

ARTICLE 29 Data Protection Working Party



Brussels, 22 June 2015

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Dear Mr Linden and Mr Nordh,

I am writing to you on behalf of the Article 29 Working Party (WP29) to provide a first response to your request for a formal endorsement of the Géant Data Protection Code of Conduct, as laid down in Article 27(3) of the Data Protection Directive.

The Code of Conduct and the enclosed Explanatory memorandum you submitted on 4th December 2014, has been examined and these documents accepted for evaluation assuming that they meet the preliminary criteria established in the Working Document on the procedure for the consideration by the Working Party of the Community Codes of Conduct adopted on 10 September 1998 as WP13.

First of all, I would like to underline that the above-mentioned rules of procedure require that a code of conduct must be in accordance with the Data Protection Directive and with the national provisions adopted pursuant to the directive. Furthermore the code of conduct shall be of adequate quality and provide sufficient added value to the Directive and other applicable data protection legislation. It needs, for example, to be satisfactorily focussed on the specific data protection questions and problems in the organisations or sector to which it is intended to apply and offer effectual clear solutions for these questions and problems.

In light of these considerations, the WP29 observes that the current provisions of the Code seem not to bring sufficient added value to the Directive and national laws requirements. Indeed, the Code contains general guiding principles on data protection. These ought to be better defined, more specified and developed further. Moreover, the Code refers to further supporting documents which are intended to complement it such as guidelines and good practice that need to be analysed in detail together with the provisions of the Code.

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 for Justice and Consumers, B-1049 Brussels, Belgium, Office No MO59 02/13

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

Among the most relevant aspects that should be detailed, the WP29 would like to bring your attention on the following major issues:

- The role of the various entities involved in the data processing (not only IdPs, SPs, home organisations, agents, but also identity federations and EduGAIN interfederation service), their qualification as data controllers and/or data processors and the different obligations and responsibilities of each of these role as par. 2.2 of the *explanatory memorandum* is rather vague;
- the technical and organizational aspects of the data processing activities undertaken by each of these entities (on that regard, providing IT-procedure descriptions, privacy impact assessments or prior checking documents if they already exist could be useful);
- the implementation of the provisions on information duty towards End User (e.g. a sample information notice should be annexed to the Code);
- the data subject rights (a specific section on this topic should be included in the Code);
- basic security requirements that should be determined for all data processing entities;
- provisions on effective enforcement that should be improved.

I call your attention on the fact that these are only first comments from the Article 29 Working Party and I am looking forward to receive a revised draft of the Code on the basis of the grounds illustrated in this letter together with complete and coherent supporting documents and all existing background information.

At the end of this first part of the procedure should stand one self-contained document that meets the criteria set forth in the above mentioned WP13 document. For your information and reference I have attached a code of conduct which has been already approved by the WP 29, however this is just an example that may not fit your situation and requirements.

Only once that has been achieved we will check the code of conduct against the national laws in a second step before the whole document will be finally submitted for endorsement to the WP 29.

To facilitate a better and faster procedure as well as an improved exchange of information I invite you to meet with members of the *e-government subgroup* of the WP 29 to present them and discuss with them the practical and technical background and the objective of the code of conduct in order to get more familiar with the technical and legal framework on both sides and in order to define the next steps to be taken.

Yours sincerely,

On behalf of the Article 29 Working Party,



Isabelle FALQUE-PIERROTIN
Chairwoman

Attachments:

- WP 13 Future work on codes of conduct: Working Document on the procedure for the consideration by the Working Party of Community codes of conduct.
- WP 77 Opinion 3/2003 on the European code of conduct of FEDMA for the use of personal data in direct marketing including the annex
- WP 174 Opinion 4/2010 on the European code of conduct of FEDMA for the use of personal data in direct marketing including the annex