
Brussels, 29 March 2012

Article 29 Data Protection Working Party

European Data Protection Authorities adopt opinion on data protection reform proposals

During its plenary meeting on 22 and 23 March 2012 the Article 29 Working Party adopted its opinion on the data protection reform proposals of the European Commission. The Working Party has carefully studied both proposals and with its opinion provides its general reaction to them. The opinion highlights areas of concern and makes suggestions for improvement.

The Article 29 Working Party generally welcomes the proposals presented by the European Commission that seek to reinforce the position of data subjects, to enhance the responsibility of controllers and to strengthen the position of supervisory authorities, both nationally and internationally. Subject to further improvement the rules proposed can significantly reduce the existing fragmentation and strengthen data protection across Europe. The Working Party calls on the Council and members of the European Parliament to grasp the opportunity to improve both proposals and enhance the protection of personal data in the European Union.

The Working Party in particular welcomes the inclusion of provisions that give incentives to controllers to invest, from the start, in getting data protection right (such as data protection impact assessments, data protection by design and data protection by default). The proposals place clear responsibility and accountability on those processing personal data, throughout the information life cycle.

The Working Party also welcomes the fact that the proposals harmonise the powers and competences of supervisory authorities to more effectively ensure and where necessary enforce compliance, both individually and in cooperation with each other, for example, by being able to impose significant fines.

Despite its general positive stance toward the proposed Regulation, the European data protection authorities find however that parts of the proposal for a Regulation need clarification and improvement.

The Article 29 Working Party is in favour of creating a concept of a one-stop shop for companies with a 'lead authority', which is the data protection authority non-exclusively competent for supervision of the processing operations of a controller or processor in all Member States. In addition, a clear obligation for data protection authorities to cooperate and to refer to the consistency mechanism to ensure that the Regulation is applied consistently in cases where data subjects in several Member States are likely to be affected by processing operations, is welcomed. This will lead to a consistent interpretation and application of the EU legal framework, thus creating legal certainty.

However, in order for the mechanism to be able to function, the manner in which it is decided where a multinational company (whether EU-owned or non-EU-owned) has its main establishment needs to be further clarified. This is important because this definition of main establishment seems to be primarily intended to determine which national data protection authority should be the 'lead authority' in a particular case, or for a particular

company. Furthermore, the consequences on the competences of other data protection authorities need to be clarified. It should in any event be clear that the competence of a lead data protection authority is non-exclusive. This means that the competence of a lead data protection authority is subject to the obligations to cooperate, provide and accept mutual assistance, and make use of the consistency mechanism and act in agreement with other involved data protection authorities.

The Article 29 Working Party also raises concerns about the strong role of the European Commission throughout the proposals, both through the use of delegated and implementing acts and in individual cases that are to be dealt with by the supervisory authorities in the European Data Protection Board (EDBP) under the consistency mechanism.

With regard to the Directive regarding data protection rules for police and judicial cooperation in criminal matters specifically, the Working Party regrets the Commission's level of ambition and underlines the need for stronger provisions. The Working Party is especially concerned that the Directive fails to include important data protection principles such as limiting retention periods, transparency and accuracy of personal data.

The Working Party furthermore addresses the scope of application of the proposed Directive and its consistency with the Regulation, amongst others in relation to data subjects' rights and data controllers' obligations. In addition, the Working Party addresses the system of international transfers and the introduction of very broad possibilities to derogate from that system.

Finally, the Working Party calls for an independent assessment of the increased costs for data protection authorities in order to ensure that data protection authorities will be able to effectively carry out the enhanced duties that are proposed in both the Regulation and the Directive.

Please read the opinion http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/index_en.htm#h2-1

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 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/data-protection/article-29/index_en.htm