

Brussels, 8 April 2009

ARTICLE 29 DATA PROTECTION WORKING PARTY

The Article 29 Working Party held its 70th plenary session in Brussels on April 7 and 8, 2009.

Hearings of SWIFT representatives and Judge Bruguière

Two years after the adoption of the opinion relative to the SWIFT case, the Article 29 Working Party decided to meet SWIFT again. The hearing has been held in April 7th, 2009, and was followed by the hearing of Judge Bruguière, the eminent person appointed in March 2008 by the European Commission to carry out annual oversight of the U.S. Treasury commitments contained in the Representations.

The Article 29 Working Party heard them with great interest. On one hand it acknowledged the progress made by SWIFT as regards the European data protection requirements and on the other hand, through his hearing and his rich experience as a Judge, Mr Bruguière gave an interesting perspective on the use of personal data in the fight against terrorism.

Nevertheless the Article 29 Working Party recalls that even in the fight against terrorism and crime, fundamental rights must remain guaranteed. The Article 29 Working Party insists therefore on the respect of European data protection principles.

World Anti-Doping Agency (WADA) International Standard for the Protection of Privacy and Personal Information

The Article 29 Working Party reiterates its support for WADA's initiative. Even if it is aware of the importance – among others for athletes' health – of the fight against doping in sport, it insists on pursuing this fight with respect for the fundamental rights of athletes and their entourage, particularly for the right to protection of their privacy and personal data.

While the adoption of the International Standard on the Protection of Privacy and Personal Protection by WADA is an encouraging sign from the point of view of raising awareness about the protection of personal data, care should be taken to avoid the false belief that it ensures, throughout the world, an adequate level of protection for personal data processed in the EU, as required by EU law. Certain adaptations were clearly made to the Privacy Standard as a result of the Working Party's first opinion. On the previous pages the Working Party has nevertheless highlighted numerous issues that remain problematic. It urges WADA, as well as national anti-

doping organisations, (inter)national sport federations and olympic committees, to pay attention to these issues and invites national organisations in particular to take them into account during their activities. The Working Party would like to stress some of these issues, notably that consent cannot be the basis for a legitimate processing, whether it relates to sensitive data within the meaning of articles 7 and 8 of Directive 95/46/EC or not. Data transfers to the ADAMS database, established in Canada, and onward transfers from ADAMS, will have to meet the requirement of an adequate level of protection in the destination country. If this level cannot be considered adequate, transfers can only take place on the basis of certain exceptions, mentioned in article 26 of the Directive, provided that they are not regular or massive, which would make the exception the rule. Regarding the publication of sanctions on the Internet for a duration of one year, the Working Party is of the opinion that this is not necessary to achieve the purposes put forward by WADA, since on the one hand the Working Party believes they can be achieved in a way that would be less damaging for the persons concerned and, on the other, that the effects of the measure are disproportionate in comparison with these purposes. It is also in light of the proportionality principle that the Working Party invites WADA and anti-doping organisations to reassess the collection of Whereabouts as it is conceived today, and more in general, the current retention period of processed data.

The Working Party trusts that all anti-doping organisations and other actors involved will take up their own respective responsibilities to ensure that the remarks made by the Working Party are fully taken into account, and that full compliance with EU data protection rules will be guaranteed.

Binding Corporate Rules

The Article 29 Working Party has intensified its work regarding interpretation and clarification of the BCR principles.

Today, the Article 29 Working Party adopted 2 new FAQs. The first one (FAQ 10) relates to the relationship between EEA data protection laws and BCR and the second one (FAQ 11) on the reversal of the burden of proof in the context of BCR.

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.

http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/index_en.htm