

DECISIONS

COMMISSION DECISION

of 19 October 2010

pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Andorra

(notified under document C(2010) 7084)

(Text with EEA relevance)

(2010/625/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾, and in particular Article 25(6) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Pursuant to Directive 95/46/EC, Member States are required to provide that the transfer of personal data to a third country may take place only if the third country in question ensures an adequate level of protection and if the Member States' laws implementing other provisions of the Directive are complied with prior to the transfer.
- (2) The Commission may find that a third country ensures an adequate level of protection. In that case, personal data may be transferred from the Member States without additional guarantees being necessary.
- (3) Pursuant to Directive 95/46/EC the level of data protection should be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations and giving particular consideration to a number of elements relevant for the transfer and listed in Article 25 thereof.
- (4) Given the different approaches to data protection in third countries, the adequacy assessment should be carried out,

and any decision based on Article 25(6) of Directive 95/46/EC should be made and enforced in a way that does not arbitrarily or unjustifiably discriminate against or between third countries where like conditions prevail, nor constitute a disguised barrier to trade, regard being had to the European Union's present international commitments.

- (5) Andorra is a State with a system of Parliamentary Co-Principality with the President of the French Republic and the Archbishop of Urgell being Co-Princes.
- (6) The right to privacy is enshrined in Article 14 of the Constitution of the Principality of Andorra (Constitució del Principat d'Andorra), as approved by popular referendum on 14 March 1993.
- (7) The legal rules for the protection of personal data in Andorra are largely based on the standards set out in Directive 95/46/EC and are laid down in the Qualified Law 15/2003 of 18 December on the protection of personal data (Llei qualificada de protecció de dades personals) (LQPDP). This data protection legislation is further complemented by Decree of 1 July 2004, establishing the Public Register for the Inscription of Personal Data Files and by Decree of 9 June 2010 approving the Regulations of the Andorra Data Protection Agency. This latter instrument clarifies several issues raised by the Working Party on the protection of individuals with regard to the processing of personal data established under Article 29 of Directive 95/46/EC in its Opinion of 1 December 2009 ⁽²⁾.
- (8) Data protection provisions are also contained in a number of legal instruments regulating different sectors, such as financial sector legislation, health regulations and public registries.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ Opinion 7/2009 of 1 December 2009, available at: http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2009/wp166_en.pdf

- (9) Andorra has ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows of 8 November 2001 as well as the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, in Andorra in force since 22 January 1996, and the Covenant on Civil and Political Rights of 16 December 1966, in Andorra in force since 19 July 2006.
- (10) The legal data protection standards applicable in Andorra cover all the basic principles necessary for an adequate level of protection for natural persons, and also provides for exceptions and limitations in order to safeguard important public interests. The application of these legal data protection standards is guaranteed by administrative and judicial remedies and by an independent supervision carried out by the supervisory authority, the Andorran Data Protection Agency, which is invested with powers of investigation and intervention and which acts completely independently.
- (11) Andorran data protection authorities have provided explanations and assurances as to how the Andorran law is to be interpreted, and has given assurances that the Andorran data protection legislation is implemented in accordance with such interpretation. This Decision takes account of those explanations and assurances, and is therefore conditional upon them.
- (12) Andorra should therefore be regarded as providing an adequate level of protection for personal data as referred to in Directive 95/46/EC.
- (13) In the interest of transparency and in order to safeguard the ability of the competent authorities in the Member States to ensure the protection of individuals as regards the processing of their personal data, it is necessary to specify the exceptional circumstances in which the suspension of specific data flows may be justified, notwithstanding the finding of adequate protection.
- (14) The Working Party on the protection of individuals with regard to the processing of personal data established under Article 29 of Directive 95/46/EC has delivered a favourable opinion on the level of adequacy as regards protection of personal data, which has been taken into account in the preparation of this Decision⁽¹⁾. In its favourable opinion, the Working Party has encouraged the Andorran authorities in the ongoing process of adopting further provisions which will extend the application of Andorran legislation to automated individual decisions, as this is currently not expressly recognised by the Andorran Qualified Law on the protection of personal data.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 31(1) of Directive 95/46/EC,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 25(2) of Directive 95/46/EC, Andorra is considered as providing an adequate level of protection for personal data transferred from the European Union.

Article 2

This Decision concerns the adequacy of protection provided in Andorra with a view to meeting the requirements of Article 25(1) of Directive 95/46/EC and does not affect other conditions or restrictions implementing other provisions of that Directive that pertain to the processing of personal data within the Member States.

Article 3

1. Without prejudice to their powers to take action to ensure compliance with national provisions adopted pursuant to provisions other than Article 25 of Directive 95/46/EC, the competent authorities in Member States may exercise their existing powers to suspend data flows to a recipient in Andorra in order to protect individuals with regard to the processing of their personal data in the following cases:

- (a) where a competent Andorran authority has determined that the recipient is in breach of the applicable standards of protection; or
- (b) where there is a substantial likelihood that the standards of protection are being infringed, there are reasonable grounds for believing that the competent Andorran authority is not taking or will not take adequate and timely steps to settle the case at issue, the continuing transfer would create an imminent risk of grave harm to data subjects and the competent authorities in the Member State have made reasonable efforts in the circumstances to provide the party responsible for processing established in Andorra with notice and an opportunity to respond.

2. The suspension shall cease as soon as the standards of protection are assured and the competent authority of the Member States concerned is notified thereof.

Article 4

1. Member States shall inform the Commission without delay when measures are adopted on the basis of Article 3.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standards of protection in Andorra fails to secure such compliance.

⁽¹⁾ Opinion 7/2009 of 1 December 2009, available at: http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2009/wp166_en.pdf

3. If the information collected under Article 3 and under paragraphs 1 and 2 of this Article provides evidence that any body responsible for ensuring compliance with the standards of protection in Andorra is not effectively fulfilling its role, the Commission shall inform the competent Andorran authority and, if necessary, present draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.

Article 5

The Commission shall monitor the functioning of this Decision and report any pertinent findings to the Committee established under Article 31 of Directive 95/46/EC, including any evidence that could affect the finding in Article 1 of this Decision, that protection in Andorra is adequate within the meaning of Article 25 of Directive 95/46/EC and any evidence that this Decision is being implemented in a discriminatory way.

Article 6

Member States shall take all the measures necessary to comply with the Decision by 1 January 2011.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 19 October 2010.

For the Commission
Viviane REDING
Vice-President
