

European Data Protection Conference

Wroclaw, 14 September 2004

Resolution

submitted by the Federal Data Protection Commissioner, Germany and co-sponsored by the Dutch
Data Protection Authority

Resolution of the European Data Protection Conference to set up a joint European Union forum on data protection in police and judicial co-operation matters (data protection in the Third Pillar)

The Treaty on European Union (TEU), in its version of 2 October 1997 (Amsterdam Treaty) contains, in title VI, comprehensive provisions governing police and judicial co-operation in criminal matters. The Treaty of Nice requires the police and law enforcement authorities of the EU Member States to further intensify their co-operation. This ranks among the priority tasks of the Union.

The Data Protection Commissioners of the European Union Member States are well aware of the need to have closer co-operation among the criminal prosecution authorities of the Member States with the aim of guaranteeing Union citizens a high degree of security in an area of freedom, security and justice. However, a fair balance must be struck between this need and preserving civil liberties, including data protection rights, as protected by the Charter of Fundamental Rights of the European Union.

One of the most important tasks of the Data Protection Commissioners is to advise the bodies involved in legislative matters on data protection issues; in this context, they need to point out the risks that legislative initiatives might entail for the above-mentioned liberties, and to propose more citizen-friendly solutions. The Commission, the Council and the European Parliament have been seeking such advice with increasing frequency.

Clearly, the Data Protection Commissioners are pleased to respond to these demands in the best possible way. However, there should be no misunderstanding that, at the present time, the organisational arrangements for the discharge of this important task are insufficient or lacking and

consequently, they cannot ensure that their advice is given at an early stage, after Europe-wide consultation and with the requisite level of quality. This is the case because in the Third Pillar a joint forum and its necessary organisational framework are absent.

This is in contrast to the First Pillar, where the Article 29 Working Party is in place, in accordance with Directive 95/46/EC, giving the Data Protection Commissioners a suitable organisational framework. This includes a permanent secretariat (made available by the Commission) and the resources to allow regular meetings in Brussels and to provide the necessary translation services. The joint supervisory bodies in the Third Pillar (for instance as regards Europol, Schengen, Eurojust) have a specific mandate, and a broader approach is required to secure a uniform level of data protection safeguards for the whole area of police and judicial co-operation.

The participants to the Conference are currently intensifying their co-operation on police and judicial matters. To this end, a police working party, set up under the Conference of European Data Protection Authorities, functions as a forum for policy making, examining issues outside the remit of existing data protection bodies at EU level. Moreover, another subgroup of the Conference has been established. This planning group, consisting amongst others of the chairs of the joint supervisory bodies (of Europol, Schengen, Customs and Eurojust), the chair of the Article 29 Working Party, and the European Data Protection Supervisor, has the responsibility to develop strategic approaches to new initiatives that involve both the use of personal data for law enforcement purposes and a European aspect.

Nevertheless, additional structural measures are necessary; as the European security architecture in the Third Pillar is being strengthened and taken forward, it is of the utmost importance to incorporate the provision of data protection advice within the structure of the Council of the European Union. For this reason, the Conference of European Data Protection Commissioners calls on the Council and on the Commission to put in place without delay the necessary measures in terms of staff and organisational resources to enable the data protection body to commence its important work of safeguarding the citizens' interest before the end of this year. The European Data Protection Supervisor appointed in line with Article 286 (2) of the EC Treaty should be actively involved in the body to be set up.

The Conference also calls upon the Council and on the Commission to create the legal conditions for the harmonisation of supervision within the Third Pillar, in close co-operation with the relevant bodies.

The Chair is instructed to forward this resolution to the Council, to the Commission and to the Parliament.

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