function is operational on a national and Community-wide basis.

Article 10*Call Forwarding*

Calls may be forwarded from the called subscriber to a third party only if this party has agreed ; for this purpose ways and means of agreement by a third party will have to be developed and provided for as well as the possibility to stop automatic forwarding.

Article 11*Directories*

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

Article 15

1. If the content of telephone calls is made accessible to third parties via technical devices, such as loudspeakers or other on-hook equipment, or stored on tape for own use or use by third parties, provision must be made in order that the parties concerned are informed via an appropriate procedure of such diffusion or storage before the diffusion or storage is initiated and for as long as it continues.

2. Paragraph 1 does not apply in the cases covered by Article 13(1).

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.

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.

Article 17

1. Subscribers who receive unsolicited calls for advertising purposes or for the purpose of offering the supply or provision of goods and services may notify the telecommunications organization conveying such messages that they do not wish to receive these calls.

2. The telecommunications organization must take the steps necessary to terminate the transmission of such messages to the subscribers concerned. Furthermore, the telecommunications organization must keep a list of the notifications in a form specified and available for inspection by the regulatory authority, in order to prevent such calls in future.

Article 12*Surveillance of communications*

1. Member States shall take appropriate measures to ensure that listening or tapping devices or other means of interception or surveillance of communications by third parties are applied only subject to authorization by the competent judiciary or administrative national authorities in conformity with national legislation.

2. Member States shall ensure that the content of telephone calls must not be made accessible to third parties via technical devices, such as loudspeakers or other on-hook equipment, or be stored on tape for own use or use by third parties without the consent of the users concerned.

3. Paragraph (2) does not apply in cases covered by Article 9 (1).

Article 13*Unsolicited calls*

1. Notwithstanding the provisions of Directive .../... on the protection of consumers in respect of contracts negotiated at a distance (distance selling), Member States shall take appropriate measures to ensure that unsolicited calls for promotional or advertising/research purposes are not allowed in respect of subscribers who do not wish to receive these calls.

2. The use of automatic call devices for transmitting pre-recorded messages may only be used in respect of subscribers who have given their consent.

3. Paragraphs (1) and (2) apply accordingly to télex messages.

Article 18

1. In implementing the provisions of this Directive,⁶ Member States shall ensure, subject to paragraphs (2) and (3) of this Article, that no mandatory requirements for specific technical features are imposed on terminal or other telecommunications equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

2. Where provisions can only be implemented by requiring specific technical features, Member States shall inform the Commission according to the procedures provided for by Council Directive 83/189/EEC⁶ which lays down a procedure for the provision of information in the field of technical standards and regulations.

3. Where required, the Commission will ensure the drawing up of common European standards for the implementation of specific technical features, in accordance with Council Directive...[on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity], and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications⁷.

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.

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.

6 O.J. No L 109, 26.4.1983, p. 8.

7 O.J. No L 36, 7.2.1987, p. 31

Article 14*Technical features and standardization*

1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs (2) and (3) of this Article, that no mandatory requirements for specific technical features are imposed on terminal or other telecommunications equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

2. Where provisions can only be implemented by requiring specific technical features, Member States shall inform the Commission according to the procedures provided for by Council Directive 83/189/EEC⁹ which lays down a procedure for the provision of information in the field of technical standards and regulations.

3. Where required, the Commission will ensure the drawing up of common European standards for the implementation of specific technical features, in accordance with Council Directive 91/263 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity¹⁰, and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications¹¹.

9 O.J. No L 109, 26.4.1983, p. 8.

10 O.J. No L 128, 23.05.91, p. 1

11 O.J. No L 36, 7.2.1987, p. 31.

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.

Article 21

The details of the application of this Directive and the modifications necessary to adapt this Directive to new technical developments shall be determined by the Commission in accordance with the procedure laid down in Article 23.

Article 15*Technical application and modification*

The details of the application of this Directive and the modifications necessary to adapt this Directive to new technical developments shall be determined by the Commission in accordance with the procedure laid down in Article 18.

Article 16*Judicial remedy and sanctions*

1. Member States shall ensure that any individual has a judicial remedy if the rights guaranteed in this Directive are violated.
2. Each Member State shall make provision in its law for the application of dissuasive sanctions applicable to any person not complying with the national provisions taken pursuant to this Directive.

Article 22

1. The Working Party on the Protection of Personal Data established according to Article 27 of 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] shall carry out the tasks laid down in Article 28 of the above-mentioned Directive also with regard to the data protection measures which are the subject of this Directive.

2. The Working Party will be specifically constituted for the purpose of this Directive.

Article 17*Working Party on the Protection of individuals with regard to the processing of personal data*

1. The Working Party on the Protection of individuals with regard to the processing of personal data established according to Article 31 of Directive.../.../EEC [concerning the protection of individuals with regard to the processing of personal data and the free movement of such data] shall carry out the tasks laid down in Article 32 of the above-mentioned Directive also with regard to the data protection measures which are the subject of this Directive.

2. The Working Party will be specifically constituted for the purpose of this Directive.

Article 23

1. The procedure laid down in Article 30 of 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] shall apply.

2. The Committee established in the framework of that procedure will be constituted specifically for the purposes of this Directive.

Article 24

1. The Member States shall bring into force the laws, regulations, and administrative provisions necessary for them to comply with this Directive by 1 January 1993 at the latest.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

2. The Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 25

This Directive is addressed to the Member States.

For the European Parliament
The President

Article 18*Procedure*

1. The Commission shall be assisted by the Committee established by Article 34 of Directive.../.../EEC [concerning the protection of individuals with regard to the processing of personal data and the free movement of such data] which for the purposes of this directive will act according to the following procedure:

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.

2. The Committee established in the framework of that procedure will be constituted specifically for the purposes of this Directive.

Article 19*Implementation of the Directive*

1. The Member States shall bring into force the laws, regulations, and administrative provisions necessary for them to comply with this Directive one year after the adoption of this Directive at the latest.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. The Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 20*Addressees*

This Directive is addressed to the Member States.

For the Council
The President

FINANCIAL OUTLINE

I. FINANCIAL IMPLICATIONS

1. Title of Action

Directive of the European Parliament and the Council 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

2. Budget line

A-2510: Expenditure on meetings of committees whose consultation is compulsory in the procedure for drafting Community legislation

Titles A1 and A2: staff expenditure

3. Legal Basis

- Article 100a of the EEC Treaty

4. Description

4.1 Specific Objectives of the Action

This action aims at the proper functioning of the internal market for telecommunications services and telecommunications equipment by ensuring the free movement of personal data in the context of telecommunications networks as well as at ensuring the protection of personal data and privacy in this area.

The proposed directive refers tasks to two bodies responsible for the protection of individuals with regard to personal data set up by Council Directive .../.../EEC [on the protection of individuals with regard to the processing of personal data and on the free movement of such data](COM(92)422final - SYN 287)(Articles 31 and 34).

4.2 Duration

The duration of the action is not limited.

4.3 Population aimed at by the action

The Directive directly concerns telecommunications organizations, other network operators and service providers as well as equipment manufacturers in the field of telecommunications, and indirectly all users of telecommunications services in the Community.

5. Classifications

non-compulsory expenditure

non-differentiated credits

6. Nature of spending

The Community's financial contribution will cover costs incurred by members attending meetings of the Working Party and the Committee as well as staff costs.

7. Financial implication for intervention credits

none

8. Anti-fraud provisions

none

II. ADMINISTRATIVE EXPENSES

The Community contribution will be covered by appropriations entered on budget items A-1 and A-2.

The specific requirements for committee meetings can be estimated to be about 2 meetings per year of a Committee with 24 members specifically constituted for the purposes of this directive. These meetings will cost about 24.000 ECU (= 2 x 12.000) per year which will be covered by budget line A 2510.

The specific requirements for Working Group meetings can be estimated to be about 4 meetings per year of a Committee with 24 members specifically constituted for the purposes of this directive. These meetings will cost about 72.000 ECU (= 4 x 18.000) per year which will be covered by budget line A 2510.

The estimated costs of the whole action in 1994 will be of about 96.000 ECU on budget line A 2510. They are not expected to increase in the following years.

Staff (1/3 A and 1/3 C for about 27.000 ECU each) will be required to ensure the secretariat of the two bodies. It will be found by a redeployment of existing staff and will not increase expenses.

III. ELEMENTS OF COST-EFFICIENCY ANALYSIS

1. Objectives and coherence with the financial programming

- 1.1 The proposed Directive aims at harmonizing the specific data protection and privacy requirements for the provision of public telecommunications services.
- 1.2 The action is provided for in the financial programming of the DG.
- 1.3 The objective of the proposed Directive corresponds to the more general objective of the "establishment of an internal market of telecommunications equipment and services" defined in the financial programming of the DG.

2. Justification of the action

The proposed Directive contains a legislative measure necessary for the establishment of an internal market in the sector. An alternative could consist in waiting for the full harmonization of the conditions for the provision of telecommunications services in all Member States. This would lead to a considerable slow-down of the creation of an internal market for telecommunications services.

3. Follow up and evaluation of the action

The proposed Directive sets out in its Article 17, which makes reference to Article 32 of the above-mentioned general directive on data protection, an obligation for the Working Group to establish an annual report which allow for a follow up of the implementation of this Directive.

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