

## ARTICLE 29 Data Protection Working Party



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By e-mail: [Hanna@IOSCO.org](mailto:Hanna@IOSCO.org)

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Subject: IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU).

Mr Secretary General,

First of all, as Chairwoman of the Article 29 Working Party (WP29), I would like to take this opportunity to underline the fact that the Working Party acknowledges and recognises the importance of the regulatory work done by the International Organization of Securities Commissions (IOSCO) notably with the view of developing, implementing and promoting internationally recognized standards for securities regulation.

In 2002 IOSCO established the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) with the aim of providing securities regulators with an international cooperation tool for combating cross-border fraud.

This MMoU is the basis for cooperation and the exchange of information among IOSCO members and sets out general principles regarding areas such as: mutual assistance and the exchange of information; the scope of assistance to be provided to foreign regulators; the dealing with and execution of requests for assistance with foreign regulators; the permissible use of information. It also sets out specific requirements regarding the confidentiality of the exchanged information.

However, it came to my attention that the MMoU does not contain any specific provisions as regards data protection safeguards when personal data are exchanged.

As you know, Article 16(1) of the Treaty on the Functioning of the European Union (TFEU), introduced by the Lisbon Treaty, establishes the principle that every individual has the right to the protection of personal data concerning them. Furthermore, with Article 16(2) TFEU, the Lisbon Treaty introduced a specific legal basis for the adoption of rules on the protection of personal data.

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental Rights and Union Citizenship) of the European Commission, Directorate General Justice, B-1049 Brussels, Belgium, Office No MO-59 02/013.

Website: [http://ec.europa.eu/justice/data-protection/index\\_en.htm](http://ec.europa.eu/justice/data-protection/index_en.htm)

Moreover, the Treaty renders the Charter of Fundamental Rights of the EU legally binding and Article 8 of the Charter enshrines the protection of personal data as a fundamental right.

Consequently, under the EU data protection legal framework, personal data transfers outside the EU are subject to the specific rules set forth by Articles 25 and 26 of the Directive 95/46/EC<sup>1</sup>.

The WP29 therefore recalls that transfers from the EU to third countries are only allowed if said third countries ensure an adequate level of protection, as assessed in the light of the criteria set out under Article 25, or if transfers take place on the basis of specific provisions foreseen by Article 26 by way of derogations. As highlighted in one of its previous opinions (WP114), the WP 29 recalls that transfers of personal data which might be qualified as repeated, massive or structural should be carried out within a specific legal framework. In such cases, the data transfers among countries should be governed by appropriate agreements which should be legally binding and fully take into account the data protection safeguards provided for by the Directive. This includes adequate redress mechanisms for data subjects and appropriate supervision by data protection authorities.

Finally, the WP29 recalls that these regulations come along with other International instruments such as the legally binding Convention 108 of the Council of Europe<sup>2</sup>, or the non-binding OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

With this in mind, I believe that the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) should be enhanced with provisions offering appropriate personal data protection guarantees.

The Working Party would appreciate to be kept informed and will where necessary provide further input regarding this subject.

Sincerely,

Isabelle FALQUE-PIERROTIN  
Chairwoman

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<sup>1</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

<sup>2</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg 25 January 1981.