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Co-operation between Data Protection Authorities at National and International Level: the views of the European Commission

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Purpose of this presentation:

- 1) The European Commission as facilitator of international co-operation. Why the European Commission promotes international co-operation so vigorously.
- 2) A case study: the Article 29 Working Party. The experiences with this group over the last years demonstrate that international co-operation is not only necessary but produces tangible results.
- 3) Lessons for the future. This international co-operation must continue in the future and must be extended also outside the EU.

1) Why is international co-operation necessary in the EU?

To achieve deeper harmonization within the EU.

The harmonization foreseen by the Directive is not complete. Its scope is restricted to first pillar issues and Member States are granted a considerable margin of maneuver in the implementation. International co-operation should compensate for these lacks of harmonization

To facilitate a soft interface with other systems.

The Directive recognises that other systems may not provide an adequate protection and, nevertheless, personal data flows are essential in knowledge-based economies. International co-operation is essential to cope with this issue in a co-ordinated, pragmatic and efficient manner.

To give national data protections a say in policy shaping.

Those called to apply and supervise the application of data protection rules should be given a say in the policy shaping.

2) A case study: the Article 29 Working Party

The status of the group

The Article 29 Working Party is a group set up by the Data Protection Directive back in 1995 in a very imaginative way. It was not meant to be a “comitology” group but was meant to be more than a mere group of experts. It acts with independence but is meant to have very close relationship with the European Commission.

The mandate of the Article 29 Working Party

Its mandate is very broad. Its more important functions are linked to providing advise to the European Commission in different matters: adequacy of third countries, advising on new proposals, etc. but it has also other important foundational mandates such as contributing to bringing deeper harmonization among the national data protection laws, issuing recommendations or adopting codes of conduct. The reputation of this group has increased considerably over the years and this has had no doubt an impact over their activities. It is expected that the future “constitutionalisation” of data protection in the European constitution may have also an impact on the mandate of this group. The recent appointment of the European Data Protection Supervisor, who is a full member of the art 29 Working Party has contributed to further enrich the group.

The role of the European Commission

The European Commission has different roles in the Article 29 Working Party: it is a member of the group, it provides it with the Secretariat services and it is most frequently the addressee of the documents adopted. These different functions that the Commission plays may be at the origin of some tensions, but they are also among the reasons of so many successful achievements of the group.

Some examples of contributions for a deeper harmonization within the EU.

Over the last years the Article 29 Working Party has adopted many documents aimed at bringing further harmonization within the EU such as the opinions on video-surveillance or the processing of personal data in the employment context.

This is now an absolute priority for the Group which is currently working on issues such as: simplification of notification requirements for data controllers, harmonized privacy notices or better enforcement.

Participants are invited to consult the Commission's web site to discover all the documents adopted by the working party since its creation (www.europa.eu.int/comm/privacy)

Some examples of contributions for a soft interface with other systems.

The Article 29 Working Party has also worked very actively on how achieving a soft interface with other systems while guaranteeing an adequate level of protection for EU citizens. Some remarkable examples of this work are the well-known **Working Party 12** of 1998 on how assessing adequacy work, the implementation of this **guidance with concrete countries** (Canada, Argentina, Switzerland) **or systems** (Safe Harbor), or developments on **standard contractual clauses or binding corporate rules**.

Recent examples of contributions in policy shaping.

Last but not least, the Article 29 Working Party contributes effectively to the policy shaping of data protection with work on strategic issues which do have an effect in future policy making and legislation. Recent examples of this contribution are documents on biometrics or the processing of genetic data, as well as the monitoring of the impact on privacy of many emerging technological issues by one of the Article 29 Working Party subgroups: the Internet Task Force.

3) Lessons for the future

A constructive relationship between the European Commission and the Article 29 Working Party is vital.

Co-operation at EU-level through the Article 29 Working Party has enormous potentiality. There is however the risk that a deterioration of the relationship between this group and the policy makers, and the European Commission in particular, could affect the benefits of this international co-operation. Therefore, any challenges to a fruitful co-operation must be overcome. This requires an effort by each party concerned. The recent adoption of a Strategy document by the Working Party is a useful step in the way towards a more efficient co-operation, taking into account the real priorities and respecting each body's role and responsibility.

European experiences on international co-operation may also prove useful for the international community.

In the same way that international co-operation by means of the Article 29 Working Party has worked so well in the European Union and provided some many results over the last years, there is no reason why similar mechanisms

could not produce similar results in the international community. In fact, the efforts of the Spanish Data Protection Authority to set up a data protection network in Latin-America are a good example of the potentialities of this approach.

Therefore, I would like to propose, here and now, that the International Data Protection Community launches a reflection on the possibility to set up similar structures of international co-operation to those set up by the European Communities almost ten years ago with the Article 29 Working Party, with similar goals to those of the Article 29 Working Party, that is, approximating legislations and practices, dealing with the differences between the systems and contributing to the shaping of a data protection policy world-wide.