



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.7.2009
SEC(2009) 1010 final

COMMISSION STAFF WORKING DOCUMENT

**Council of Europe Recommendation on the Protection of Individuals with Regard to
Automatic Processing of Personal Data in the Framework of Profiling**

to be addressed to the Council Working Party on data protection

COMMISSION STAFF WORKING DOCUMENT

Council of Europe Recommendation on the Protection of Individuals with Regard to Automatic Processing of Personal Data in the Framework of Profiling

COMMUNITY POSITION

BACKGROUND

1. The Consultative Committee of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data ("Convention 108") of the Council of Europe (T-PD) is currently drafting a Recommendation on the Protection of Individuals with Regard to Automatic Processing of Personal Data in the Framework of Profiling (the "Recommendation").

This draft Recommendation will be adopted by the Committee of Ministers before the end 2009.

The next meeting of the T-PD which will finalize the draft Recommendation, after internal consultation inside the Council of Europe, is expected to take place in September 2009.

The Bureau of T-PD is expected to have a meeting in July 2009 to discuss the draft recommendation in the light of comments requested from all Contracting Parties to Convention 108.

2. The European Commission actively participates at the T-PD meetings and follows closely developments in this field.
3. By virtue of 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 ("Data Protection Directive")¹, Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)², Council Directive 93/13/EEC on unfair terms in consumer contracts of 5 April 1993 ("Unfair Contract Terms Directive")³ and Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market of 11 May 2005 ("Unfair Commercial Practices Directive")⁴, the work of the Council of Europe on the Recommendation on the protection of individuals with regard to automatic processing of personal data in the framework of profiling falls within the exclusive competence of

¹ OJ no. L281 of 23.11.1995, p. 31

² OJ no. L201 of 31/7/2002, p. 37

³ OJ no. L95 of 21.4.1993, p. 29

⁴ OJ no. L 149 of 11.6.2005, p. 22

the Community. Therefore, the European Community must negotiate the draft Recommendation to guarantee that the text of the draft Recommendation is coherent with the provisions and the spirit of the above mentioned Directives.

4. Representing the Community, the Commission will negotiate, within the competent bodies of the Council of Europe, the above mentioned draft Recommendation in accordance with the attached Community position. After consultation with the Commission, Member States shall support the Community position, where appropriate.

SUGGESTED ACTION BY THE COUNCIL WORKING PARTY:

The Council Working Party on Data Protection is invited to reflect and offer comments as well as guidance on the draft Recommendation in the light of the above mentioned Directives.

COMMUNITY POSITION

1. General objective

The Community shall strive to prevent the Recommendation being incompatible with the provisions setting a high level of protection within the Community and should guarantee that the text of the Recommendation fully complies with *acquis communautaire*, in particular with the provisions of 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 ("Data Protection Directive")⁵, Directive 2002/58/EC the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)⁶, Council Directive 93/13/EEC on unfair terms in consumer contracts of 5 April 1993 ("Unfair Contract Terms Directive")⁷ and Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market of 11 May 2005 ("Unfair Commercial Practices Directive")⁸.

2. Details

In this task, the Community will specifically focus among other issues on the

- (i) definitions of personal data in the context of profiling especially as regards what it means to be identifiable as an individual;
- (ii) confidentiality of communications and the related traffic data, as well as the protection of information stored on users' terminal equipment;
- (iii) principles of lawful processing, in particular the principles of purpose limitation and data minimisation;
- (iv) definitions of profiling;

⁵ OJ no. L281 of 23/11/1995, p. 31

⁶ OJ no. L201 of 31/7/2002, p. 37

⁷ OJ no. L95 of 21.4.1993, p. 29

⁸ OJ no. L 149 of 11.6.2005, p. 22

- (v) principles applicable to automated decisions and
- (vi) rights of data subjects

in order to guarantee that new rules are not in contradiction with existing ones and with fundamental rights.

The principle of technology neutral approach has to be maintained.

3. Protection of the *acquis* for intra-EU relations

The Community will, if necessary, ensure that Member States can continue, in their mutual relations, to apply the relevant Community rules and shall not therefore apply the rules arising from the Recommendation except insofar as there is no Community rule governing the particular subject concerned.