

# *EC approves standard contractual clauses for data transfers to non-EU countries*

report by Eugene Oscapella

**T**HE EUROPEAN UNION Data Protection Directive (95/46/EC) requires all personal data transferred to countries outside the EU to benefit from “adequate protection.” However, the European Commission’s standard contractual clauses offer an alternative method of lawfully transferring such data.

On June 18th 2001 the European Commission adopted a Decision setting out standard contractual clauses ensuring adequate safeguards for personal data transferred from the EU to countries outside the EU which have not been recognised by the Commission as providing adequate protection for such data. The Decision obliges Member States to recognise that companies or organisations using such standard clauses in contracts concerning personal data transfers to countries outside the EU are offering “adequate protection” to the data.

Use of these standard contractual clauses, the Commission notes, will be voluntary. However, it will offer companies and organisations a way to comply with their obligation to ensure “adequate protection” for personal data transferred to those countries that have not been formally recognized as providing adequate protection. To date, only Switzerland, Hungary and the US ‘Safe Harbor’ arrangement have qualified (see p.15).

## **STANDARD CLAUSES AN OPTION**

The standard contractual clauses contain a legally enforceable declaration (“warrant”). Both the “data exporter” and the “data importer” undertake to process the data in accordance with basic data protection rules and agree

that individuals may enforce their rights under the contract.

The Commission notes that the standard contractual clauses are not the only way of lawfully transferring data to third countries. They add a new possibility to those already existing under the Data Protection Directive. These include cases where individuals have given their unambiguous consent for data to be transferred outside the EU and where the transfer is necessary for the conclusion or performance of a contract in the interest of the data subjects. In addition, Member States’ data protection authorities may authorise transfers case-by-case if satisfied that the data enjoys “adequate protection.”

The Commission adds that data protection authorities in the Member States retain powers to prohibit or suspend data flows in exceptional circumstances. However, under the Decision of June 18th, they cannot refuse data transfers made under contracts that incorporate the standard contractual clauses approved by the Commission. The Decision also does not prevent national data protection authorities authorising other ‘ad hoc’ contractual arrangements for the export of data out of the EU based on national law, as long as these authorities are satisfied that the contracts in

question provide adequate protection for data privacy.

Describing the decision as only a first step in developing contractual solutions as a tailor-made tool for the transfer of personal data world-wide, the Commission said it would adopt separate Decisions on specific types of transfers and situations.

The Commission is consulting Member States and Data Protection Authorities on a new draft Decision concerning standard contractual clauses for the transfer of personal data from data controllers established in the Community to data processors established in non-EU countries.



*For further information generally, as well as the text of the Decision visit [www.europa.eu.int/comm/internal\\_market/en/dataprot/news/clauses2.htm](http://www.europa.eu.int/comm/internal_market/en/dataprot/news/clauses2.htm)*

*To see the frequently asked questions (FAQs) prepared by the Commission see [www.europa.eu.int/comm/internal\\_market/en/dataprot/news/clauses2faq.htm](http://www.europa.eu.int/comm/internal_market/en/dataprot/news/clauses2faq.htm)*