



JACOB SÖDERMAN

Strasbourg, 30 -09- 2002

Mr Romano Prodi
President
European Commission
200 rue de la Loi
B - 1047 Brussels

Mr President,

According to Article 33 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, the Commission shall report to the Council and the European Parliament at regular intervals, starting not later than three years from 24 October 1998 on the implementation of the Directive, attaching to its report, if necessary, suitable proposals for amendments.

In accordance with Article 286 EC, Directive 95/46/EC also applies to the Community institutions and bodies from 1 January 1999. Data processing by Community institutions and bodies is also governed by Regulation 45/2001, which applies the principles of the Directive to the Community institutions and bodies.

The European Ombudsman understands the internationally defined purpose of data protection rules as being as to promote the individual right to privacy. This right is defined in Article 8 (1) of the European Convention on Human Rights: *Everyone has the right to respect for his private and family life, his home and his correspondence.*

The Ombudsman is concerned that data protection rules are being misinterpreted as implying the existence of a general right to participate anonymously in public activities. This misinterpretation risks subverting the principle of openness and the public's right of access to documents, both at the level of the Union and in those Member States where openness and public access are enshrined in national constitutions or laws.

Please find enclosed a paper containing some examples of the misinterpretation of data protection rules.

The current review of Directive 95/46 offers the possibility to promote correct interpretation and application of the Directive by amending the wording of recital 72 as follows (new words are shown in **bold**)

(72) Whereas this Directive ~~allows~~ **is not intended to limit** the principle of **openness and the right** of access to official documents ~~to be taken into account when implementing the principles set out in this Directive~~ under national constitutions or laws.

It would also be useful to make a corresponding amendment to the recitals to Regulation 45/2001, by adding a new Recital 37 as follows:

(37) This Regulation is not intended to limit the concept of openness enshrined in the second subparagraph of Article 1 of the Treaty on European Union. Nor is it intended to limit the right of access to documents, which is governed by Regulation 1049/2001/EC.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Söderman', written in a cursive style.

Jacob SÖDERMAN

Enclosure