
Brussels, 14 September 2011

ARTICLE 29 DATA PROTECTION WORKING PARTY

The Chairman together with two delegations representing the Article 29 Data Protection Working Party, met with representatives from IAB Europe and EASA to discuss their self-regulatory code of conduct on Online Behavioural Advertising. At the meeting the Chair reiterated the concerns the European data protection authorities have with the current code and announced the Working Party will produce an opinion on the code by the end of the year.

Following article 5(3) of the e-Privacy Directive consent is necessary for placing and reading information on end-user terminal equipment such as a cookie. Consent can only be deemed valid if given after the user has been provided with clear and comprehensive information. The proposal of EASA and IAB Europe provides for a possibility to *object* against having data being used for personalized online advertising purposes. This means that in most cases the industry legitimizes processing on the basis of inaction or silence of the user. However, as the Working Party already stressed in its recent opinion, only statements or actions, not mere silence or inaction, constitute valid consent.

At the meeting the representatives of the OBA industry stated that the code was primarily intended to create a level playing field and admitted that the current version in itself does not intend to provide compliance with the European and national legal requirements. The representatives of the Working Party noted that this statement differs from the expectations voiced by Vice-President Kroes with regard to the aim of the code.

Chairman Kohnstamm warned that companies must not be misled in thinking that the code offers a "safe haven". He stressed that a situation in which companies invest in abiding by a code that does not fully comply with European and national legal requirements, should be avoided. European data protection authorities have the task to ensure compliance and will, where necessary, enforce on the basis of the law.

The Chairman invited the representatives to address the concerns raised in his letter to the OBA industry of 3 August 2011. The Working Party will take these answers into account in order to prepare an informed opinion on the self-regulatory code by the end of the year.

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/data-protection/article-29/index_en.htm