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NOTE

from :	Presidency
to :	Article 36 Committee
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Subject :	Results achieved during the Finnish Presidency in the field of Data Protection – Third Pillar related issues

1. Introduction

In 1998 the Italian delegation raised the issue of harmonisation of data protection provisions in the third pillar. On the basis of an Italian discussion paper and a contribution from the legal service, the Horizontal Working Party on Data Protection was mandated to deal with this issue. Work started during the German Presidency, which organised one meeting of said working party (11 February 1999).

2. Work Programme of the Finnish Presidency

On the basis of aforementioned introduction, the Finnish Presidency announced that it would like to continue work in the following fields:

- a) Firstly the setting up of a joint secretariat should be brought forward.

- b) Secondly, the creation of a single supervisory body in the third pillar.
- c) Thirdly, the development of common principles for data protection in the third pillar

3. Setting up of a joint secretariat

During the last meeting of the Group Information Systems and Data Protection on 17 November 1999 the Presidency reached the following conclusions:

- a) All delegations in general agreed to the idea of setting up a joint secretariat for the existing and future third pillar joint supervisory bodies.
- b) The main reasons for setting up a joint secretariat would be cost efficiency and the solution for several problems presently encountered (foreseen increase of workload, organising of meetings, position of the secretariat of the Europol Joint Supervisory Body, etc.).
- c) On request of several delegations the Council Legal Service confirmed that a simple integration of the existing secretariats into the framework of the Council General Secretariat would not meet the criteria for independence which – according to the opinion of several delegations – should apply for a joint secretariat. A simple integration can thus not be used as a model when setting up a joint secretariat.
- d) In order to find a solution that on the one hand guarantees the independence of the joint secretariat while falling short of creating a separate legal entity, delegations discussed a solution along the lines of the European ombudsman construction (setting up by a Council decision an independent unit in the Council Secretariat with its own staff and budget line).
- e) Although a solution along the lines of the ombudsman decision received considerable support by delegations because it offers a practical way forward, delegations agreed that a solution along these lines requires more research.

On the basis of the aforementioned conclusions the incoming Presidency announced it will produce a discussion paper further developing the ombudsman construction by the middle of December 1999. The setting up of a joint secretariat will be further discussed at the first meeting during Portuguese Presidency of the Group Information Systems and Data Protection that will most likely take place on 19 January 2000. The incoming Presidency announced in this respect that a speedy setting up of a joint Secretariat will be one of its priorities.

4. Common Membership of Data Protection Bodies

As far as the setting up of a common Supervisory Body for the third pillar is concerned, the Presidency proposed to address the issue in light of a possible forthcoming amendment of the Europol Convention, considering that the formal creation of a common Supervisory Body requires the amendment of the Europol, Schengen and Customs Conventions.

The Group could not immediately agree on the way forward and the incoming Presidency announced that the matter of creating a common Supervisory Body shall be addressed again by the Group in the light of progress achieved in setting up a joint Secretariat.

5. Harmonisation of Data Protection Rules

Although several papers were produced outlining the way in which data protection rules in the third pillar could be harmonised, no substantial progress was achieved. Delegations differed of opinion about the usefulness of such a harmonisation and could not agree as to the objective of such an harmonisation (creating common principles to be used when setting up future third pillar instruments or also preparing the harmonisation of the rules in existing conventions).

The incoming Presidency announced to address the issue again at the next meeting of the Group (19 January 2000) and to produce in preparation of this meeting a document outlining common principles for data protection presently applied in the third pillar. It has also produced a questionnaire in order for some issues to be clarified in preparation of the next meeting.
