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from : Italian delegation

to : COREPER/Council (JHA)

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Subject: Protection of personal data

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During the informal meeting of the Ministers of Justice and Home Affairs of the European Union on 19 March 1998, a request was made, on the initiative of the Italian Minister for the Interior, for a specific item to be included in the agenda of the next JHA Council scheduled for the end of May.

This was meant to foster the consideration of the various instruments that have been or are being developed within the framework of the so-called "Third Pillar" of the Maastricht Treaty, setting up automated systems for data processing and exchange with and without automated means, in order to subsequently assess consistency of the policy implemented so far as to the relationship between data protection issues and the different kinds of cooperation and assistance for judicial and law enforcement purposes. The possible outcome might be the development of new operational arrangements.

The major agreements obviously relate to the conventions or draft conventions setting up Europol, the Customs Information System and Eurodac as well as implementing the Schengen Agreement and the Schengen Information System.

Indeed, it can be reasonably expected that the increased cooperation in the justice and home affairs sector will require new, similar instruments to be developed in the near future; this is also shown by the ongoing discussion concerning the provisions on data protection to be included in the forthcoming instruments applying to driving disqualifications and mutual judicial assistance.

The above conventions were drafted by different working parties, each of them being competent for the relevant cooperation sector.

This led to laying down, at least in part, different provisions as to the protection of personal rights. Different supervisory bodies at EU level were also envisaged or provided for as to data protection.

Such an approach results, *inter alia*, in:

- definite overwork for the working parties in charge of carrying on cooperation within the Union Council as to the matters included in Article K.1 of the Treaty – having regard also to the specificity and technicality of the provisions applying to data protection and the related guarantees for the persons concerned;
- laying down different arrangements for data exchange and the exercise of the right of access, rectification, erasure, etc. as provided for by data protection laws in the individual Member States;
- the risk of inconsistent and/or unfair treatment despite homogeneous circumstances;
- duplication of means and funds especially as regards back-up structures for the different joint supervisory bodies.

Similar concerns were also expressed by the European Parliament in its resolution of April 1997 on the operation and the future of Schengen (point 16), where improved coordination of the initiatives was called for.

The need for all Member States to address these issues jointly is therefore apparent, so as to assess the policy adopted and the required changes – if any.

Account should also be taken, however, of the discussion recently held on these topics during the European Conference of Data Protection Commissioners, which took place in Dublin on 23 and 24 April. This discussion led to the approval by all national data protection supervisory bodies of a document in which a number of considerations were raised as to the implications of the issue at stake in terms of uniform protection.

The taking of initiatives in this field is welcomed in the above document, which is currently being transmitted to the European Presidency.

Based on this further input, we deem it appropriate for all Member States to take account, during the Council meeting on 28 and 29 May, of the need to address the above issues in greater detail, following a possible initial policy debate, in order subsequently to determine more specific policies and, possibly, operational solutions.

In particular, an analysis would be necessary in order to:

- assess whether actual inconsistencies exist in terms of protection despite homogeneous circumstances;
- specify more precisely standards applying to data protection clauses to be included in future agreements;
- gather more precise information as to the relationships between the different databases that are used at national and international level for judicial and law enforcement purposes, in order to prevent duplication and inconsistencies as to the common features of the various computerized systems;
- evaluate the medium-term feasibility of reducing the number of or unifying the different joint supervisory bodies in the data protection sector.

Following this initial round of consultation, an *ad hoc* expert working party might be set up, possibly including observers/representatives from the national data protection supervisory bodies, to draft short-term proposals.