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Brussels, 16 December 2010

## **ARTICLE 29 DATA PROTECTION WORKING PARTY**

### **European Data Protection Authorities clarify rules on applicable law**

**The European Data Protection Authorities have adopted an Opinion on applicable law. The rules determining applicable law address the question of which national law applies to the data processing of companies that operate internationally. The current European Data Protection Directive 95/46/EC contains a provision on applicable law (Article 4) that is not very easy to understand and implement. The Article 29 Working Party explains in its Opinion the different elements that need to be considered to determine the applicable law. The Opinion is illustrated by several examples.**

The point of departure in answering the question of applicable law is the place where the data controller is established. However, in cases where companies are processing personal data in the context of establishments in several countries the matter of applicable law is more complicated. For instance, a Danish citizen applies for a loyalty card at the Copenhagen branch of an Italian chain of fashion stores. In this scenario, his data are collected by the store in Denmark and Danish law applies. However, if the Italian headquarter of the chain uses the data to offer the same Danish customer special promotions through direct marketing, Italian law would be applicable for that part of the data processing. That is because the direct marketing takes place in "the context of the activities" of the Italian headquarter office. This example illustrates that the key factor in determining applicable law is the context in which the processing is carried out. Both place and nature of normal activities play an important role in defining the context.

In today's online world, defining the context is becoming more and more difficult. Therefore, in its Opinion, the Article 29 Working Party not only aims to clarify the current situation on applicable law, it also gives several recommendations to improve the current provision in view of the upcoming proposal for a new and comprehensive data protection legal framework in 2011. Most importantly, the data protection authorities ask the Commission for a simplification of the rules on applicable law, especially in situations where one company has branches in several Member States. The simplification would provide the necessary clarity both for the consumer and for the companies.

On 4 November 2010 the Commission adopted a strategic [Communication on a comprehensive approach on personal data protection in the European Union](#), highlighting its main ideas and key objectives on how to revise the current rules on data protection. The European Data Protection Authorities have committed themselves to closely follow the review and to provide opinions on several matters to give the EU Commission input for the review of the data protection legal framework. The opinion on applicable law is the first opinion in this context.

**Background information**

The European data protection authorities (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 Article 29 Working Party is competent to examine any question covering the application of 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/policies/privacy/workinggroup/index\\_en.htm](http://ec.europa.eu/justice/policies/privacy/workinggroup/index_en.htm)