

ARTICLE 29 Data Protection Working Party



Brussels, 25 September 2015

Mr Alexander Seger
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Subject: Article 29 Working Party's analysis of the scenarios proposed in the context of the Cybercrime@Octopus

Dear members of the Cybercrime Convention Committee,

Since 2013, several discussions took place between the Article 29 Working Party (WP29) and the Cybercrime Convention Committee¹ on the issue of direct access by third countries' law enforcement authorities to data stored in others jurisdictions.

During the 2014 Cybercrime@Octopus conference, several scenarios² have been presented in relation to transborder access to personal data for law enforcement purposes. In its letter of 28 November 2014, the WP29 already identified the main situations with different data protection implications.

As announced at the Octopus Conference in June 2015, the WP29 has finalised its analysis of the scenarios, based on the different criteria relevant for a data protection legal assessment (such as proportionality, necessity, existence of a clear legal basis, legitimate basis for a processing,...) and on the relevant European applicable legal texts.

You will find hereunder the contribution of the WP29 on the various scenarios. As you will notice, the application of data protection principles does not constitute an obstacle to the tasks of the law enforcements authorities. It rather goes along with the action of the law enforcement authorities and helps respecting the fundamental rights of the data subjects.

The WP29 stresses that the scenarios presented do not cover all hypotheses which can be encountered in the context of direct access by law enforcement authorities. Therefore, additional scenarios could have been envisaged.

¹ See letter of the WP29 of 5 December 2013.

² The scenarios are available at

http://www.coe.int/t/dghl/cooperation/economiccrime/Source/Cybercrime/CyberCrime@Octopus/cyber_COE_TB_Scenarios_june2014%20V5web.pdf

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

The answers of the WP29 often refer to the need of taking into account relevant national legislation, since the different scenarios cannot receive a unique response that would be valid for every country.

The WP29 remains at your disposal for any further question regarding this issue and would be happy to attend a future conference organised by the Cybercrime Committee to discuss its answers.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN

A letter in identical terms is being forwarded to Mr Walter and Ms Kwasny, as representatives of the data protection committee of the Council of Europe (T-PD).

Annex: WP 29 contribution to scenarios proposed in the context of the Cybercrime@Octopus

Cc: MsVěra Jourová, Commissioner Justice, Consumers and Gender Equality
Permanent Representation of Luxembourg
Chairman of the LIBE Committee of the European Parliament