

development purposes. She also said that it is impossible to examine every single transfer *a priori* to determine whether these derogations apply.

Another option was to obtain consent from individual data subjects. However, said Bellamy, the Article 29 Working Party says there are limits as to how valid a consent is in the employment field. For example, the Working Party has suggested it would be difficult to rely on consent for the processing of human resources (HR) details in situations where an employee is unlikely to have any choice in the matter. Despite this interpretation, Accenture obtained consent from its existing and future employees globally, both via employment contracts and separate notice and consent. "Is it going to stand legally in a court of any Member State," asked Bellamy? "I don't know, maybe not...but at least we have tried and raised awareness."

ALTERNATIVE SOLUTIONS

The main alternative, proposed by the European Commission, is its Model Clauses for data controllers. Bellamy, however, explained that this approach was not suitable for Accenture's style of business for a number of reasons. Most importantly, Model Clauses would create a dual regime for EU data and non-EU data. "Our systems do not allow us to do that...our global policy is applicable to all data, all citizens, wherever they and we are."

Organisations could also consider entering the US Safe Harbor scheme. It's another option, said Bellamy, but as a bilateral arrangement, it does not offer a truly global solution. On the whole, she regards Accenture's approach as the best solution for the organisation, as it is lawful, privacy friendly, and most importantly, workable.



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Commission review may signal changes to EU directive

By Lilly Taranto

Susan Binns, Director of Data Protection at the Internal Market Directorate of the European Commission, has suggested that amendments could be made to the EU Data Protection Directive. Speaking at PL&B's Annual International Conference in July, Binns said that a review of the directive, which is currently in progress, does give the Commission scope to recommend any necessary changes. And, in a statement that has received a cautious welcome from some in the business community, Binns said: "We would like to simplify the directive, so long as the standards are kept."

Launched towards the end of June this year, the Commission's review has sought the opinions of businesses, individuals and national data protection authorities. The review was scheduled to take place at the end of 2001. However, due to the late transposition of the directive by some member states and considering the broad consultation that the Commission has launched, Binns said that the report is unlikely to be published until early-2003.

Only five member states implemented the directive on schedule, countries such as Belgium, Denmark and the UK, have done so only in the last two years. To date, Ireland and Luxembourg are yet to fully transpose the directive into national law.

One of the key objectives of the review is to assess the degree to which the directive has enabled harmonised regulation and the free movement of personal data across the EU. The Commission's findings could conclude that divergences between national data protection laws have created obstacles to the internal market. Should that be the case, said Binns, the Commission would examine how this has come about. She explained that it could be a result of bad transposition of the directive by individual countries, misunderstanding over some of its terms, or even that the directive itself is inadequate.

Although at an early stage, Binns said that the review had already uncovered a number of problematic areas. One major issue is the clarity of definitions such as "personal data", "consent", and "filing system". Another key concern cited by Binns was international transfers of data – in particular, where the responsibility for deciding the adequacy of data protection in non-EU countries falls. She also suggested that the Commission might look into ways of recognising and assessing codes of conducts for international data transfers.

Binns' speech sounded a warning for businesses and data protection authorities by suggesting enforcement procedures were not tough enough. She said that enforcement procedures are "very much complaints-driven," as opposed to stricter approaches such as proactive investigations by the authorities. "It is inappropriate," she said, "to rely on complaints as a means for enforcement."

At this stage it is too early to predict what the results of the Commission's review. Binns explained that, although the Commission is taking an open-minded approach to the review, it is restricted to following a specific framework. Any changes to the directive, she said, would still have to respect other legislation, such as the European Convention on Human Rights. Changes to data protection legislation, she explained, could be achieved through a "soft-law" approach – for example through the work of the Article 29 Working Party.



For the press release on the Commission's review of the directive: http://europa.eu.int/comm/internal_market/en/dataprot