pdp JOURNALS

ISSN 2049-5307

Privacy & Data Protection

Volume 14, Issue 7 July / August 2014

Headlines

- Working Party adopts Opinion on Quebec adequacy status, p.17
- Austrian court axes data retention law; UK to bring in emergency legislation, p.19
- Russian Parliament adopts Internet Privacy Bill, p.20

Contents

Working Party 'sets record straight' on risk-based approach

The Article 29 Working Party has clarified its view on a 'risk-based regulatory approach', a core concept for data protection in Europe, and a particular area of interest for the UK regulator.

The Working Party issued a statement (www.pdpjournals.com/docs/88202), prompted by what it says are its concerns, both in relation to discussions on the new EU legal framework for data protection and more widely, that the risk-based approach is being 'increasingly and wrongly presented as an alternative to well-established data protection rights and principles, rather than as a scalable and proportionate approach to compliance.' The Working Party intends to 'set the record straight' with its statement.

Far from a new concept, the risk-based approach is well known from the current Data Protection Directive (95/46/EC). One such application of it in the Directive is the processing of special categories of data (Article 8), in that strengthened obligations result from processing which is considered risky for the persons concerned.

As the Working Party points out, the risk-based approach has also been laboured as a core element of the Accountability Principle (Article 22) in the draft Data Protection Regulation.

In addition to the obligation of security (Article 30 of the draft Regulation), and the obligation to carry out an Impact Assessment (Article 33), the approach has been extended and reflected in other implementation measures, such as the data protection by design Principle (Article 23), the obligation for documentation (Article 28),

(Continued on page 17)

Enforced subject access requests to be illegal in UK by December

The UK government has announced that enforced subject access requests will become a criminal offence under new legislation set to be introduced on 1st December 2014.

Enforced subject access is where individuals are forced by someone like a prospective employer to make a subject access request and reveal the results to them, typically in relation to criminal conviction data.

Section 56 of the UK Data Protection Act already makes it an offence to require a person to make a subject access request and reveal the result. However, the government decided to delay implementation of the provision until the new criminal records checking regime was fully in place.

In February 2014, the government announced that the section would be brought into effect soon.

The UK regulator, the Information Commissioner's Office, has said it will 'develop guidance that explains exactly what this law means for organisations and for individuals.' It added: 'we will be preparing ourselves to prosecute those who are involved in the practice.'