

Privacy Update

Lorenz Privacy Team

The Principle of Accountability and its Call to Action

In a call to action, the Article 29 Working Party adopted an opinion on the principle of accountability on July 13, 2010 (“Opinion 3/2010 on the Principle of Accountability” 00062/10/EN, hereinafter: “Opinion”). Foreshadowing the recent developments surrounding the revision of EU Directive 95/46/EC (hereinafter: “Directive”), the Opinion emphasizes the inclusion of a principle of accountability in the revised Directive. In general, this principle is described as focusing “on showing how responsibility is exercised and making this verifiable”.

Citing difficulties in the implementation of effective measures to protect data – including the data deluge effect, value of online data and the negative effects of data breaches in both public and private sectors – the Opinion contemplates a new legal architecture for the revised Directive. This new architecture will not replace the existing fundamental principles, but instead look to the implementation of internal measures and procedures putting into effect data protection principles and ensuring their effectiveness. These internal mechanisms have not been specifically identified, but they should vary according to the risks posed by the form of processing and nature of the data (e.g. sensitive data). One can assume that such measures will be required from both public and private entities and would effectively implement the existing data privacy principles (e.g. proportionality, notice, security of processing, etc.). For private entities these would likely form part of a corporate governance code or similar procedure. In addition to internal mechanisms, the Opinion encourages the obligation to perform privacy impact assessments in certain cases (i.e. internal or external audits) as well as the appointment of data protection officers (hereinafter: “DPOs”).

The Opinion also suggests wording as to what the provision on accountability in the revised Directive could look like. However, the Article 29 Working Party purposefully avoided stating the specific measures so that such measures could be scaled to different processing operations by the data controller, taking into account the risks and type of data and processing. Such scaling is to be done within the framework of local law, national data protection authorities (hereinafter: “DPAs”) guidance and the opinions of the Article 29 Working Party.

An additional reflection is offered to impose particular obligations on data processors or to designers and/or manufacturers of ICT. It is not yet entirely clear if these additional obligations will materialize (and if so, what form they will take), but it does demonstrate the breadth at which the Article 29 Working Party is aiming with the revised Directive. Further, data breach notification requirements are also promoted and will take a more prominent presence in the European data privacy regulatory landscape.

The Opinion outlines that the promotion of accountability requirements in combination with “meaningful powers of sanctions” on behalf of DPAs and the long term development of certification schemes (in cooperation with DPAs) would meet the challenges posed by rapidly developing technology and its corresponding risks.

The full text of the Opinion is available [here](#).

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