



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 17 March 1999 (07.05)  
(OR. f)

**SEMDOC**

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#### INFORMATION NOTE

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from : Working Party on Economic Questions (Data Protection)  
on : 10 and 11 March 1999  
to : COREPER

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No Cion. prop.: 13115/98 ECO 45  
No prev. doc.: 6188/99 ECO 61

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Subject : Accession of the European Communities to Convention No 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data

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#### 1. INTRODUCTION

On 13 November 1998, the Commission submitted to the Council a Recommendation for a Council Decision (13115/98 ECO 415) authorising the Member States to approve on behalf of the European Communities the adoption by the Committee of Ministers of the Council of Europe of amendments to allow the European Communities to accede to Council of Europe Convention No 108 (amendments set out in T-PD(98) 31 Addendum 1).

However, that initiative failed to result in the Council's adoption of a decision along the lines of the Recommendation owing to opposition from the United Kingdom<sup>1</sup>, which identified a problem concerning the exercise of the right to vote by the European Communities following their accession to the Convention.

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<sup>1</sup> This reservation was tabled under the "I"/"A" item procedure used for the adoption of the Council Decision: see 13417/98 ECO 36.

In the view of the UK delegation, Article 2 of the draft amendments to Convention 108, which governs this question, does not cover the situation provided for in the Amsterdam Treaty, which is to enter into force imminently. The delegation pointed out that certain questions would be transferred from the third pillar to Title IV of the EC Treaty but would remain within the competence of the United Kingdom, Ireland and Denmark to the extent that those Member States are not bound by Community measures adopted pursuant to that Title.

## 2. Outcome of the Working Party's discussions

At the end of its meeting on 10 and 11 March 1999, the Working Party reached the following solution to the problem, of which it agreed to notify the Permanent Representatives Committee:

- the Commission would be given the task of ensuring with the competent Council of Europe bodies that Article 2(1) of the draft amendment to Convention 108 was modified to read as in the Annex;
- in due course a draft Decision would be resubmitted as an "A" item to Coreper/the Council, authorising the Member States, to approve on behalf of the European Communities the adoption by the Committee of Ministers of the Council of Europe of amendments to allow the European Communities to accede to Council of Europe Convention No 108.

All delegations agreed to this solution.

The United Kingdom delegation however stated that it might wish to return to its request for a statement in the minutes and, at the time of accession proper, to the question of whether accession should not be solely by the "European Community" <sup>2</sup>. It also pointed out that the matter was still being examined by its Parliament.

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<sup>2</sup> See 6188/99

Article 2(1) of the draft amendment to Convention 108

"1. Un nouveau paragraphe 3, libellé comme suit, est inséré à l'article 20 de la Convention:

"Chaque Partie dispose d'un droit de vote. Tout Etat Partie à la Convention a une voix. Sur les questions relevant de leur compétence, les Communautés européennes exercent leur droit de vote et expriment un nombre de voix égal au nombre de leurs Etats membres qui sont Parties à la Convention et qui ont transféré leurs compétences aux Communautés européennes dans le domaine considéré. Dans ce cas, ces Etats membres des Communautés ne participent pas au vote et les autres Etats membres des Communautés peuvent participer au vote. [...] Les Communautés européennes ne votent pas lorsque le vote porte sur une question qui ne relève pas de leur compétence."

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"1. A new paragraph 3, reading as follows, shall be inserted in Article 20 of the Convention:

"Every Party has a right to vote. Each State which is a Party to the Convention shall have one vote. Concerning questions within their competence, the European Communities exercise their right to vote and cast a number of votes equal to the number of Member States that are Parties to the Convention and have transferred their competences to the European Communities in the field concerned. In this case, those Member States of the Communities do not vote, and the other Member States may vote. [...] The European Communities do not vote when a question which does not fall within their competence is concerned."