
Brussels, 11 April 2011

ARTICLE 29 DATA PROTECTION WORKING PARTY

The Article 29 Working Party held its 80th plenary meeting on 4 and 5 April 2011 in Brussels

Proposal EC lacks proof of necessity of use EU passenger's data
European data protection authorities adopt opinion on European PNR-system

The European data protection authorities, assembled in the Article 29 Working Party, adopted an opinion on the proposal from the European Commission to set up an EU system allowing law enforcement authorities access to the Passenger Name Records (PNR) registered by airlines for flights arriving in or departing from a Member State. According to the European data protection authorities the necessity of the proposed system has not yet been proven. The data protection authorities stress in their opinion the need for evidence-based policy making as the accompanying impact assessment does not provide a proper evaluation of the use of PNR and does not demonstrate the necessity of what is being proposed.

In addition, the measures proposed are also not in line with the proportionality principle, as the proposal envisages the collection of all data from all travellers on all flights, initially to and from third countries, but a review will consider the extension to intra-EU flights.

The opinion recommends to evaluate the existing systems and methods of co-operation in this field first. If security gaps exist, the next step should be to analyse the proper functioning of the existing systems before introducing yet another measure. The opinion also stresses the need for appropriate and adequate data protection measures and safeguards and comments on some of the data protection provisions in the proposal.

An important point of criticism is the fact the European Commission presents the proposal as privacy-friendly because personal data are 'anonymised' after thirty days and would thus no longer be identifiable. However, from the proposal it is apparent that the information in fact does remain identifiable, and that only certain information is masked. This will make the access to the data more restricted, but is in fact not anonymisation. The Working Party therefore calls upon the European legislator to only use accurate language that does not confuse and mislead.

The opinion further comments on a number of issues that are not addressed in a satisfactory way from a data protection point of view. These include the too broad definition of 'serious crime' as a precondition for the possible use of PNR-data and the lack of clear pre-determined criteria against which the PNR-data could be matched. The opinion also stresses the longstanding position of the Article 29 Working Party that sensitive data should be filtered out by the carrier, to avoid that these may be seen and/or used by the law enforcement authorities.

http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2011_en.htm

Smart metering

The Article 29 Working Party also adopted an opinion on smart metering during its plenary meeting. Even though smart metering brings with it a potential for numerous novel ways for processing data and delivering services to consumers and that there are different ways to deal with the matter, data protection laws apply in full.

Smart metering is enormous in scale. It is to be expected that the vast majority of European citizens will have one installed in their homes before the end of this decade. The arrival of smart metering, which paves the way for the smart grid, involves an entirely new and complex model of inter-relationships which poses challenges for the application of data protection law. This opinion explains the applicability of data protection law, it demonstrates that personal data is being processed by the meters, so data protection laws apply.

Whatever the processing, whether it is similar to that which existed in the pre-smart environment, or unprecedented, the data controller must be clearly identified, and be clear about obligations arising from data protection legislation including Privacy by Design, security and the rights of the data subject. Data subjects must be properly informed about how their data is being processed, and be aware of the fundamental differences in the way that their data are being processed so that when they give their consent it is valid.

http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2011_en.htm

Adequacy New Zealand

During the plenary meeting the Article 29 Working Party adopted an opinion attesting that the data protection legislation of New Zealand guarantees an adequate level of protection according to the Directive 95/46/EC. This opinion will be taken into consideration by the European Commission when deciding on the official adequacy decision.

http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2011_en.htm

Law Enforcement

The data protection authorities further decided that WP29 should prepare itself to take up law enforcement issues as a part of its work in the very near future. In the light of the upcoming proposals from the European Commission for a comprehensive data protection legal framework, the authorities want to ensure the same comprehensiveness can be achieved within the Working Party. During the next plenary meeting early June they will decide on the exact modalities and the necessary administrative arrangements. It was also decided that the WP29 will work together with the Working Party on Police and Justice on the integration of their EU related tasks by early 2012.

Background information

The European data protection authorities (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 Article 29 Working Party is competent to examine any question covering the application of 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