



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

Date: July 4, 2008

José Manuel de Frutos, Marc Meslin (European Commission)

Attendees: Christopher Kuner, Cédric Burton, Alba Bosch (Hunton & Williams, on behalf of ICC)

Prepared by: Alba Bosch

Clause	Main Proposed Amendments	Position of the Commission / DPAs
1. Definitions	No relevant proposals.	Add a definition of the subcontractor, which derives from the definition of the data importer.
2. Details of the Transfer	No relevant proposals.	No relevant proposals.

Meeting on the Amendments to the EU Standard Contractual Clauses for the Transfer of Personal Data to Third Countries (Controller to Processor)

On July 4, 2008, a meeting was held between Christopher Kuner, representing the ICC, and the representatives of the Commission to discuss the proposed amendments to the EU Standard Contractual Clauses. The meeting concentrated on the subcontracting clause. The Commission indicated a willingness to reach an agreement, but a number of issues were left open. These clauses will probably be discussed at the next Article 29 Working Party meeting, to be held at the end of September; ICC and the other business associations may be invited to attend.

The following is a brief summary of the amendments that were discussed:

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3. Third-Party Beneficiary Clause	<p>Add a provision should the data exporter merge or be taken over by another entity.</p> <p>Delete the possibility for the data subject to be represented by an association.</p>	<p>No agreement reached.</p>
4. Obligations of the Data Exporter	<p>Replace the term “guarantees” with “assurances”.</p> <p>Delete the reference to compliance with security measures.</p> <p>Replace the terms “not providing adequate protection” by “with different data protection standards”.</p>	<p>No agreement was reached on deletion and replacement of terms.</p> <p>The Commission proposed to add the following obligations for the data exporter concerning subcontracting:</p> <ul style="list-style-type: none">▪ forward to the DPA any notification received from the data importer or the subcontractor on legislation changes;▪ make available to the data subjects upon request a copy of any subcontract;▪ warrant that, in case of subcontracting, the processing is carried out according to the conditions set in Clause 11 (see below) by a subcontractor providing at least the same level of protection as the data importer.
5. Obligations of the Data Importer	<p>Rewording (on audit) and deletion to reflect the wording of the Alternative Clauses, Decision C2004(5271).</p> <p>Delete the obligation for the data importer to make available to the data subject upon request a copy of the Clauses.</p>	<p>No agreement was reached on deletion and rewording.</p> <p>The Commissions proposes to add the following obligations for the data importer concerning subcontracting:</p> <ul style="list-style-type: none">▪ warrant, in case of subcontracting, that he gained prior written consent of the data exporter and that the processing is carried out in accordance with Clause 11 (see below);▪ send a copy of any subcontract to the data exporter.
6. Liability	<p>Move the paragraph on indemnification to the appendix.</p>	<p>Accepted.</p> <p>The Commission proposes to add a subcontracting provision, without modifying the liability scheme.</p>
7. Mediation and Jurisdiction	<p>Delete the reference to the New York Convention on arbitration.</p>	<p>The Commission could possibly accept it.</p>



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8. Cooperation with Supervisory Authorities	Reword in accordance with Clause 5.	No agreement reached.
9. Governing Law	No relevant proposals.	No relevant proposals.
10. Variation of the Contract	No relevant proposals.	No relevant proposals.
11. Subcontracting	New clause on subcontracting.	<p>The Commission accepted the new provision, but slightly changed the wording.</p> <p>The Commission's proposal contains the following conditions for the data importer for subcontracting:</p> <ul style="list-style-type: none">▪ obtain prior written consent of the data exporter;▪ carry on the processing on behalf of the data exporter and in accordance with his instructions;▪ comply with the applicable data protection law, the Clauses and the terms of a written subcontract which imposes the same obligations on the subcontractor as are imposed on the data importer (with the exception of the obligation of making the clauses available to the data subject).
12. Obligation after the Termination of Personal Data Processing Services	Delete the redundant reference to Clauses 5 and 8.	No agreement reached.