

COMMISSION DECISION

of 5 March 2010

pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection provided by the Faeroese Act on processing of personal data

(notified under document C(2010) 1130)

(Text with EEA relevance)

(2010/146/EU)

THE EUROPEAN COMMISSION,

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(2) thereof.

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,

- (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 Community's present international commitments.

After consulting the Working Party on Protection of Individuals with regard to the processing of personal data ⁽²⁾,

- (5) The Faeroe Islands are a self-governing community within the Kingdom of Denmark. When Denmark joined the European Community in 1973, the Faeroe Islands did not. They are therefore to be considered as a third country within the meaning of Directive 95/46/EC.

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.

- (6) The Home Rule Act of the Faeroe Islands divides all policy areas into two main groups, whereby Special Faeroese Affairs are the responsibility of the Faeroese Government's administration and legislation and Joint Concerns are the responsibility of the Kingdom of Denmark. This Decision only covers transfer of personal data from the Community to recipients in the Faeroe Islands who are subject to the Act on Processing of Personal Data ⁽³⁾ ('the Faeroese Act'). The Faeroese Act does not apply to the processing of personal data in the course of an activity carried out by authorities of the Kingdom of Denmark, namely, the High Commissioner of the Faeroe Islands (Rigsombudsmanden), the Court of the Faeroe Islands (Sorenskriveren), the Commissioner of the Faeroe Islands (Politimesteren på Færøerne), the Prison and Probation Service of the Faeroe Islands (Kriminalforsorgens afdeling), the Island Command Faeroes (Færøernes Kommando) and the Chief Medical Officer of the Faeroe Islands (Landslægen).

(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

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ Opinion 9/2007 on the level of protection of personal data in Faeroe Islands, adopted on 9 October 2007, available at http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2007_en.htm

⁽³⁾ Act No 73 of 8 May 2001 on Processing of Personal Data, available at <http://www.datueftirlitid.fo/Default.asp?sida = 2878>

- (7) The Faeroese Act is based on the standards set out in Directive 95/46/EC and accordingly it covers all the basic principles necessary for an adequate level of protection of the right of natural persons to privacy with respect to the processing of personal data. The application of these standards is guaranteed by judicial remedy and by independent supervision carried out by the supervisory authority, the Data Protection Commissioner, who is invested with powers of investigation and intervention.
- (8) 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.
- (9) 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,
- (a) where a competent Faeroese 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 Faeroese 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 the Faeroe Islands 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(1).

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 the Faeroe Islands fails to secure such compliance.

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 the Faeroe Islands is not effectively fulfilling its role, the Commission shall inform the competent Faeroese 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 the Faeroe Islands 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 the end of a period of 90 days from the date of its notification to the Member States at the latest.

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 25(2) of Directive 95/46/EC, the Faeroe Islands are considered as providing an adequate level of protection for personal data transferred from the European Union to recipients subject to the Act on Processing of Personal Data ('the Faeroese Act').

Article 2

This Decision concerns only the adequacy of protection provided in the Faeroe Islands by the Faeroese Act 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 the Faeroe Islands whose activities fall within the scope of the Faeroese Act in order to protect individuals with regard to the processing of their personal data in the following cases:

Article 7

This Decision shall apply from 15 June 2010.

Article 8

This Decision is addressed to the Member States.

Done at Brussels, 5 March 2010.

For the Commission

Viviane REDING

Vice-President
