

**1670/05/EN
WP 111**

**Results of the Public Consultation on Article 29 Working Document 105 on Data
Protection Issues Related to RFID Technology**

Adopted on 28 September 2005

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Civil Justice, Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 01/43.

Website: http://europa.eu.int/comm/justice_home/fsj/privacy/index_en.htm

I. Introduction

Following the adoption of the Working Document on data protection issues related to RFID technology on January 19, 2005, the Working Party 29 decided to put it up for public consultation. After the closing of the public consultation, the Working Party 29 prepared the following summary of the content of the responses received on the Working Party 29 paper on RFID. The Working Party 29 considered that it would be useful to share this summary of main contents with stakeholders in general.

II. Summary of the main comments and some conclusions

- Eight private individuals have provided comments, as well as one consumer association, nine universities or think tanks and sixteen corporations or trade organisations. Most of the responses originate from EU Member States, whereas approximately a 10 % were sent from the US and Canada.
- Given not only the number but particularly the size of the corporations and representation of the trade organisations it is fair to say that the public consultation has generated a huge interest from industry.
- In looking at the types of industry that have provided comments it is easy to identify two types of industry sectors: first, the communications and information technology sector and second the retailers.
- Most private consumer associations, universities and think tanks regard the Working Party 29 paper very positively. Industry appreciation varies. While almost all recognise the value of the work and the fact that Working Party has put effort into the paper, some of them are somewhat critical of certain conclusions contained in the paper. The exception is the industry providing security solutions, which is as appreciative of the paper as consumers and universities.
- The level of sophistication of the responses varies but in general it is fair to say that there are a fair number of responses that are thorough, well structured and well presented. Some reflect a very deep knowledge of the technology; others reflect a serious understanding of the privacy implications associated with from the use of RFID technology. Others contain useful information about the business interest in the technology and its impact on the European Union economy.
- Most corporations and trade organisations (except industry that provides security solutions) consider that the existing data protection Directive adequately covers the privacy and data protection issues that arise in the deployment of RFID technology. They plead for self-regulation to complement the data protection Directive. Conversely, most universities, think tanks, individuals and companies providing security solutions suggest the need for some sort of additional guidance from Working Party 29. Some suggest complementing the data protection Directive with specific rules for RFID.

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- Some of those who suggest the need for additional legislation covering RFID technology point out that the use of RFID for item level tagging may not necessarily involve the processing of personal data, yet it seems appropriate to require notice, choice, right to object, etc. Others plead for rules that would make it mandatory to embed technical solutions (PETs) in RFID technology. This is true of kill commands and the use of cryptography for tags that store personal data. Some also ask for prohibition or strict rules for implants of RFID in the human body.
- Some of those who suggest the need for further guidance from the Working Party 29 consider that such guidance should focus on specific RFID applications, for example the use of RFID in public transportation, retail sector, human implants, and passports.
- As concerns technical solutions that some consider should be in-built in RFID applications, respondents agree about the need for easy deactivation of RFID tags by retailers at the point of sale must be mandatory as well as about the need to ensure that RFID tags do not reveal personal data to unauthorised parties. Manufacturers bear a responsibility to help provide solutions.
- Those who consider that no additional legislation is needed point out that the data protection Directive adequately covers the processing of personal data through RFID. They say that new legislation would constitute a barrier to the development of this technology with the attendant economic consequences. They point out that it would put Europe at a disadvantage compared to other regions in the world.
- A very controversial issue is whether item level tagging based on EPC Global standards will usually entail a processing of personal data. Whereas consumers and some think tanks/universities believe that most of the time this will entail a processing of personal data, most answers from industry consider that it will not. This is particularly important because if such data is not considered personal data, retailers have no obligation to comply with the data protection Directive. In that case, there is no obligation, for example, to inform individuals on the presence of RFID tags in goods, presence of readers, the need to deactivate them, etc.
- Another very controversial point, connected to the issue mentioned in the above bullet point, is whether the Working Party 29 paper is based on an overstretched definition of personal data, which goes beyond the definition contained in the data protection Directive and which is used to support the application of the Directive in cases where the Directive should not apply. In particular, a number of respondents think that the various hypotheses described in point 3.3 of the Working Party 29 paper do not entail a processing of personal data.
- A repeated criticism of the paper is that the examples of RFID applications given in the paper do not represent reality. Societal benefits and a realistic appreciation of technical possibilities should be looked at when judging RFID applications.
- While consumers, security industry and universities all agree on the need for a kill command for consumer products at the exit of the shop, retailers and standard bodies for retailers strongly disagree.

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