

ARTICLE 29 - DATA PROTECTION WORKING PARTY

Brussels, 7 June 2001

Mr Göran Persson
Acting President of the Council of
the European Union
Prime Minister
STATSRÅDSBEREDNINGEN
Rosenbad, 4
S - 103 33 Stockholm
Sweden

Dear Mr Persson,

The European Parliament and the Council intend to finalise their positions on the Commission proposal for a directive on privacy and protection of personal data in electronic communications.

This proposal translates the principles of the European Convention of Human Rights concerning the right to privacy and data protection into the electronic communications sector by requesting confidentiality of communications and the deletion of traffic data after completion of the communication. For needs of law enforcement, clearly defined exemptions are provided for in Article 15 paragraph 1 of the draft directive in line with the European Convention on Human Rights.

It seems that some Member States would like to change this balance in favour of increasing the possibilities of law enforcement authorities, beyond the scope of what the European Court on Human Rights has accepted in the course of its case law on Article 8 of the European Convention on Human Rights.

The Article 29 Data Protection Working Party considers that the Council and the European Parliament should resist any change of the existing provisions guaranteeing confidentiality of communications (Article 5) and limited processing of traffic data (Article 6). It is not acceptable that the scope of initial data processing is widened in order to increase the amount of data available for law enforcement objectives. Any such changes in these essential provisions that are directly related to fundamental human

The Working Party has been established by Article 29 of Directive 95/46/EC. It is the independent EU Advisory Body on Data Protection and Privacy. Its tasks are laid down in Article 30 of Directive 95/46/EC and in Article 14 of Directive 97/66/EC. The Secretariat is provided by:

The European Commission, Internal Market DG, Functioning and impact of the Internal Market. Coordination. Data Protection.
Rue de la Loi 200, B-1049 Bruxelles/Wetsstraat 200, B-1049 Brussel - Belgium - Office: C100-6/136
Internet address: http://europa.eu.int/comm/internal_market/en/media/dataprot/wpdocs/index.htm

rights, would turn the exception into a new rule. Systematic and preventive storage of EU citizens' communications and related traffic data would undermine the fundamental rights to privacy, data protection, freedom of expression, liberty and presumption of innocence. Could the Information Society still claim to be a democratic society under such circumstances ?

The Charter of Fundamental Rights of the European Union recognises all these fundamental rights and freedoms and requires that any limitations on the exercise thereof must respect the essence of those rights and freedoms. Moreover, the Charter takes a clear position on the tendency of protection for those rights that are also guaranteed by the European Convention on Human Rights as it states that Union law may provide more extensive protection. A lower level of protection would be legally and politically unacceptable.

On behalf of the Working Party, I therefore urge your institution to maintain the existing balanced approach, as initially proposed by the European Commission, in full respect of our international commitments under the European Convention of Human Rights and its attendant case law.

Yours sincerely,

(signed)

Stefano Rodotà
Chairman