

ARTICLE 29 Data Protection Working Party



Brussels, 12/06/2012
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Juan Fernando López Aguilar
Chairman of the LIBE Committee
European Parliament
B - 1047 Brussels
Belgium

Subject: Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order (EIO) in criminal matters

Dear Members of the LIBE Committee,

The Council presented a draft Directive regarding the European Investigation Order, which is currently being discussed in the Parliament.

In the context of criminal investigations, the competent authorities collect and use personal data of the persons concerned on a large scale. Often data are collected by using methods that cause interference with the privacy and fundamental rights of the persons involved. Therefore, a high level of data protection and fundamental rights protection is necessary in criminal investigations.

With regard to the proposed Directive the question arises whether a comprehensive privacy impact assessment has been carried out. Such an impact assessment must especially examine whether minimum standards exist at European level to guarantee sufficient protection of the data protection rights of the data subjects concerned. Since the instrument of the European Investigation Order significantly extends the mutual recognition of law enforcement authorities' powers of investigation, the national regulations underlying the investigation order must define clear and proportionate conditions that must be fulfilled before certain powers of investigation can be exercised. Moreover, sufficient procedural safeguards including those relating to the protection of personal data are crucial. All this needs to be taken into account in an impact assessment.

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 MO59 2/13.

Website: http://ec.europa.eu/justice/policies/privacy/index_en.htm

At the moment, the proposal for a new Directive in the JHA field is discussed. The Article 29 Working Party opinion on this proposal stressed the need for maintaining a high level of data protection. This is essential for safeguarding effective data protection in view of the free flow of law enforcement data. The present proposal for a European Investigation Order in criminal matters highlights this free flow and the Article 29 Working Party considers it necessary to draw up a conclusive overall strategy first, guaranteeing a high level of data protection in the European Union combined with the necessary procedural safeguards for all activities involving the collection, processing and the use of personal data by law enforcement authorities in the context of criminal investigations

This letter has also been sent to the European Commission and the Council.

Yours sincerely,

On behalf of the Article 29 Working Party,

Jacob Kohnstamm
Chairman of the Article 29
Working Party