

Press Release  
Communiqué de presse  
Mitteilung für die Presse

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Brussels, October 2, 2008

**ARTICLE 29 DATA PROTECTION WORKING PARTY**

**The Article 29 Working Party held its 67<sup>th</sup> plenary session in Brussels on October 2, 2008.**

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*Continuing the efforts for the reinforcement of Binding Corporate Rules*

After the strong signal given to companies last June when the Article 29 Working Party has produced important efforts to facilitate the drafting by the industry of BCR applications, new important steps have been decided during the autumn session.

First of all, the toolbox gathering all information on BCRs and designed both for companies and for Data Protection Authorities has been completed by new FAQs. WP29 continues working on clarifying open questions regarding BCRs. In this regard, WP29 approved \_FAQ n° 7 and is planning to adopt 6 more FAQs at the next plenary session in December.

The toolbox is composed of a framework of BCRs, FAQs and a checklist.

The checklist gathers all elements and conditions required in WP 74 & 108 and explains the principles one by one. The checklist defines what must be found in BCRs, and what must be presented to DPAs in the BCR application

The framework is designed to give an idea to companies of the structure of BCRs.

The Frequently Asked Questions (FAQs) provide operational answers to concrete questions raised by companies.

Above all, the Article 29 Working Party, considering the urgency to speed up the approval procedure of the BCRs, is strongly committed to working on the improvement of the coordination procedure, and has therefore decided to organise intensified meetings of the BCR subgroup.

Meanwhile, a mutual recognition procedure has been launched and already 9 Data protection Authorities, which are the Data Protection Authorities of France, Germany (federal and Länder), Ireland, Italy, Latvia, Luxembourg, the Netherlands, Spain, and of the UK have concluded to engage themselves to mutually recognise BCRs sent to them through the BCR coordination procedure. Mutual recognition is a policy commitment rather than a legal change. It is based on trust, and on the consideration that our legislative systems are all based on the Directive. The essence of mutual recognition is that the DPAs commit themselves that once the Lead Authority circulates a consolidated draft with a positive opinion that it meets the required standard, other DPAs accept this opinion as sufficient basis for providing their own permit or authorisation for the BCR or for giving positive advice to the body that provides that authorisation.

It is hoped that other DPAs may be able to join the Mutual Recognition group in the coming months, as the work on the improvement of the coordination procedure for BCRs through regular meetings of the BCR subgroup is intensified until spring next year.

These considerable efforts and the priority given to this topic constitute a very positive signal towards global companies.

### ***US ESTA***

The Article 29 Working Party started analysing the impact of the US electronic system for travel authorisation (ESTA) on the privacy of transatlantic passengers. The scheme which was launched in August 2008 on a voluntary basis will become mandatory in January next year replacing the paper form I-94W currently to be filled in by all travellers on board.

Such an electronic system which comes in addition to the EU-US PNR agreement which also foresees the transfer of passenger data significantly changes the way how data are collected and processed by US authorities. More data such as the phone number are being required, the retention period will be extended to 75 years and it is not clear how passengers can exert their rights in case their travel authorisation has been denied. After a first evaluation of ESTA the EU Privacy Commissioners conclude that many questions remain unanswered and need to be addressed before the system becomes compulsory to make sure that the privacy of transatlantic travellers remains protected. Those preliminary [points are published](#).

It is for example not clear how sensitive data are dealt with, how travellers can keep track of their data in particular when they have filled in them erroneously or data change over time and what happens in cases where the travel authorisation has been lost or stolen given that ESTA does not include an electronic signature.

WP29 calls on the US authorities to address these concerns and inform transatlantic travellers better about the new scheme and passenger rights as the discussion is still going on.

## ***E-discovery***

The Article 29 Working Party subgroup dealing with E-discovery met in September to discuss this transborder issue. A draft working paper should be proposed for discussion and possible adoption at the next plenary session of the Article 29 Working Party in December.

## ***Follow-up on search engines and Social Networks (SNS)***

Last April, the Article 29 Working Party adopted its opinion 1/2008 on data protection issues related to search engines. Feedback on this opinion was provided by several actors in the field, such as Google and Ixquick. WP29 will make an analysis of the reactions to its opinion, and on the basis of this analysis, the Working Party plans to organise hearings with 3 companies.

The Article 29 Working Party is preparing an opinion on on-line social networks. In this context, it has sent out a questionnaire on data protection and privacy related issues to Social Network Services (SNS). WP29 has been updated on the contributions by the Social Network Services (“SNS”) operators on the questionnaire. A consolidated version of the opinion is being prepared.

## ***WADA***

During its 66<sup>th</sup> meeting on 24 and 25 June 2008, the Article 29 Working Party was requested by the European Commission to deliver an opinion on the World Anti Doping Agency’s (WADA) draft International Standard for the Protection of Privacy and Personal Information. The Working Party delivered its opinion 3/2008 on the privacy rules regarding global anti-doping measures on 1 August 2008. In this paper, it expressed concerns regarding the protection of personal data of sportsmen and –women falling under EU law, and invited WADA to take its comments into account. During the 67<sup>th</sup> meeting, WP29 was informed of the response of WADA to its opinion 3/2008, and of the new version of the privacy standard itself. Upon this, and to ensure the protection of personal data of sportsmen and –women in the fight against doping, the Working Party decided that it will provide further comments on the World Anti Doping Code.

## **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.

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