Intelligence sharing for enforcement

Data protection & privacy

16/04/2015

ClientEarth

Contents

ClientEarth

Intelligence sharing

Art 12: Competent Authorities shall

- cooperate with *each other; administrative authorities of third countries; Commission*

  to ensure compliance.
- exchange information on serious shortcomings detected through checks, and on the types of penalties imposed, with each other and the Commission

ClientEarth

Who is sharing information

- Exchange between:
  - Competent authorities & related MS enforcement officials
  - Administrative authorities of third countries – producer and e.g. USA/Australia
  - European Commission

ClientEarth

What information?

- ‘Nominal’
- Intelligence that does not have immediate relevance to a particular investigation – e.g risks re particular countries/species/suppliers
- Intelligence that is relevant to a particular investigation with cross-jurisdiction application
- Details of ongoing/concluded investigations

ClientEarth

Personal data protection

- Relevance:
  - name of a company director, supplier, complainant...
- ‘Processing’ of personal data is controlled
- Principles: lawfulness, purpose limitation, proportionality, accuracy, retention period
- Obligations on data controllers
- Data re offences / suspected offences / convictions
- Transfer between Member States / Commission / Outside EU

ClientEarth

Personal data protection

Implications:

- Data controllers should be identified
- Data subjects should be informed (exceptions exist)
- Access to some data – ‘need to know’ basis
- Guidance on how to process data
- Transfer to third countries : USA ; Australia.
  - Exception: where transfer is necessary to establish legal claims
  - Model contract

ClientEarth

Trade secret requirements

- E.g. commercial data on customers, suppliers, business plans.
- Protection against unlawful acquisition, use, disclosure.
- Use and exchange of information for investigation/enforcement activities is allowed.
- Need to protect against unauthorised acquisition/use → security of communication method.

ClientEarth

Access to information

- For data subjects in context of personal information
  - Exception - if necessary to safeguard monitoring/regulatory function
- Access to information provisions
  - Exceptions – proceedings of public authorities, commercial confidentiality, personal data, interests of the person who supplied the information
- Potential for ‘forum shopping’

ClientEarth

Using intelligence in enforcement

- Use of intelligence in a prosecution if collected by authorities in a different jurisdiction can = complex
- Timing: when is information shared / different parties (e.g. CAs in different Member States) involved.
- Role of multilateral organisations to support?

ClientEarth

Summary conclusions

- Legal considerations are applicable to different types of information
- Legal considerations/requirements:
  - Exist – personal data protection and secure and appropriate communication are key
  - Are manageable
  - Are present whether or not an intelligence sharing ‘mechanism’ is used
  - A ‘mechanism’ = one option to ensure they are dealt with properly

ClientEarth

Thank you

Emily Unwin
eunwin@clientearth.org

www.clientearth.org
@ClientEarth

ClientEarth