Basic information

2003/2153(INI) INI - Own-initiative procedure	Procedure completed
Data protection of personal data (Directive 95/46/EC). 1st report **Subject** 1.20.09 Protection of privacy and data protection	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	CAPPATO Marco (NI)	09/09/2003

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	SCHAFFNER Anne-Marie (PPE-DE)	07/07/2003
ITRE Industry, External Trade, Research, Energy	ZORBA Myrsini (PSE)	20/10/2003

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	

Key events

Date	Event	Reference	Summary
15/05/2003	Non-legislative basic document published	COM(2003)0265	Summary
04/09/2003	Committee referral announced in Parliament		
19/02/2004	Vote in committee		Summary
19/02/2004	Committee report tabled for plenary	A5-0104/2004	
09/03/2004	Decision by Parliament	T5-0141/2004	Summary
09/03/2004	End of procedure in Parliament		

Technical information

Procedure reference	2003/2153(INI)

Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/19866

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, single reading		A5-0104/2004	19/02/2004	
Text adopted by Parliament, single reading		T5-0141/2004 OJ C 102 28.04.2004, p. 0030-0147 E	09/03/2004	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2003)0265	15/05/2003	Summary

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

2003/2153(INI) - 15/05/2003 - Non-legislative basic document

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.

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.