



Article 29 group advises on implementation of the EU Directive

Dr Ulf Brünnhann, Head of Unit, DG15, European Commission, explains the background to the committees established by the EU Data Protection Directive, and reports on the work they have undertaken.

The *Management Committee* was established by Article 31 of the Directive, and is made up of Member States' representatives. It has an official role in the making of specific decisions about third country data transfers.

The *Working Party of Data Protection Authorities* established by Article 29, is advisory in nature but its mandate is fairly broad, looking at issues including the implementation and application of the Directive and the levels of protection in third countries (PL&B December 1996 p. 14).

The Working Party met for the first time in January 1996, and by July had met on a further five occasions. The Working Party consists of representatives of the Member States' EU data protection authorities and of the Commission. The Commission also provides the Secretariat to the Group. Once a data protection authority for the Community institutions has been established, a representative of this authority will also sit in the Working Party.

The chairman is Mr Peter Hustinx (Registratiekamer, the Netherlands). The vice-chairperson is Mme Louise Cadoux (CNIL, France).

Topics covered in the first year of the Working Party's programme include:-

- data transfers to third countries,
- levels of protection in third countries,
- procedures for notification of processing under the Directive,
- extent of permitted exceptions to the basic data protection rules, and
- application of data protection law to the media.

Legal processing and media freedom

The tension between legal processing and artistic and journalistic freedom has been one of the more difficult areas to which the Working Party has

paid particular attention. (See p.2). Section 3 Article 9 of the EU Directive states:-

"Member states shall provide for exemptions or derogations from the provisions of this chapter....for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression."

A working party recommendation on the application of data protection to the media was adopted on 25th February 1997. It's main conclusions are:

- data protection law does apply to the media;
- Article 9 derogations must follow the principle of proportionality;
- derogations should not be granted to the media or journalists as such, but rather to persons processing data for journalistic purposes;
- derogations should only cover journalistic (editorial) purposes - other processing carried out by the media being subject to the normal rules of the Directive;
- when evaluating the proportionality of any derogations, attention must be paid to specific guarantees enjoyed by individuals in relation to the media, such as rights to reply or obtaining rectification of false information after publication;
- individuals are, in any case, entitled to adequate forms of redress. When evaluating derogations, attention must be paid to any existing ethical or professional obligations of journalists and to any self-regulation provided by the profession.

Assessing adequacy

The Working Party has adopted a paper outlining its thoughts on the issue of assessing the adequacy of protection when data is transferred to third countries. This paper of "first orientations" attempts to set down in writing, for the first time, the main ingredients of what is considered "adequate protection."

The Working Party has adopted a recommendation giving support to the Canadian Standards Association's initiative in the area of data protection. The Working Party has also adopted its first Annual Report.



Comments and questions

Tom Kiedrowski (London Investment Banking Association) expressed concern about the issue of transfers of personal data outside of the EU and about the way in which Articles 25 and 26 of the EU Directive would operate. Would countries be blacklisted?

Ulf Brühann explained that implementation of Articles 25 and 26 was, in the first instance, up to Member States. Only where a specific transfer were blocked would the Commission and the Article 31 Committee become involved. The approach of the Directive, as is made clear in the documents under preparation in the Article 29 Group (the Working Party), is more of a "case-by-case" approach, rather than one of compiling whitelists or blacklists of countries. This reflects the fact that the circumstances of a specific transfer must be taken into account when assessing the adequacy of protection.

Dr Stefan Walz, (Data Protection Commissioner, Bremen, Germany, and member of the Working

Party), gave some more information on how the Working Party had approached its work on third country transfers, which he considered to be a model approach. First the group had sought information on the factual situation. Two studies were presented to the group - one on international networks, the other on privacy protection in the USA, and reports from national delegations were collected. Then ensued a period of intensive debate, until finally a position paper emerged.

This paper assessing adequacy of transfers to third countries is available from DG 15:

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Edited extracts from a presentation to the Privacy Laws & Business 10th Annual Conference, July 1997, given by Dr Ulf Brühann, Head of Unit, DG 15, European Commission. Reported by Nick Platten, independent consultant.

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