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EU: Article 29 Working Party Adopts Opinion on New Standard Contractual Clauses

On March 17, 2009, the Article 29 Working Party released Opinion 3/2009 on the Commission's draft decision for standard contractual clauses (SCCs), which discusses proposed updates of the clauses allowing the transfer of personal data to sub-processors established in third-world countries, in light of increased global outsourcing practices. Opinion 3/2009 is available [here](#), and further analysis on the Working Party's Opinion is available [here](#).

EU: Article 29 Working Party Investigates Telecoms and ISPs Data Retention Practices

On March 17, 2009, the Article 29 Working Party issued a press release regarding its upcoming investigation concerning the compliance of telecom service providers and ISPs with their national obligations under data retention legislation (based on the e-Privacy Directive 2002/58/EC and the Data Retention Directive 2006/24/EC). The aim of the investigation is to analyze how and if data retention obligations are being met within the telecoms sector in the various Member States. The investigation will be conducted via standardized questionnaires throughout all Member States. The Working Party's press release is available [here](#).

Belgium: Belgian Criminal Court Fines Yahoo! for Non-Disclosure of Personal Data

On March 2, 2009, a Belgian criminal court (*Tribunal correctionnel de Termonde*, No. DE 20.95.16/08/25, unpublished) imposed on Yahoo! Inc. a €55,000 (approximately \$71,500) fine for refusing to disclose to a Belgian public prosecutor the personal data of its email users, who were under criminal investigation for fraud. The court also imposed a daily fine of €10,000 (\$13,000) in case of non-compliance with the judgement. The case is currently being appealed by Yahoo! Inc. The decision is available, on request, from the public prosecutor's office. Further analysis of the decision is available [here](#).

Finland: Finnish Parliament Approves Snooping Law

On March 4, 2009, after months of consultation, the Finnish Parliament approved a controversial new piece of legislation (Legislation No. 126) that allows employers to track their employees' Internet use. The new law amends Finland's Act on the Protection of Privacy in Electronic Communications (Act no. 516/2004), and allows employers to investigate their employees' email logs under restricted conditions in relation to corporate data security and surveillance rights. The law was approved by the Finnish president on March 13, 2009, and is available (in Finnish) [here](#).

France: French Employee Dismissed for Excessive Use of Internet at Work

On March 18, 2009, the French Court of Cassation (*Cour de cassation Chambre sociale Arrêt du 18 mars 2009*) ruled that a company that had dismissed an employee for using the company's Internet access for non-professional purposes during more than 40 hours in the same month had a legal cause for dismissal. This decision follows a previous decision of July 9, 2008 (*Cour de cassation Chambre sociale Arrêt du 9 juillet 2008*), whereby the Court of Cassation ruled that an employee accessing the Internet via the company's computer during working hours is presumably doing so for professional purposes. The full March 2009 decision is available (in French) [here](#), and the July 2008 decision is available (in French) [here](#).

France: French DPA Issues Report on Online Advertising

On March 26, 2009, the French Data Protection Authority (CNIL) issued a report on online advertising (*La publicité ciblée en ligne*) that was adopted during its plenary session on February 5, 2009. The report states that although online advertising has developed into a strategic component of business models, in many respects it also constitutes a threat to privacy (e.g., unclear purposes of online data collection, lack of information, ineffective opt-out mechanisms, etc.). The CNIL considers that in many cases online advertising does not comply with the French Data Protection Act and calls for more transparency, clear and user-friendly privacy notices, and increased use of the "opt-in" principle. The CNIL also encourages businesses to adopt

a code of conduct and to develop more effective tools allowing Internet users to have control over their data. The full report is available (in French) [here](#).

France: French DPA Fines Company for Non-Compliance with Data Protection Regulations

On March 27, 2009, the French Data Protection Authority (CNIL) issued a press release regarding a €30,000 fine imposed on "Centre E.Leclerc" supermarket stores in 2008 (*Délibération no. 2008-187 du 3 juillet 2008*) for violation of the French Data Protection Act. The company had failed to comply with several obligations, in particular: (a) had failed to notify data processing and use of CCTV; (b) had failed to determine data retention periods; (c) had omitted to notify the data subjects; and (d) had used discriminatory remarks in the free text zones of its database. The company had disregarded the CNIL's previous warning and was subsequently fined. The full decision of the CNIL is available (in French) [here](#).

Germany: German Social Networks Sign Code of Conduct

On March 11, 2009, operators of Germany's leading social networks, which include "schuelerVZ", "studiVZ", "lokalisten" and "wer-kennt-wen", signed a 17-page code of conduct (the "Code") submitted by the Association for Voluntary Self-Regulation of Multimedia Service Providers in order to protect children and young people. The Code is designed to improve data protection and consumer protection in social networks, in particular to protect young people from harassment. It requires that a privacy notice be displayed directly after registration and that restrictive default

settings be enabled for users under the age of fourteen. The full text of the Code (in German) can be found [here](#), and further analysis is available [here](#).

Germany: German Court Rules on Data Retention and Submits Questions to ECJ

On March 16, 2009, the German Administrative Court of Wiesbaden published a February court decision (*Az. 6 K 1045/08 WI*) requesting the European Court of Justice (ECJ) to assess the compatibility of the Data Retention Directive (Directive 2006/24) regarding the retention of telephone and Internet data with basic constitutional rights. The Court considers the Directive to be invalid because it violates the proportionality principle required by Article 8 (right to privacy) of the European Convention on Human Rights. The full judgement (in German) can be requested from the Wiesbaden Administrative Court [here](#).

Germany: Government Introduces €50,000 Penalty for Unsolicited Telephone Calls

On March 26, 2009, the German Ministry of Justice announced that the government adopted the "Act against unsolicited telephone advertising and for improvement of consumer protection in special types of sales". Pursuant to the Act, violations of the existing prohibition on unsolicited commercial telephone calls can now be sanctioned by fines of up to €50,000. In addition, the Act clarifies that a commercial telephone call is lawful only if the recipient has given prior explicit consent to the call. The provision is intended to prevent the caller's reliance on consent that may have been given by the recipient in

a totally different context or after the call was placed. Furthermore, those placing commercial telephone calls may not hide their telephone number or identity. Violations of this prohibition may be sanctioned by fines of up to €10,000. The Act will have to pass the Federal Council in May, and is likely to become effective this summer. Further information (in German) is available [here](#).

Italy: Italian DPA Increases Fines for Breaches of Telephone Database Compliance

On March 18, 2009, the Italian DPA (The Garante per la Protezione dei Dati Personali) announced measures designed to increase potential fines from a previous maximum of €30,000 to €300,000 for the most serious offences where companies violate telemarketing rules on access to telephone databases. The announcement follows the recent “*Milleproroghe*” Legislative Decree (*Decree law 207/2008*), which provides a limited exemption (for promotional purposes) to telemarketers using telephone and address databases built on old telephone directories prior

to August 1, 2005 up until December 31, 2009. The Garante’s press release is available (in Italian) [here](#).

Portugal: Portuguese DPA Issues Guidance on Protecting Credit-Scoring Data

On March 9, 2009, the Portuguese Data Protection Commission (CNPD) issued public guidance (*Decision no. 156/09*) on personal data processing for companies providing credit-scoring data. In order to assess an individual’s credit-worthiness, companies typically have access to that individual’s name, date of birth, address, marital status and other information relating to their credit history. According to the Decision, which draws heavily on Portugal’s Data Protection Act (Law 67/98), CNPD authorization must first be sought before credit scoring begins. Decision 156/09 is available (in Portuguese) [here](#).

UK: ICO Cracks Down on Misleading Small Print

On February 12, 2009, the Information Commissioner’s Office (ICO) issued a press release calling for an overhaul of

privacy and marketing small print, citing a recent survey conducted by the ICO that revealed that half the respondents did not understand what they were signing up for when completing online and paper forms. The ICO is concerned that customers are often confused by the lengthy and unnecessary legalese and urges companies to make their privacy notices much clearer. Further information is available from the ICO [here](#).

UK: Privacy Guidelines for Behavioral Advertising Issued

On March 4, 2009, the UK’s Internet Advertising Bureau (IAB) launched a self-regulatory set of guidelines for online behavioral companies (Good Practice Principles for Online Behavioural Advertising). The guidelines are aimed at companies that collect and use personal data for behavioral targeting and include three core principles: (1) notice/transparency, (2) user choice, and (3) education. They also consider where special care is needed for certain categories of data, such as personally identifiable information or sensitive data. The guidelines are available [here](#).

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