



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	Belgian delegation
to :	K4 Committee
Subject :	Protection of personal data in the Third Pillar of the European Union. Proposals on determining the remit of the Horizontal Working Party on Data Processing

A. Current state of play

1. Thus far, four documents have raised the question: the Italian delegation's proposals (JAI 15 of 6 May 1998), the Resolution of the Conference of Data Protection Commissioners (JAI 16 of 14 May 1998), the Council Legal Service note (CK4 41 of 9 September 1998), and the note from the German Presidency to the Horizontal Working Party on Data Processing (JAI 3 of 4 February 1999).

The latter was actually a preparatory document for the first meeting of that Working Party on 11 February 1999.

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2. The main points which emerged from the first meeting were the flexibility of the remit assigned to the Horizontal Working Party on Data Processing and the various alternatives suggested in response to the following considerations:
- should attempts be made to coordinate physical data protection as a whole, or should we confine ourselves to standardising control instruments, particularly the Joint Supervisory Authorities for data protection?
 - if physical data protection law is to be coordinated, can this be done by means of the systematic insertion of a clause into the various instruments, or must different provisions be drawn up, which would be included in the body of the text of those Conventions?
 - furthermore, if standardisation does take place, should it include only future legislation on data protection, or should instruments already adopted also be included?

While it is clear that the Horizontal Working Party on Data Processing as a whole supports the idea of coordination and standardisation, the limits that must be imposed on its remit are not yet clear to it. Evidence of this can be found in the conclusions that our delegations draw from the exchanges of views held at the meeting on 11 February 1999, i.e.:

- an invitation to the Council Legal Service to prepare a feasibility study on the scope and purpose of the instrument to be prepared;
- the official involvement of the European Data Protection Commissioners' Conference and the presidencies of the Schengen and Europol Joint Supervisory Authorities in the follow-up to the Working Party's discussions.

To facilitate the feasibility study entrusted to the Legal Service, we would hereby urge the K4 Committee to agree to the proposals set out under section C below.

B. Current situation

3. It is clear from the documents referred to in point 1 above that the area of personal data protection is developing considerably in particular because of the increasing use of new technologies), in all fields of cooperation between the fifteen European Union States.
4. Bearing in mind these developments, the European Union Member States, operating in the context of Schengen or of the Third Pillar, decided to include explicit data protection provisions in the instruments then being drawn up.
5. It is now apparent that those same instruments concern a variety of complex matters (monitoring of individuals, customs cooperation, combating organised crime, etc.). It is also clear that the information exchange systems set up by those instruments differ in their structure, in their objectives and in the specific data protection rules established.

Thus, a "star-structured" exchange system of standardised information, such as that of the Schengen Information System, cannot be compared with the exchange structure for information and data analysis files established under Europol. The data protection rules peculiar to each system naturally tend to be suited to its specific structure.

6. At its meeting on 11 February 1999 the Horizontal Working Party on Data Processing raised the possibility of looking for a "common denominator" in data protection, through examination of the most important instruments of the Third Pillar (Schengen, Europol, Customs Information System, Naples II Convention).

Insofar as physical data protection (basic principles, conditions for permitting data processing, rights of individuals concerned, obligation of authorities in charge of data processing, etc.) is concerned, **it does not at present seem advisable to pursue standardisation, for the following reasons:**

- it has already been ascertained that the areas covered by data exchanges, and the structures of the systems, were too dissimilar;
- apart from the Schengen Information System, these exchange structures have not yet had the opportunity to operate in practice, so it has not yet been possible to assess the adequacy or otherwise of the data protection systems set up;
- the idea of looking for a "common denominator" for physical data protection is not new. It was the subject of long discussions in other bodies which were also interested in the subject (e.g., the Project Group on Data Protection (CJ-PD), or the Consultative Committee set up by Convention No 108 of the Council of Europe – TPD). The outcome of this long-term work has not yet made it possible to reach a satisfactory conclusion, in the view of all delegations;
- lastly, and most importantly, if the objective of the Horizontal Working Party on Data Processing were primarily to look for "the lowest common denominator" in physical data protection under the Third Pillar, how would it be possible to disregard Council of Europe Convention No 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data?

This is explicitly mentioned in the Schengen Implementing Convention (Article 115(1); Article 117(1); Article 126(1)), in the Europol Convention (second subparagraph of Article 10(1); Article 14(1) and Article 14(3)), in the CIS Convention (Article 4(2); Article 13(1); Article 15(3); Article 18(2); Article 21(1)) and in the Naples II Convention (Article 25(1)).

7. However, an attempt to standardise the control systems for data protection rules, in particular the Joint Supervisory Authorities, **can already be considered**.

Although the task is more limited, it is no less necessary and sensitive, bearing in mind the need to standardise future rules, but also and above all the provisions of existing instruments, such as:

- Article 115 of the Schengen Implementing Convention;
 - Article 24 of the Europol Convention;
 - Article 18 of the Convention on the Customs Information System.
8. Such a plan is all the more feasible since the Joint Supervisory Authorities referred to above are, for each Convention, made up of the same national data protection supervisory authorities (even, in many cases, the same representatives of the same authorities).

Also, standardisation of the composition, tasks and powers, and of the budgetary, staff and equipment resources of the current Joint Supervisory Authorities would contribute to a process of simplification, increasing transparency and improving the administration of the European institutions, and would respond to a desire specifically included by the Presidency among its objectives for justice and home affairs. If, finally, new cooperation instruments, including data protection rules, made it necessary to standardise physical data protection, the single Joint Supervisory Authority could then liaise between the various Government representatives.

C. Proposals

9. The Belgian delegation therefore proposes that the remit to be assigned to the Horizontal Working Party should concern:

- primarily the standardisation of the Joint Supervisory Authorities, covering all the various aspects (tasks, composition and resources), with a view to setting up a single Joint Supervisory Authority;
- instruments already concluded (i.e. Schengen, Europol, the CIS, Naples II), instruments in the process of being concluded (such as the Convention on Driving Disqualifications, etc.) and future instruments.
