



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.02.1999

COM(1999)19 final

Recommendation for a

COUNCIL DECISION

authorising the Member States, on behalf of the European Community, to approve unanimously the adoption of the recommendation for protection of privacy on the Internet by the Committee of Ministers of the Council of Europe.

(presented by the Commission)

1. The competent bodies of the Council of Europe felt that users of the Internet and service providers should be made aware of the implementation of measures to protect data of a personal nature, with specific regard to information highways.

To this end, a set of draft guidelines has been drawn up.

These draft guidelines aim to offer practical advice, worded as simply and clearly as possible, for Internet actors (and particularly users and service providers in the broad sense of the term) on the implementation of general measures for the protection of personal data on information highways. The draft guidelines propose that these principles be written into the codes of conduct laid down by interested parties, professional or consumer associations.

The guidelines will be annexed to a recommendation for adoption by the Committee of Ministers of the Council of Europe. The Member States will be recommended to disseminate the guidelines amongst the general public and the national authorities responsible for ensuring compliance with national regulations on data protection.

2. In its decision adopted in February 1998, and on the Commission's recommendation, the Council of the European Union has authorised the Commission, within the limits of its responsibilities and on behalf of the European Community, to take part in negotiations on the Council of Europe's draft.

3. The negotiating directives established by the Council aimed to ensure compatibility between the draft drawn up by the Council of Europe and:

- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,

- Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.

Given the specific risks to privacy and data protection on the Internet, and for the purpose of ensuring compatibility with the above Directives, the Council highlighted certain issues which merit particularly careful consideration by the Commission during the negotiations. These issues involve the finality principle, the right of individuals to be informed whenever their personal data are being processed, and the circumstances in which data may be transmitted to third parties, particularly where this is for direct marketing purposes.

4. The Commission has undertaken negotiations in consultation with the Special Committee designated by the Council.

5. At its 35th meeting on 25-27 March 1998, the project group on data protection (CJ-PD) adopted an initial set of draft guidelines. Once authorisation was given by the Council of Ministers, these draft guidelines were submitted for public consultation. A hearing for interested parties was held on 27 October 1998 on the occasion of the 36th meeting of the CJ-PD. The hearing was attended, in particular, by direct marketing representatives and telecommunications operators (Fedma, EuroISPA, ETNO) and the International Chamber of Commerce. Following this hearing, a number of the draft guidelines were amended with the support of the Commission acting on behalf of the European Community. The CJ-PD forwarded the draft guidelines to the European Committee on Legal Cooperation which adopted them at its meeting of 4 December 1998 for submission to the Committee of Ministers (see Doc. CJ-PD(98)56 rev).

6. The recommendation and guidelines are to be adopted at the beginning of 1999.

As confirmed in an exchange of letters between the European Community and the Council of Europe on 5 November 1996, further to the exchange of letters in 1987, the Commission will attend this meeting, although it will not of course have any voting rights.

7. The Commission has noted that the contributions it had occasion to make during the negotiations, in accordance with the negotiating directives referred to above, had a decisive influence on the formulation of the Council of Europe's draft.

The Commission considers that the draft recommendation and the guidelines attached to it are compatible with Directives 95/46/EC and 97/66/EC mentioned above.

8. In conclusion, given that the Commission is unable to vote on behalf of the Community but needs to observe discipline in a domain falling within Community competence, the Commission recommends that the Council decide in favour of the Member States voting unanimously on behalf of the Community for adoption of the Council of Europe's recommendation, as finalised in the document referred to above and adopted by the European Committee on Legal Cooperation.

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