Data protection of personal data (Directive 95/46 /EC). 1st report

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PURPOSE : to present the first report on the implementation of the Data Protection Directive (directive 95 /46/EC). CONTENT : the Commission makes this report on implementation pursuant to Article 33 of directive 95/46/EC. The Commission has gone beyond the simple examination of the Member States' acts of implementation and has conducted in addition an open public debate, encouraging a wide participation on the part of stakeholders. It must be remembered that the Directive has a very broad impact. Every individual is a data subject and entities in every sector of the economy are data controllers. This report summarises the Commission's findings in the light of the input it has gathered and its recommendations for action. The Commission considers however that this can only be regarded as the first step in a longer process. An overall assessment reveals the following main points: - late implementation: the serious delays in implementation that occurred in most Member States is the first and main shortcoming which the Commission has the duty to register as regards the implementation of the Directive which it unequivocally condemns. It has taken the appropriate action under Article 226 of the Treaty; - the Directive has fulfilled its principal objective of removing barriers to the free movement of personal data between the Member States. Since the adoption of the Directive, no case has been drawn to the attention of the Commission in which the transfer of personal data between Member States has been blocked or refused on data protection grounds; - the Commission believes that a high level of protection has been achieved. However, the results of the on-line survey suggest that the perception of citizens at this regard is different. This paradox requires further reflection. A preliminary analysis would suggest that at least part of the problem is attributable to an incomplete application of the rules; - with regard to other overall policy objectives such as the provision of a level playing field for economic operators in different Member States and helping to simplify the regulatory environment in the interests of good governance and competitiveness. Judged against these criteria, the divergences that still mark the dataprotection legislation of the Member States are too great. This was the prevalent message received from the contributors to the review, in particular those representing business interests, who complained that present disparities prevent multinational organisations from developing pan-European policies on data protection. The Commission feels that that stakeholders are right to demand more convergence in legislation and in the way it is applied by the Member States and the national supervisory authorities in particular. The communication examines a range of solutions to deal with the divergences in Member States laws. The Commission is also concerned about weaknesses in relation to enforcement, compliance and awareness. The supervisory authorities in many Member States are also concerned about this, particular their lack of resources. The three matters are inter-related, and addressing one aspect will have a positive influence: more vigorous enforcement will improve compliance with the legislation. Better compliance will result in datacontrollers providing better information to data subjects about the existence of the processing and their rights under the law, with a beneficial effect on the level of awareness about data protection among citizens in general. Following discussions with the Member States, the Commission notes that a modification of the Directive is not necessary. There is considerable scope for improvement in the implementation of the present Directive which is likely to resolve a number of the difficulties identified during the review, some of them wrongly attributed to the Directive itself. The Commission's attention will continue to be focussed in particular on areas where Community law is clearly being breached and on areas where divergent interpretations and/or practices are causing difficulties in the Internal Market.