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

2003/2153(INI) - 09/03/2004 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report drafted by Marco CAPPATO (IND, I) on the 1995 Data Protection Directive by 439 votes in favour, 39 against and 28 abstentions. Parliament was particularly critical of the extremely serious delays that have occurred within the Commission and urges it to propose within the first half of 2004, as announced, a legal instrument on the protection of privacy in the third pillar; this instrument should be binding in nature and aimed at guaranteeing in the third pillar the same level of data protection and privacy rights as in the first pillar. It should harmonise standards, the current rules on privacy and data protection concerning Europol, Eurojust and all other third-pillar organs and actions, as well as any exchange of data between them and with third countries and organisations. Parliament considers that, in the long term, Directive 95/46/EC should be applied, following the appropriate modifications, to all areas of EU activity, so as to guarantee a high standard of harmonised and common rules for privacy and data protection and that compliance with privacy and data protection rules should be guaranteed by national supervisory authorities, a common EU authority, to which citizens will have the right to appeal, and the Court of Justice. Parliament maintains that it should also have decision-making powers in respect of all proposals concerning the protection of privacy within the EU, such as international agreements involving its bodies, adequacy findings and so on. On the implementation of the Data Protection Directive 95/46/EC, Parliament deplores the fact that some Member States did not implement the directive before the deadline for transposition thereby obliging the Commission to take legal action. It also regrets the fact that the tardy implementation of the directive and the continuing differences in the way in which it is applied at national level have prevented economic operators from drawing maximum benefit from it, and have blocked some cross-border activities within the European Union. Parliament shares the view of the Commission that, since implementation of the directive has been slow and experience with it is still very limited, the directive should not be amended for the time being (except so as to make the assessment of the adequacy of the protection provided for the personal data of European citizens by a third country to which such data are to be transferred subject to Parliament's approval). It considers that current shortcomings in the implementation of the directive should be overcome by actions taken at the European and national level by Member States and data protection authorities following the programme announced in the Commission's communication. With respect to the use of data of a personal nature in the police sector, the EP asks, furthermore, to be consulted before - and receive reports after - such transfers take place and urges Europol and Eurojust to clarify and make available to citizens and to Parliament the necessary information on the exchange of data, whether personal or not, with third countries and organisations. It reiterates that EU data protection standards are seriously infringed when personal data are, without informing and obtaining the consent of the data subject, transferred or accessed directlyand systematically by a third state party, notably when data are collected for another purpose and without judicial authorisation, as in the case of US authorities accessing transatlantic passenger data collected in the EU by airline companies and electronic reservation systems. It calls for the agreements negotiated which entail the transmission of personal data between the EU and third countries to guarantee an adequate level of data protection and, in any case, to maintain the level guaranteed in Directive 1995/46/EC. Parliament believes that Member States' laws providing for the wide-scale retention of data related to citizens' communications for law-enforcement purposes are not in full conformity with the European Convention on Human Rights and the related case-law. It stresses that the free movement of personal data is vital for the smooth operation of virtually all Union-wide economic activities and that it is therefore necessary to resolve these differences of interpretation as soon as possible, to enable multinational organisations to frame pan-European data protection policies. Parliament also calls on Member States to ensure that data protection authorities are provided with the necessary means to comply with the tasks provided for by Directive 95/46/EC, and that they are independent and autonomous from national governments. It expresses concern at the development of SIS and the Council

plans under which SIS II should allow new categories of alerts (persons and objects) and new sectors to be added, alerts to be inter-linked, the period during which alerts may be stored to be changed, biometric data (especially photographs and fingerprints) to be registered and transferred, and access to be provided to new authorities, namely Europol, Eurojust and national judicial authorities, where necessary, for purposes other than those originally laid down, such as the service of European arrest warrant. Furthermore, it deplores, the legal confusion created by the fact that SIS covers both first and third pillar matters, with different levels of privacy protection. It also expresses concern at the general approach taken by the Council to proposals seeking to incorporate biometric data (digital photographs and fingerprints) into visas and residence permits using an electronic chip, particularly because such data can easily be copied into centralised databases when checks are carried out. Lastly, it calls on the Commission to continue to monitor the issue of video surveillance, not least in the light of national judicial rulings, and awaits the submission of the proposal on the protection of privacy at the workplace, of which advance notice has been given.