

ARTICLE 29 Data Protection Working Party



Brussels, 26 August 2013

*STORK 2.0 project partners
c/o Hans Graux
hans.graux@timelex.eu*

Dear Mr Graux,

On behalf of the Article 29 Working Party I would like to thank you and the STORK 2.0 project partners for your letter of 2 April 2013. Please find below several observations with regard to the project and your response.

Concerning the “PEPS model versus MW model” self-assessment you carried out, the Working Party welcomes that this analysis has been done and understands that in the decentralised MW model the required electronic identity information is checked (processed) together with the electronic service offered, while in the centralised PEPS model national proxy servers are checking (processing) the electronic identity information separately from the electronic service offered. The result of this assessment is that both models are equally privacy friendly. It is not the role of the Working Party to approve the methodology used or agree with the result of this assessment. Therefore I will only point at three elements that seem to require additional consideration:

- There are several weaknesses that have been identified and mentioned in your letter. In the now starting STORK 2 project these weaknesses should be addressed and eliminated. .
- It appears there is still uncertainty whether to qualify a PEPS provider as processor, sub-processor or controller. In order to determine this, guidance can be found in the Opinion WP 169¹ where the Working Party noted that a processor is called to implement the instructions given by the controller at least with regard to the purpose of the processing and the essential elements of the means and acts only on behalf of the controller.
- A service provider seems not to have a choice which of the 2 models he wants to use and under which conditions. This seems to be regulated on a national level. Is it foreseen that Member States determine which STORK interoperability means may be used by service providers by law or other legal instruments or is this choice vested with another public or private body?

¹ Opinion 1/2010 on the concepts of "controller" and "processor" adopted on 16 February 2010 by the Working Party http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2010/wp169_en.pdf

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 (Fundamental Rights and Union Citizenship) of the European Commission, Directorate General Justice, B-1049 Brussels, Belgium, Office No LX-46 01/190.

Website: http://ec.europa.eu/justice/policies/privacy/index_en.htm

The Working Party welcomes that STORK 2.0 plans to look into building common standards in data security, data quality and accuracy both for the identification and authentication functionalities as for the systems providing further attributes. In this context the introduction of adequate and simple to operate technical safeguards that help to implement and /or monitor the correct implementation of these common standards would be certainly desirable.

The Working Party encourages the STORK 2 project partners to carry out a full and comprehensive privacy impact assessment (PIA) before technical changes and innovations are developed and/or implemented. Also, a more comprehensive risk analysis and risk assessment on the attribute (provider) system should be carried out. Especially further developing and refining the capacity of STORK to only give access to attributes where it is necessary and proportional for the specific purpose of a STORK transaction should be considered.

The Working Party would like to recall and emphasize that transparency and information is of utmost importance. Suitable (easy to understand) documentation and information notes must be provided and tools that allow data subjects to access their personal data must be foreseen.

It would be too early to comment on the project plans of accessing health data over STORK enabled platforms, integrate the private sector or include non EU/EEA countries in the project. However the Working Party wants to draw your attention to the fact that processing of health data requires particular attention, as these data are sensitive data under Directive 95/46/EC and may only be processed under certain conditions.

Last but not least I would like to invite you to keep the Working Party informed on any progress made.

Yours sincerely,

On behalf of the Article 29 Working Party,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end.

Jacob Kohnstamm
Chairman