



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 April 2001**

**6316/2/01  
REV 2**

**LIMITE**

**JAI 13**

**NOTE**

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from :            Presidency  
to :              Article 36 Committee

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No. prev. doc. : 6316/1/01 JAI 13 REV 1

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Subject :        Draft Resolution on the personal data protection rules in instruments under the  
                    third pillar of the European Union

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At its meeting of 1 March 2001 the Information Systems and Data Protection Working Party discussed the Draft Resolution on the personal data protection rules in instruments under the third pillar of the European Union as contained in document 6316/01 JAI 13.

Delegations reached broad agreement on the text of the Draft Resolution, it being understood that during the meeting a number of amendments were made to the text as contained in document JAI 13. These amendments were reflected in the Annex of document 6316/1/01 JAI 13 REV 1.

Delegations were subsequently requested to indicate to the Presidency in writing their position in respect to the text contained in document 6316/1/01 JAI 13 REV 1. On the basis of the comments received, the Presidency introduced a small number of additional amendments, taking - as far as possible - into account the written comments made by delegations. Contained in the Annex please find the text of the draft Council Resolution reflecting the amendments introduced by the Presidency (*in italics*).

The outstanding reservations are reflected in the footnotes. The Article 36 Committee is requested to address these reservations with a view to finalise the text in the draft Council Resolution. On the basis of the discussion in the Article 36 Committee, the Presidency will decide on how to proceed with the draft Council Resolution.

DRAFT RESOLUTION <sup>1</sup>

on the principles of personal data protection in the fields  
of police and judicial cooperation in criminal matters

The Council of the European Union,

Whereas:

1. The right to *the protection of personal data* is a fundamental right of natural persons, recognised, inter alia, by the Charter of Fundamental Rights of the European Union. <sup>2</sup> *The right to the protection of personal data can only be limited where there is a need to safeguard an interest deserving overriding protection.*
2. Directive 95/46/EC of *the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data* <sup>3</sup> which sets rules for the protection of personal data within the Union, does not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such as those provided for by Title VI of the Treaty on European Union.
3. *Accordingly*, a comprehensive document is opportune in order to set out the fundamental principles for personal data protection in the fields of police and judicial cooperation in criminal matters (...).

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<sup>1</sup> General reservation by the German delegation.

<sup>2</sup> OJ C 364, 18.12.2000, p. 1.

<sup>3</sup> OJ L 281, 23.11.1995, p. 31.

4. Instruments adopted on the basis of Title VI of the Treaty on European Union, in particular the Europol Convention, the Naples II Convention, the Convention on the use of information technology for customs purposes and the Convention on Mutual Assistance In Criminal Matters, contain provisions on the protection of personal data. Equally the Schengen Convention contains provisions on the protection of personal data.
5. Member States have ratified the Council of Europe Convention No 108 of 28 January 1981 and the Community is due to accede to this Convention upon completion of the formal procedures.
6. Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 constitutes a reference document for personal data protection in the police sector.
7. There is a need to preserve the effectiveness of cooperative mechanisms in police and judicial cooperation in criminal matters.
8. Cooperation between the data protection supervisory authorities set up in instruments adopted in the European Union and the national supervisory authorities is important.

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Hereby adopts the following Resolution:

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<sup>1</sup> The German delegation requested to insert a paragraph in the preamble reflecting the need to determine the scope and to motivate possible exceptions of the principles contained in the draft Resolution.

TITLE I  
**GENERAL PROVISIONS**

*Article 1*<sup>1</sup>

**Union instruments to which the Resolution applies**

The provisions set out below apply to all instruments adopted by the Council on the basis of Article 34(2)(b),(c) and (d) of Title VI of The Treaty on European Union, concerning police and judicial cooperation in criminal matters, which provide for the processing of personal data, even if it is limited to the communication of personal data. The provisions apply to those instruments adopted by the Council after the publication of this Resolution in the Official Journal of the European Communities.

*Article 2*

**Principles to be taken into account and their scope of application**

1. The instruments referred to in Article 1 should specify which of the principles set out in Title II of this Resolution are to be implemented in that instrument and their scope of application as referred to in paragraph 3.
2. The instruments referred to in Article 1 may provide for exceptions or derogations to be applied to those principles, taking account of the subject-matter or specific character of the instrument in question, where the exceptions or derogations constitute a necessary measure in a democratic society in the interests of
  - (a) protecting state security, public safety, the monetary interests of the state or the suppression of criminal offences;
  - (b) protecting the data subject or the rights and freedoms of others.<sup>2</sup>

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<sup>1</sup> Shortly before adopting the Resolution, a list will be drawn up containing texts politically agreed to by Council bodies at the time of the foreseen adoption of the Resolution. On that basis the Council could, when adopting the Resolution, adopt a declaration excluding the reopening of negotiations of the aforementioned instruments agreed to by Council bodies in the light of the adoption of the Resolution.

<sup>2</sup> Reservation by the German delegation. It objected to the possibility to provide for exceptions and derogations in respect of all principles.

3. The principles set out below apply to the processing of personal data wholly or partly by automated means and to the processing by non-automated means of personal data as far as the personal data forms part or are intended to form part of a filing system. <sup>1</sup>

## TITLE II PRINCIPLES

### *Article 3*

#### **Principle of fairness and lawfulness**

Personal data should be processed fairly and lawfully.

### *Article 4*

#### **Principle of end-purpose**

Personal data should be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.

### *Article 5*

#### **Principle of proportionality**

Personal data should be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.

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<sup>1</sup> The German, Greek and Spanish delegations requested to insert the words "or dossier" at the end of paragraph 3.

*Article 6*

**Principle of data quality**

Personal data should be accurate and, where necessary, kept up to date; every reasonable step should be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they are collected and/or further processed, are erased or rectified.

*Article 7*

**Principle of regulating the processing of special categories of data**

The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership, and the processing of personal data concerning health or sex life, may be authorised only where adequate safeguards are laid down.<sup>1</sup>

*Article 8*

**Principle of the specification of the length of storage**

Personal data should be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data are collected and/or further processed. The length of time for which data may be stored should, where possible<sup>2</sup>, be specified especially when special categories of data as referred to in Article 7 are involved.

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<sup>1</sup> Reservation by the Italian delegation. It proposed to generally prohibit the processing of sensitive data, subject to certain exceptions. The Danish delegation suggested to insert after the word "only", the following phrase: "if necessary and".

<sup>2</sup> Reservation by the German delegation proposing to delete the words "where possible".

*Article 9*

**Principle of the confidentiality of processing**

The controller, the processor and any person acting under the authority of either should not disclose to third parties any personal data to which they have access by virtue of their function, unless authorised or required to do so by law.

*Article 10*

**Principle of security guarantees**

The controller should implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or all other unlawful forms of processing. These measures should be of a level appropriate to the risks represented by the processing.

*Article 11*

**Principle of the right to information**

1. The data subject should be informed of the identity of the controller and/or his representative, if any, the fact that personal data concerning him are being processed, the categories of data concerned and the purposes of the processing, unless the provision of such information proves impossible or incompatible with the purposes of the processing, or involves a disproportionate effort compared to the interests of the data subject.
2. The moment in time in which the information referred to in paragraph 1 is provided should not prejudice the purposes for which the data were collected and/or further processed.



## *Article 12*

### **Principle of the right of access and rectification**

1. If compatible with the purposes for which personal data were collected and/or further processed, the data subject should have the right to obtain from the controller, without constraint at reasonable intervals and without excessive delay or expense, communication to him of the data relating to him which are undergoing processing. It should be provided that this right of access may be direct or through a competent body.
2. The data subject should be able to obtain, either directly or through a competent body, as appropriate, the rectification, erasure or blocking of personal data whose processing does not comply with the principles of the instruments concerned.

## *Article 13*

### **Principle of responsibility**

The controller should be responsible for ensuring that the provisions set out in the instrument in question are observed.

## *Article 14*

### **Principle of the right to compensation for any damage suffered**

*The data subject should have the right to compensation for any damage suffered by him because of unlawful processing of personal data concerning him.*

TITLE III  
**MONITORING OF THE OBSERVANCE OF THE PRINCIPLES**

*Article 15*

**Supervisory authorities**

1. Observance of the principles of personal data protection should be monitored and enforced by one or more independent public supervisory authorities of, or common to, the Member States. The supervisory authority should be vested in particular with powers of investigation and intervention allowing it in particular to instigate, as appropriate, the rectification, erasure or blocking of personal data whose processing does not comply with the principles.<sup>1</sup>
2. It should be stated which independent public authority of, or common to, the Member States is competent to decide whether individuals have suffered damage connected with a violation of the principles of personal data protection.
3. Paragraphs 1 and 2 are without prejudice to independence of national judicial authorities as well as their competencies to monitor and enforce the observance of the principles of personal data protection as well as to decide on claims whether individuals have suffered damage connected with a violation of the principles of personal data protection.

Done at Brussels,

For the Council  
The President

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<sup>1</sup> Reservation of the German delegation. It proposed to delete in the first sentence the words "and enforced" and to formulate - on the basis of Article 28(2) of Directive 95/46/EC - the second sentence as follows: "The supervisory authority should in particular be endowed with investigative powers and effective powers of intervention, such as, for example, the ability to instigate, as appropriate, the rectification, erasure or blocking of personal data whose processing does not comply with the principles".