

## ARTICLE 29 Data Protection Working Party



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Dear Mr Podesta,

I am writing to you in my capacity of Chair of the Article 29 Working Party, the EU independent advisory body on data protection and privacy set up under Article 29 of the Data Protection Directive 95/46/EC.

The Working Party has read with great interest the report “Big data: seizing opportunities, preserving values” which was released by your office last month. The report devotes substantial attention to the privacy issues raised by the development of big data, which naturally coincides with the Working Party’s own concerns and work.

The Working Party welcomes a number of policy recommendations made in the report, namely the extension of privacy protections existing in the United States to non-US persons. The effectiveness of such an extension is indeed critical for European citizens in the aftermath of the recent revelations on the mass surveillance programmes operated on European citizens by intelligence services, notably in the United States.

Also, the Working Party takes note of your support for the greater interoperability of privacy standards at the international level, which it also considers as a key element to ensure the effective protection of individuals with regard to the processing of their personal data, in the EU and elsewhere.

It also agrees with the idea that processing techniques applied to big data could lead to discriminatory outcomes, infringing the right to equal treatment and to not be discriminated.

For all these reasons, the Working Party looks forward to contributing to the transatlantic cooperation on the practical follow-up of these proposed measures, so that EU as well as US concerns are duly taken into consideration.

Many important benefits are expected from the development of big data. Nevertheless, big data also raises important concerns with regard to the privacy of the individuals concerned, the civil rights protection, as well as social and ethical questions.

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 Justice, B-1049 Brussels, Belgium, Office No MO-59 02/013.

Website: [http://ec.europa.eu/justice/data-protection/index\\_en.htm](http://ec.europa.eu/justice/data-protection/index_en.htm)

An appropriate balance must be struck between these expected collective benefits and the risks for individuals. This naturally raises the question of whether this balance can be struck within the existing legal framework that is applicable to the development of this trend.

Directive 95/46/EC and other relevant EU legal instruments are clearly part of this framework, as most of the big data trend entails the extensive processing of data on EU citizens.

Their relevance is even greater since the landmark ruling of the European Court of Justice of 13 May 2014 in the Google Spain case, which makes it necessary to take EU data protection rules into account when assessing the impact of the advertising-supported ecosystem on the Internet on the protection of individuals with regard to the processing of their data.

Some stakeholders tend to believe that the basic data protection principles and obligations require accommodation to enable promising forthcoming developments in big data to take place.

At this stage, the Working Party has no reason to believe that the EU data protection principles, as they are principally enshrined in Directive 95/46/EC, are fundamentally challenged by the development of big data.

In fact, as your report clearly shows, big data is a broad term that covers a great number of data management cases, some of which are already well-identified, some of which are only partially apprehended and even unclear. A number of the cases identified in the report – such as the development of comprehensive information systems in the delivery of health services or in the centralisation of law enforcement files – also exist in the EU Member States that could be adequately framed by existing European data protection rules, whether at EU- or national levels.

On the basis of these shared national experiences, the Working Party recently released a number of policy documents, which it believes are consistent with the analysis of some privacy concerns which are identified in the report – e.g. its Opinion 05/2014 on Anonymisation Techniques or its Opinion 01/2014 on the Application of necessity and proportionality concepts and data protection within the law enforcement sector. In this context, the Working Party also refers to its Opinion 03/2013 on purpose limitation, its Opinion 06/2013 on open data and public sector information re-use, and its Opinion 06/2014 on legitimate interest.

With all these elements in mind, the Working Party intends to carry out its own assessment of the development of big data on the basis of the EU legal framework.

The Working Party looks forward to further exchanges on these fascinating developments in the near future, in particular on the proposition that relates to the protection of EU citizens.

Yours sincerely,

On behalf of the Article 29 Data Protection Working Party,

Isabelle FALQUE-PIERROTIN

Chair

Cc:

- Ms Viviane Reding, Vice-President, European Commission
- Ms Penny Pritzker, US Secretary of Commerce
- Mr. Ernest J. Moniz, US Secretary of Energy
- Mr. John HOLDREN, Director, Office of Science and Technology Policy
- Mr. Jeffrey ZIENTS, Director, US National Economic Council