

## ARTICLE 29 Data Protection Working Party



Brussels, 5 August 2010  
D(2010) 12303

Mrs. Cecilia Malmström  
Member of the European Commission  
B - 1049 BRUSSELS  
Belgium

Dear Commissioner,

After the final step taken by the Council on 13 July 2010 in the legislative procedure regarding the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (hereafter: TFTP2 Agreement), it has become clear the said Agreement will enter into force as of 1 August 2010.

The European Data Protection Authorities, united in the Article 29 Working Party (WP29), have anticipated this entry into force and therefore discussed at their plenary meeting on 12-13 July 2010 the joint review of the TFTP2 Agreement, that is to take place “*at any event after a period of six (6) months from the date of entry into force*” (article 13.1 TFTP2 Agreement).

Despite their objections to the TFTP2 Agreement explained in their letter of 25 June 2010 to the chairman of the European Parliament’s LIBE Committee<sup>1</sup>, the European Data Protection Authorities are willing to participate in the joint review mechanism foreseen.

Article 13.3 of the TFTP2 Agreement refers to the composition of the European Union review delegation. It states the “*delegation shall include representatives of two data protection authorities, at least one of which shall be from a Member State where a Designated Provider is based*”. I am pleased to inform you the WP29 has nominated the representatives from the data protection authorities (DPAs) of Belgium and the Netherlands to take part in the EU review delegation on behalf of the European Data Protection Authorities.

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<sup>1</sup> Letter with reference JLS-D5 D(2010) 10038, a copy of which was sent to you.

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental Rights and Union Citizenship) of the European Commission, Directorate General Justice, B-1049 Brussels, Belgium, Office No LX-46 01/190.

Website: [http://ec.europa.eu/justice\\_home/fsj/privacy/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)

The WP29 has learned from the representative of DG Home Affairs present at their plenary meeting that the Commission has not yet decided on the modalities for the joint review. At the meeting, the WP29 expressed their explicit wish for the representatives of the Belgian and Dutch DPAs to be included in the preparatory meetings of the joint review. I trust you will be able to confirm this will indeed be agreed to by the European Commission. Furthermore, I would kindly ask you to inform the members of the WP29 at your earliest convenience on the Commission's intended procedure and time frame for defining the modalities of the joint review.

As you will understand, the European Data Protection Authorities attach great value to their independent position. They therefore kindly request that the rights and obligations of the representatives of the Belgian and Dutch DPAs under the current EU legal framework on data protection be fully respected during the joint review. This would include access to all information mentioned in article 13.2 TFTP2 Agreement without any prior conditions imposed other than those already applying under their professional secrecy obligations. In particular, participation in the joint review mechanism should to the opinion of the WP29 not require the signing of any non-disclosure agreement by representatives of the DPAs.

In conclusion I would appreciate if you would be able to clarify the position of the Joint Supervisory Board of Europol in relation to the independent oversight of the TFTP2 Agreement.

The European Data Protection Authorities look forward to receiving your reaction to this letter and remain at your disposal should any question arise.

Yours sincerely,

Jacob Kohnstamm  
Chairman

Cc: Ms. Viviane Reding, Vice-President of the European Commission responsible for Justice, Fundamental rights and Citizenship  
Mr. Stefano Manservigi, Director General DG Home Affairs  
Ms. Françoise Le Bail, Director General DG Justice  
Mr. Jerzy Buzek, President of the European Parliament  
Mr. Juan Fernando López Aguilar, Chairman of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament  
Mr. Steven Vanackere, Minister of Foreign Affairs Belgium  
Mr. Stefaan De Clerck, Minister of Justice Belgium