

---

Brussels, 14 July 2011

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

### **European data protection authorities clarify the notion of consent**

**Consent of the data subject has always been a key notion in data protection, but it is not always clear when consent is needed, and what requirements have to be fulfilled for consent to be valid. The importance of consent is evident as the processing of personal data has become a prominent feature of modern society, both in the online and offline world. Therefore, the European data protection authorities, assembled in the Article 29 Working Party, have adopted an opinion (WP187) in which they assess the definition of consent in the current framework and give several recommendations for the future.**

Consent is one of the grounds that can legitimise the processing of personal data. In the opinion, the European data protection authorities clarify the notion of consent and provide recommendations with regard to the revision of the general data protection legal framework.

According to the European data protection authorities, consent requires the use of mechanisms that leave no doubt of the data subject's intention to consent. Therefore only statements or actions, not mere silence or inaction, can constitute valid consent. For example, when a data subject registers with a social network and the default settings of his or her profile make all personal information viewable to all "friends of friends", it cannot be inferred that this user has given his or her consent.

Consent must be given prior to the start of processing activities or before any new use of the data. The European data protection authorities also stress that the right to withdraw one's consent should be guaranteed. In addition, to be able to make informed choices, data subjects need to be informed about the data processing and good quality and accessibility of the information is paramount to this. Naturally, in this regard, specific attention must be paid to individuals lacking legal capacity, such as minors. Finally, data controllers should be able to demonstrate that they have obtained valid consent.

#### **Link to Opinion WP187**

[http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2011\\_en.htm](http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2011_en.htm)