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ARTICLE 29 DATA PROTECTION WORKING PARTY

Data protection authorities call for strict general privacy agreement with United States

The European data protection authorities, united in the Article 29 Working Party, call upon the European institutions to ensure a strict and far reaching general privacy agreement with the United States. In a letter adopted on 18 November 2010, the data protection authorities respond to the plan of the European Commission to reach a deal with the United States on the protection of personal data of individuals when exchanged in police and criminal justice cooperation matters. This agreement is presumably one of the most important steps in data protection to be taken in the coming years and will set long-term standards for international cooperation.

The Article 29 Working Party welcomes the initiative for a general agreement with the United States, since this could ensure a high level of protection for all individuals' personal data. The data protection authorities would like this agreement to be a so-called 'umbrella agreement', which could cover both existing and future agreements between the European Union and/or its Member States on one hand and the United States on the other. Furthermore, the European data protection authorities stress the need for the future agreement to comply with the European Unions' data protection framework, including the EU Charter of Fundamental Rights. The future agreement should not in itself be the basis for exchanging information, but should govern the general principles for data protection. Specific exchanges will continue to require a legal basis in the form of a bilateral or multilateral agreement which should include a standard provision referring to the future general agreement.

Given the unsatisfactory result – from a data protection point of view – of the negotiations on the TFTP II Agreement, allowing the United States to obtain access to information on international bank transfers, the data protection authorities are concerned about the possible outcome of the negotiations of a general privacy agreement. They therefore emphasize the need for several data protection safeguards to be included in the future agreement. These include full, effective and enforceable rights for all individuals, including both administrative and judicial redress, and limitations to bulk transfers. Also, the Article 29 Working Party asks for very strict rules for the onward transfer of EU-originating data to other countries or non-law enforcement agencies within the US. Finally, the future agreement should foresee a system of evaluation and joint review of both the future agreement itself and of the underlying bilateral and multilateral agreements.

A negotiating mandate allowing the European Commission to start talks with the Americans is expected to be adopted at the Justice and Home Affairs Council on 3 December 2010. The European data protection authorities have requested the European institutions to take its position into account and to give the Article 29 Working Party regular updates on the state of play of the negotiations.

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