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**"The Strategic Context and the Role of Data Protection Authorities in the
Debate on the Future of Privacy"**

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Dear colleagues,

At the Spring Conference in Edinburgh, about a year ago, at the invitation of Richard Thomas, we started a discussion on the future of Directive 95/46/EC. It was quite clear that some of you were not so eager to have that discussion and saw more risks than benefits in the exercise. However, at the end of the conference, there was a consensus that Data Protection Authorities should play a leading role in the debate.

Only a few weeks later, the Commission held a conference in Brussels and launched a consultation on the future of the present legal framework for data protection in the European Union and on how to respond to the challenges of technological change and globalisation. At the end of 2009, the Article 29 Working Party and the Working Party on Police and Justice, both acting unanimously, adopted a joint contribution to this consultation which has been widely recognised as one of the most interesting and most substantial contributions to the debate.

In less than one year, we have made an enormous step forward in the discussion on the future of the legal framework for privacy and data protection. It is true that this discussion – and even more so its follow up in the form of a possible revision of the Directive – are not without risks. But we all know that *not* acting – and avoiding change where it is necessary – most certainly carries more risks in this case, such as an increasing loss of relevance and effectiveness of data protection in a changing world. There is therefore no doubt that we did the right thing and acted in line with our responsibilities as institutional guardians of data protection.

In my remarks at this conference, I would like to focus on the strategic context of our contribution and share with you what this means for our role in the unfolding debate. In other words: why did the main lines of our contribution develop in the way they did, and what consequences does this have for our role in the debate and in the future legal framework?

Our contribution was largely based on the vision that a society that is increasingly dependent on the widespread use of ICT, can still be respectful of privacy and data protection, but only – and let me emphasize this – only if some key conditions are fulfilled:

- a comprehensive framework should ensure more effectiveness,
- "privacy by design" and "privacy by default" should be integrated in ICT,
- adequate means should be developed to deal with globalisation,
- controllers should be made more accountable to ensure compliance,
- data subjects should be empowered to make use of their rights,
- data protection authorities should be more effective in enforcement.

These elements are now also visible in the new Work Programme of the Article 29 Working Party for 2010-2011 and will therefore continue to keep us busy.

As Richard Thomas will be speaking next about BCRs or Binding Global Codes in the context of international data flows, let me remind you that the principle of accountability in our contribution was not limited to that context, but intended to ensure that controllers are more generally in control and in the position to ensure and demonstrate compliance with data protection principles in practice. Accountability requires that controllers put in place internal mechanisms and control systems that ensure compliance and provide evidence – such as audit reports – to demonstrate compliance to external stakeholders, including supervisory authorities.

The implementation of this principle does not in any way reduce the current level of protection. To the contrary, it reinforces the obligations of data controllers and is of great help to data protection authorities in supervision and enforcement. The principle

has great added value for an effective implementation of data protection in practice, over and above the mechanisms that are currently available in the Directive.

The principle of accountability is of course closely related to the need for data protection authorities to be more selective and strategic and invest their resources in a way as to generate the largest possible scale of compliance in an environment where personal data will be everywhere and where compliance will have to be demonstrated in different ways, probably also with the help of new tools and services, including more transparency and different kinds of assurance services provided by third parties.

It is in this more challenging, but also very realistic environment that DPAs will have to exercise their essential tasks of monitoring and if necessary enforcing compliance with data protection rules and principles. It is clear that conventional approaches will not be sufficient in this environment. Instead, we will have to think in terms of the strongest possible incentives to encourage compliance and how to best allocate these incentives. This is not possible without new and creative solutions.

This explains our general emphasis on “privacy by design”, on more “accountability” for controllers and on stronger “enforcement powers” for data protection authorities. The linguistic problem with the term “accountability” in some languages – where all seems to come down on the notion of “responsibility” – can be solved if we are aware of the stakes in this debate.

Let me be very clear at this point. The stakes are not more and not less than how to ensure privacy and data protection in a highly developed Information Society of 2015, 2020 or beyond. In our contribution to the consultation on the future of privacy, we have replied to this challenge and proposed the key conditions under which this would be feasible in practice. It is our task to drive this vision forward wherever we can.

However, this means that data protection authorities can no longer afford to be in the defensive, only fighting isolated battles – but that we should be more proactive and better organise ourselves. This applies both to the European level – where we can improve our cooperation in the Article 29 Working Party – and at the national level where you are – of course – your own best independent experts.

Let me mention that some winds are blowing in the same direction and seem to be supportive for an approach as outlined in our paper: first, the Lisbon Treaty, with more emphasis on data protection and a stronger role for the European Parliament; secondly, the policy agenda of the new Commission and the commitment of the responsible Commissioner Mrs Viviane Reding who made data protection her top priority. The relevant environment is also quite positive as became clear at a recent Spanish Presidency conference on “Trust in the Information Society” in February in Leon. Other occasions have confirmed me in this impression.

As most of you will remember, in November 2006, at the International Conference in London, we launched the London Initiative with a strong focus on "communicating data protection and making it more effective". Since then, quite a few important steps have been made in the right direction. It is now more and more likely that "Privacy by Design" will be an integral part of the Digital Agenda of the European Commission.

However, whether we are successful in our approach also depends on how we – as data protection authorities – will use this momentum and continue to demonstrate our effectiveness. I am quite sure that the Commission is carefully looking into different options to deliver on its promises, but it is essential that it comes up with proposals that take into account what is really needed and does not settle for less ambitious results.

If the Commission's proposals – for lack of time or otherwise – would fall short of what is needed, we might have to propose alternative solutions during the discussions in Parliament and Council.

An ambitious approach is the only way in which we can ensure that our privacy and personal data are well protected, also in the future. So, we have to be prepared to contribute at different stages and keep developments under a close watch for some years. In any case, at EDPS we are following this subject very closely.

As many of you will know, similar discussions are - or will soon be - taking place in the Council of Europe and in the OECD. For all these reasons, I look forward to the discussion at this conference, in the Article 29 Working Party and at other occasions

later this year and in the near future. It is very clear: the stakes are rising more and more, and failure should be no option!

Thanks for your attention.