

## ARTICLE 29 Data Protection Working Party



Brussels, 9 February 2015

Mr Steven Maijoor  
Chair of European Securities and Markets  
Authority  
France

By E-mail:  
Steven.Maijoor@ esma.europa.eu  
info@esma.europa.eu  
AIFMD-questions@esma.europa.eu

Subject: Invitation to meet the Financial Matters subgroup of the Article 29 Working Party

Dear Mr Maijoor,

The Article 29 Working Party is the group of the data protection authorities of the European Union set up by Article 29 of the Directive 95/46/EC 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 Working Party is aware that that European Directive 2014/65/EU on markets in financial instruments, commonly referred to as MIFID 2, contains broad provisions on recording and record-keeping on communication involving investment firms relating to client services (Article 16.6 and 16.7). We note that ESMA in 2014 carried out a consultation on a request from the Commission for technical advice on delegated acts to be adopted under MIFID 2.

The Working Party is also aware of ESMA's recent consultation paper on draft technical standards under Regulation 596/2014 (the Market Abuse Regulation), as a level 2 implementing measure (delegated acts from the European Commission). According to the draft text in the consultation, these draft technical standards would entail broad requirements to collect personal data including the recording of telephone conversations of market soundings for which there appears to be no legal basis in the Market Abuse Regulation.

The surveillance envisaged in these financial instruments and draft instruments raise concerns on the right to privacy and compliance with applicable data protection rules and principles.

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 for Justice and Consumers, B-1049 Brussels, Belgium, Office No MO59 02/34

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

As you know, recording requirements must comply with other obligations under European legislation regarding the protection of privacy in communications, most relevant of which are Directive 95/46 (Data Protection Directive) and Directive 2002/58 (e-Privacy Directive).

Therefore, data protection authorities have to look at all potential impacts of this system and advice on the proper integration of data protection safeguards. Furthermore, as far as this project will involve the processing of personal data, the WP29 would also like to remind you that some national data protection authorities must be consulted before starting any local pilots. Any such pilots must be in compliance with European and national legal data protection rules.

With this in view, the Working Party would like to invite you, as a first step, to meet the Financial matters subgroup of the Working Party. It would be very useful to hear a presentation of the draft technical standards and your views on appropriate measures for monitoring behavior of market players.

The Working Party would appreciate being kept informed of the further work in this area and remains available for any further information or explanation regarding its position and contribution.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN  
Chairwoman

CC: Mr Jonathan Faull, Director General of the EU Commission, DG FISMA  
By e-mail: [Jonathan.FAULL@ec.europa.eu](mailto:Jonathan.FAULL@ec.europa.eu)