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Brussels, 2 December 2009

## **ARTICLE 29 DATA PROTECTION WORKING PARTY**

### **The Future of Privacy: Joint contribution to the Consultation of the European Commission on the legal framework for the fundamental right to protection of personal data**

The Joint contribution to the Consultation of the European Commission on the legal framework for the fundamental right to protection of personal data of the Article 29 Working Party and the Working Party on Police and Justice has been adopted on 1 December 2009. It discusses the question whether the current legal framework meets the important challenges for personal data protection provoked by new technologies and globalisation. The adopted paper also gives input on what future action would be needed to address the identified challenges.

According to the Article 29 Working Party and the Working Party on Police and Justice the main principles of data protection are still valid despite the new challenges. However, it is important to use the opportunity of consultation on the current legal framework in order to clarify the application of some key rules and principles of data protection.

#### ***One comprehensive framework***

The Article 29 Working Party and the Working Party on Police and Justice emphasize the need for one comprehensive legal framework for data protection that also applies to police and judicial cooperation in criminal matters.

#### ***Globalisation***

The Commission is called upon to take initiatives towards the further development of global standards regarding the protection of personal data. In addition, the paper discusses the need for redesigning the 'adequacy process' in order to guarantee an adequate level of protection outside the EU, international agreements, and the reinforcement and inclusion in the new legal framework of a provision on Binding Corporate Rules (BCRs).

#### ***Technological changes***

The technological developments have strengthened the risks for individuals' privacy and data protection and to counterbalance these risks, the principle of 'Privacy by Design' should be introduced in the new framework: technological data protection should be taken into account already at the planning stage of technological procedures and systems, in order not only to maintain security but also to avoid or minimize the amount of personal data processed. The principle should therefore not only be binding for data controllers, but also for technology designers and producers.

### ***Empowering the data subject***

The changes in the behaviour and role of the data subject and the experience with the current Directive 95/46/EC call for a stronger position for the data subject in the new data protection framework in order to play a more active role. Empowerment of the data subject requires, among others, the improvement of redress mechanisms including the introduction of class action procedures. In addition, the new framework should provide alternative solutions in order to enhance transparency and the introduction of a general privacy breach notification. In the context of empowering the data subject the joint contribution also discusses the role of ‘consent’, the problems with harmonisation and the role of data subjects on the internet.

### ***Strengthening data controller’s responsibility***

The responsibility of the data controllers needs to be strengthened. Data controllers need to take several proactive and reactive measures so data protection will be embedded in their organisations. The principle of ‘accountability’ should be introduced in the comprehensive framework in order for data controllers to carry out the necessary measures to ensure that substantive principles and obligations are observed when processing personal data. In addition, the accountability principle would require data controllers to have the necessary internal mechanisms in place to demonstrate compliance to external stakeholders, including Data Protection Authorities (DPAs). Finally, the possibilities of simplifying or diminishing notifications of data processing operations with national DPAs should be explored.

### ***Stronger and clearer roles for DPAs and their cooperation within the EU***

At the moment there are large divergences between the Member States regarding the position, resources and powers of DPAs. The new challenges to data protection require strong supervision by DPAs in a more uniform and effective way. The new framework should therefore guarantee uniform standards concerning independence, effective powers, an advisory role in the legislation making process and the ability for DPAs to set their own agenda by setting priorities regarding the handling of complaints, all on a high and influential level.

As for the cooperation of DPAs, it should be ensured that all issues relating to the processing of personal data, in particular in the area of police and judicial cooperation in criminal matters, will be included in the activities of the current Article 29 Working Party (WP29). Where needed, it should be insisted on that there is a strong commitment of members of the WP29 to implement the views of the WP29 into national practice.

### ***Data protection challenges in the field of police and law enforcement***

The field of police and law enforcement is an area of specific concern. Over the last years there has been a dramatic increase of the storage and exchange of personal data in relation to activities of the police and justice sector due to growing needs of the use of information in order to face new threats resulting from terrorism and organised crime, and stimulated by the technological developments. Against this background, the challenges for data protection are immense and should be addressed in the future legal framework. The joint contribution provides the conditions for law and policy making on data protection in the area of police and law enforcement. In addition, the legal context of this area is being discussed (Lisbon Treaty, Framework Decision 2008/977/JHA on the protection of personal data in the framework of police and judicial cooperation in criminal matters).

**Read the full text of the Joint contribution to the Consultation of the European Commission on the legal framework for the fundamental right to protection of personal data**

**[\[http://ec.europa.eu/justice\\_home/news/consulting\\_public/news\\_consulting\\_0003\\_en.htm\]](http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0003_en.htm)**

### ***Background information***

The Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The WP is competent to examine questions covering the application of the national measures adopted under the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.

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