

time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

FINAL PROVISIONS

Article 31

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 1 January 1993.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

2. The Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 32

The Commission shall report to the Council and the European Parliament at regular intervals on the implementation of this Directive, attaching to its report, if necessary, suitable proposals for amendments.

Article 33

This Directive is addressed to the Member States.

Proposal for a Council Directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks

COM(90) 314 final — SYN 288

(Submitted by the Commission on 27 July 1990)

(90/C 277/04)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100A thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

- (1) Whereas Council Directive ... concerning the protection of individuals in relation to the processing of personal data exhorts Member States to ensure the protection of privacy;
- (2) Whereas currently in the European Community new advanced digital public telephone networks are emerging which give rise to specific requirements concerning the protection of personal data and privacy of the user;
- (3) Whereas this is the case, in particular, with the introduction of the integrated services digital network (ISDN) and public digital mobile networks;

(4) Whereas the Council, in its resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 ⁽¹⁾, has called for steps to be taken to protect personal data, in order to create an appropriate environment for the future development of telecommunications in the Community; whereas the Council has re-emphasized the importance of the protection of personal data and privacy in its resolution of 18 July 1989 on the strengthening of the coordination for the introduction of the integrated services digital network (ISDN) in the European Community ⁽²⁾;

(5) Whereas the European Parliament has underlined the importance of the protection of personal data and privacy in telecommunications networks, in particular with regard to the introduction of the integrated services digital network (ISDN) ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾;

(6) Whereas Commission recommendation 81/679/EEC calls for the adoption and ratification by Member

⁽¹⁾ OJ No C 257, 4. 10. 1988, p. 1.

⁽²⁾ OJ No C 196, 1. 8. 1989, p. 4.

⁽³⁾ OJ No C 7, 12. 1. 1987, p. 334.

⁽⁴⁾ OJ No C 12, 16. 1. 1989, p. 69.

⁽⁵⁾ OJ No C 12, 16. 1. 1989, p. 66.

States of the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data which spells out general principles for the protection of personal data;

- (7) Whereas a number of Member States have adopted and ratified this Convention;
- (8) Whereas Council Decision ... opens negotiations with a view to the accession of the European Economic Community, in the fields in which it is competent, to the Convention of the Council of Europe for the protection of individuals with regard to automatic processing of personal data;
- (9) Whereas Council Directive ... [concerning the protection of individuals in relation to the processing of personal data implements the adoption of these general principles in the Community];
- (10) Whereas, in the case of public digital networks, specific legal, regulatory, and technical provisions must be made in order to protect personal data and the privacy of users with regard to the increasing risks connected with the computerized storage and processing of personal data in such networks;
- (11) Whereas Member States are currently developing divergent provisions in this area;
- (12) Whereas given the obstacles resulting from these divergent legal, regulatory, and technical provisions concerning the protection of personal data and privacy in the context of the implementation of public digital telecommunications networks in the Community, in particular the integrated services digital network (ISDN) and public digital mobile networks, the full establishment of a Community-wide market in telecommunications services and equipment requires the rapid introduction of harmonized provisions;
- (13) Whereas this Directive should determine the extent to which personal data may be collected, stored and processed in connection with the provision of telecommunications services;
- (14) Whereas the collection, storage, and processing of personal data by a telecommunications organization is justified for the purposes of the provision of the intended service only and may not be used without specific authorization by law or the subscriber's prior consent for any other purpose; whereas such collection, storage, and processing of personal data may, in particular, not be used to give such telecommunications organization any undue competitive advantage over other service providers;
- (15) Whereas this Directive should implement in the telecommunications sector the general principles concerning the subscriber's right to inspect the personal data stored about him/her, his right to request the rectification or erasure of such data, if necessary, as well as his right to prevent non-authorized disclosure of his personal data;
- (16) Whereas this Directive must provide for harmonization of the Member States' rules concerning the protection of privacy in the field of itemized call statements;
- (17) Whereas, it is necessary, as regards the calling line identification, to protect both the right of the calling party to remain anonymous and the privacy of the called party with regard to unidentified calls;
- (18) Whereas safeguards must be provided for the users of teleshopping and videotex services against unauthorized use of their personal data as well as for the subscribers in general against intrusion into their privacy by means of unsolicited calls;
- (19) Whereas it is necessary to ensure that the introduction of technical features of telecommunications equipment for data protection purposes is harmonized in order to be compatible with the implementation of the internal market of 1992;
- (20) Whereas the implementation of this Directive with regard to third countries must take into account the level of protection of personal data and privacy in those countries as provided for in the Council Directive [concerning the protection of individuals in relation to the processing of personal data];
- (21) Whereas all matters concerning protection of personal data and privacy in the context of public digital telecommunications networks, which are not covered by the provisions of this specific Directive, the Council Directive mentioned above shall apply;
- (22) Whereas this Directive does not address issues of protection of personal data and privacy related to national security;
- (23) Whereas it is useful for the preparation of measures intended to implement or modify this Directive to draw on the experience of the Working Party on the Protection of Personal Data composed of representatives of the supervisory authorities of the Member States, set up by Article 27 of Council Directive ...

[concerning the protection of individuals in relation to the processing of personal data];

(24) Whereas such measures must be prepared with the assistance of the Committee composed of representatives of the Member States set up by Article 30 of Council Directive ... [concerning the protection of individuals in relation to the processing of personal data],

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive provides for the harmonization of the provisions required to ensure an equal level of protection of privacy in the Community and to provide for the free movement of telecommunications equipment and services within and between Member States.

2. The Member States shall adopt the necessary specific provisions in order to guarantee the protection of personal data and privacy in the telecommunications sector in accordance with this Directive.

Article 2

1. Without prejudice to the general provisions of Council Directive ... concerning the protection of individuals in relation to the processing of personal data, this Directive applies specifically to the collection, storage, and processing of personal data by telecommunications organizations in connection with the provision of public telecommunications services in public digital telecommunications networks in the Community, in particular via the integrated services digital network (ISDN) and public digital mobile networks.

2. In case a Member State has not yet implemented the integrated services digital network (ISDN) or public digital mobile networks, the provisions of this Directive will be implemented to the extent that they also apply to services based on analogue networks.

Article 3

For the purposes of this Directive,

1. 'personal data' means any information relating to an identified or identifiable individual;
2. 'telecommunications organization' means a public or private body, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, where applicable, public telecommunications services;

3. 'public telecommunications network' means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;

4. 'public telecommunications service' means a telecommunications service whose supply Member States have specifically entrusted *inter alia* to one or more telecommunications organizations.

Article 4

1. Collection, storage and processing of personal data by a telecommunications organization is justified for telecommunications purposes only, in particular in order to establish connections for the transmission of voice, data or image, to produce bills, to compile directories, and for other legitimate operational purposes, for example fault clearance, prevention of misuse of the telecommunications organization's equipment, or registration of incoming calls in accordance with Article 13 (1).

2. The telecommunications organization shall not use such data to set up electronic profiles of the subscribers or classifications of individual subscribers by category.

Article 5

1. Personal data of the subscriber may be collected and stored to the extent necessary to conclude, perform, amend or terminate the contract with the telecommunications organization. After termination of the contract the data are to be erased unless and for so long as they are required to deal with complaints, to recover charges or to comply with other obligations imposed by the law of the Member State, in conformity with Community law.

2. The contents of the information transmitted must not be stored by the telecommunications organization after the end of the transmission, except where required by obligations imposed by the law of the Member State, in conformity with Community law.

Article 6

The subscriber is entitled:

- to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him/her are stored as well as communication to him/her of such data in an intelligible form,
- to obtain, as the case may be, rectification or erasure of such data if they have been processed in breach of the

provisions which are imposed by the law of the Member State in conformity with Community law.

Article 7

1. In principle, all personal data processed in connection with telecommunication networks and services are to be kept confidential.
2. The personal data may not be disclosed outside the services or the network of the telecommunications organization without specific authorization by law or the subscriber's prior consent. A subscriber shall be held to have given such consent only where it is given by way of a specific response to a request by the telecommunications organization. Without the subscriber's prior consent, these personal data must not be disclosed to persons within the telecommunications organization who are not dealing with the relevant services provided.
3. The telecommunications organization must not make the provision of its service dependent upon such consent.

Article 8

1. The telecommunications organization must provide adequate, state-of-the-art protection of personal data against unauthorized access and use.
2. In case of particular risk of a breach of the security of the network, for example in the field mobile radio telephony, the telecommunications organization must inform the subscribers concerning such risk and offer them an end-to-end encryption service.

Article 9

1. Billing data containing the telephone number or identification of the subscriber station, the address of the subscriber and the type of station, the total number of units to be charged for the accounting period, the called telephone number, the type and duration of the calls made and/or the data volume transmitted as well as other information needed for billing such as advance payment by instalments, disconnection and reminders, may be stored and processed.
2. Such a general storage of billing data is permissible up to the end of the statutory period during which the bill may be challenged.

Article 10

1. Traffic data containing the personal data necessary to establish calls, or required for billing or other operational purposes, such as the telephone number of the calling and of the called subscriber, the time each call started and finished and the telecommunications service used by the subscriber, may be collected, stored and processed as far as this is necessary to provide the telecommunications service required.
2. The traffic data stored in the switching centres of the telecommunications organization must be erased after termination of the call unless the data are anonymized or are required for billing or other legitimate purposes in the meaning of Article 4.

Article 11

Upon application of the subscriber an itemized call statement may be produced, containing, among other items, the telephone numbers of the called subscribers without the last four digits.

Article 12

1. With regard to communications between subscribers linked to digital exchanges, the calling subscriber must have the possibility to eliminate via a simple technical facility the identification of his/her telephone number on the display of the called subscribers' terminal equipment, or its recording in a storage facility of this terminal, on a case-by-case basis.

The transmission of the telephone number may also be permanently eliminated by the telecommunications organization upon application of the calling subscriber.

2. The called subscriber may apply for permanent elimination of the identification of all incoming calls; he/she must also be able to turn off the display of his/her terminal equipment, or to eliminate the recording in the terminal's storage facility, in order to prevent the identification of the incoming calls, on a case-by-case basis.

The called subscriber must be able to limit the acceptance of incoming calls to those which identify the calling subscriber's number.

3. With regard to communications between a subscriber linked to an analogue exchange and subscribers linked to digital exchanges, the former subscriber is to be informed of the identification of his/her telephone number and to be offered the permanent elimination of the feature upon application. This subscriber must also have the possibility

to eliminate the identification on a case-by-case basis.

Article 16

Article 13

1. For a limited period of time, the telecommunications organization may override the elimination of the calling line identification:

(a) upon application of a subscriber requesting the tracing of malicious calls. In this case, the data containing the identification of the calling subscriber will be stored by the telecommunications organization and be made available upon request to the public authority charged with the prevention or pursuit of criminal offences of the Member State concerned;

(b) upon specific court order, in order to prevent or pursue serious criminal offences.

2. A permanent override function must be made available upon request:

(a) to organizations recognized by a Member State which answer and deal with emergency calls; and

(b) to fire brigades operated or recognized by a Member State.

3. The telecommunications organizations shall take the necessary steps to ensure that the override function is operational on a national and Community-wide basis.

Article 14

1. Calls may be forwarded from the called subscriber to a third party only if this party has agreed; the third party may limit automatic forwarding to those calls which identify the calling subscriber's number; the third party must be informed via a specific signal of the message that the call has been forwarded.

2. The calling subscriber must be informed automatically during the establishment of the connection that the call is being forwarded to a third party.

Article 15

1. If the content of telephone calls is made accessible to third parties via technical devices, such as loudspeakers or other on-hook equipment, or stored on tape for own use or use by third parties, provision must be made in order that the parties concerned are informed via an appropriate procedure of such diffusion or storage before the diffusion or storage is initiated and for so long as the IT continues.

2. Paragraph 1 does not apply in the cases covered by Article 13 (1).

1. The telecommunications organization must ensure that the telephone number as well as other personal data of the subscriber, in particular concerning the quantity and nature of his/her orders when using a teleshopping service or concerning the information requested via a videotex service, is stored only to the extent strictly necessary to supply the service and is only used by the service provider for purposes authorized by this subscriber.

2. Subject to the provisions of Article 20, the service provider may not set up electronic profiles of the subscribers or classifications of individual subscribers by category, without their prior consent.

Article 17

1. Subscribers who receive unsolicited calls for advertising purposes or for the purpose of offering the supply or provision of goods and services may notify the telecommunications organization conveying such messages that they do not wish to receive these calls.

2. The telecommunications organization must take the steps necessary to terminate the transmission of such messages to the subscribers concerned. Furthermore, the telecommunications organization must keep a list of the notifications in a form specified and available for inspection by the regulatory authority, in order to prevent such calls in future.

Article 18

1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs (2) and (3) of this Article, that no mandatory requirements for specific technical features are imposed on terminal or other telecommunications equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

2. Where provisions can only be implemented by requiring specific technical features, Member States shall inform the Commission according to the procedures provided for by Council Directive 83/189/EEC⁽¹⁾ which lays down a procedure for the provision of information in the field of technical standards and regulations.

3. Where required, the Commission will ensure the drawing up of common European standards for the implementation of specific technical features, in accordance with Council Directive ... [on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recog-

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

dition of their conformity], and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications ⁽¹⁾.

Article 19

1. The provisions of this Directive relating to the telephone service shall be applied to other public digital telecommunications services to the extent that these services present similar risks for the privacy of the user.
2. The measures necessary for the implementation of paragraph 1 shall be adopted by the Commission after consultation of the Working Party referred to in Article 22 and in accordance with the procedure laid down in Article 23.

Article 20

To the extent that the full achievement of the objectives of this Directive requires the application of its provisions to service providers other than telecommunications organizations, the Commission may adopt the measures necessary for the application of this Directive to those service providers after consultation of the Working Party referred to in Article 22 and in accordance with the procedure laid down in Article 23.

Article 21

The details of the application of this Directive and the modifications necessary to adapt this Directive to new technical developments shall be determined by the Commission in accordance with the procedure laid down in Article 23.

Article 22

1. The Working Party on the Protection of Personal Data established according to Article 27 of Council Directive ...

approximating certain laws, regulations and administrative provisions of the Member States concerning the protection of individuals in relation to the processing of personal data shall carry out the tasks laid down in Article 28 of the abovementioned Directive also with regard to the data protection measures which are the subject of this Directive.

2. The Working Party will be specifically constituted for the purposes of this Directive.

Article 23

1. The procedure laid down in Article 30 of Council Directive ... approximating certain laws, regulations and administrative provisions of the Member States concerning the protection of individuals in relation to the processing of personal data shall apply.
2. The Committee established in the framework of that procedure will be constituted specifically for the purposes of this Directive.

Article 24

1. The Member States shall bring into force the laws, regulations, and administrative provisions necessary for them to comply with this Directive by 1 January 1993 at the latest.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

2. The Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 25

This Directive is addressed to the Member States.

⁽¹⁾ OJ No L 36, 7. 2. 1987, p. 31.