

AUDITING AND ENFORCEMENT AT THE SPANISH DPA: EXPERIENCE WITH OUTSOURCING TO COUNTRIES WITH A NON - ADEQUATE LEVEL OF PROTECTION

Dear colleagues,

Nowadays, the economic and social integration arising from the globalized market has involved a notable development of cross border flow of personal data between public and private agents established in different countries. Such data flow has been favored by factors such as progress of high technologies and, in particular, the development of Internet.

The Spanish Data Protection Agency is aware of this great increase in international data transfers registered at the General Data Protection Registry.

In May 2007, **the Spanish DPA conducted an unprecedented enforcement action outside the EU**: an onsite inspection of data transferred to a country, like Colombia, which does not ensure an adequate level of protection - to assess the practices in the call center sector, within the scope of telecommunication operators.

The purpose was to audit the increase transfer of international data and provide more transparency in the international data transfer authorization procedure.

The aim of this inspection was to verify the effective compliance with the Spanish Data Protection Law at customer telephone attention centers established by companies in the telecommunications sector in and out of the Spanish territory.

First of all, I would like to describe the general framework of the international data transfers in Spain in order to explain the performance of an ex officio sector inspection of data importers.

Up to the 1st of July 2007, over **8,000 international data transfers were reported** to our General Registry.

The **main countries of destination of these authorizations** are the USA (with 87 authorizations) and, from last year, Latin American countries, such as Chile, Peru and Colombia and Morocco.

With regard to the **purposes** of these international transfers, we may state that the main ones are related:

1. Firstly to the Corporate Management in a global context of human resources customers and providers. This category of transfer amount to 58% of the authorizations granted by the Agency and is related to multinational groups which have their parent company outside of Spain, mainly in the USA.
2. Secondly, telephone care for customer and other telemarketing actions. This category mainly includes provision of customer or telemarketing services by data importers established in Latin America. It has significantly increased in the last two years and amount to 22% of the authorizations.

Up to 2004 there were no authorizations to Latin America. Since 2005, 35 transfers have been authorized to these countries. The main reason to explain this rise is that many companies adopt global sourcing to these countries, mainly in the telecom sector.

Regarding such authorizations, the Spanish Trade Unions showed their concern for this processing to the Spanish DPA, warning that data might be at risk of misuse or vulnerable to security breaches. Bearing these issues in mind, the Agency has considered necessary not only to evaluate the legal sufficiency of the guarantees provided by the applicants, but also their effective fulfilment.

In May 2007, the **selection of the sample** to inspect was performed. By then, the telecommunication sector had a total of 22 international transfer authorizations, representing a 15% of the whole amount of authorizations. We checked that two operators held a market share of 80% of the Spanish market, so we decided to investigate them. These operators offered operation of the commercial telephone care services and telemarketing, in relation to the fixed telephony and internet services.

Under the Spanish Data Protection Act, when the service provider is established in countries which do not ensure an adequate level of protection, the applications for transfer are based on the compliance with the standard contractual clauses set out in the European Commission Decision of 2002.

Such safeguards must be embodied in a written contract, entered into between the data exporter and importer, in order to warrant that they have complied with data protection standards which establish the requirements of the European Directive.

In the case of Colombia, telecom companies included these standard contractual clauses in the contract concluded with companies acting as the processors for Colombian technical support outsourcing.

According to these clauses, where data is transferred to processors established in third countries with a non - adequate level of protection, the DPA may conduct audits of the importer, using the same techniques and tools that are available for audits of the exporter within the DPA's jurisdiction.

In this particular case, the two Spanish telecom companies outsourced their customer and telemarketing services to other companies specialized in this area in Colombia. The data processors can be either a Spanish firm with branches in Colombia or a Colombian specialized company located in that country.

The methodology used was based on the identification of the purposes of the transfers and development of a plan of action in three phases.

1. **The first phase** consisted of performing physical visits to the telecommunications operator in Spain, with the following objectives:
 - Analysis and specification of the services provided from companies located in Colombia;
 - Auditing the processing of personal data, and obtaining information on accesses performed from Spain and from Colombia;
 - Checking that the information accessed was adequate for what is established in the contractual service;
 - Studying the security measures implemented for access to the personal data performed from Spain and from the entities located in Colombia;
 - Evaluation of the technological environment used for international data transfer.

2. **In a second phase**, inspections were performed of the processors that had a head office in Spain and a branch in Colombia. These actions have concentrated on the following aspects:
 - Analysis of the services provided from the offices located in Spain and from those located in Colombia, as well as the data flows between both;
 - Checking compliance of the processing performed by these entities with the purposes stated in the service provision agreements;
 - Checking the personal data accessed at these firms and verifying whether they were relevant in relation to the services established;
 - Verifying the security measures implemented for access to the personal data.

- Evaluation of the technological environment used for access to personal data.
3. **In a third and last phase**, visits were made to processors located in Colombia, with collaboration by the telecom operators (controllers), in order to:
- Check the adequacy of the processing performed by these entities with the purposes stated in the service provision contracts;
 - Check the personal data accessed from these firms and to verify that they are pertinent in relation to the services established;
 - Verify the security measures implemented in relation to the instructions established by the controller and their compliance with Security Measures Regulations;

From the result of the proceedings conducted by the Data Inspectors at the telecom companies, we stated the following **CONCLUSIONS OF THE INSPECTION:**

1. **We found general compliance with technical and organizational security requirements.**
2. With regard to the **processing of the audited data:**
 - a. The data processing matched the services specified in the contract provided in the application for the international transfer authorized by the Spanish DPA.
 - b. The personal data to which the processor companies had access was considered necessary to provide the contractual services.
 - c. Under no circumstances should there be transfer of the telecommunications files to the companies that acted as processors.

3. The most relevant aspect taken into account was the **safety measures** of the Information Systems that allowed access to guarantee the confidentiality and integrity of customer data.

a. **Measures adopted by the controllers:**

- i. The telecommunications operators adopted diverse measures to protect the information contained in their files: among others, not allowing mirroring of files with personal data outside the Spanish territory; using their own communications lines for access from Colombia and having logical security devices implemented.
- ii. The confidentiality of access to the information was established by setting up an encrypted channel between ends, although it was detected that this measure was not been implemented with regard to all the data flows.

b. **Measures adopted by the processors:**

- i. According to instructions from the controllers, service providers located in Colombia had suppressed the peripheral devices that allow information to be extracted at all the work stations used by the telephone operators.
- ii. No computer applications were installed that provided print screen functions or document printing facilities.
- iii. Identification and authentication of telephone operators located in Colombia with access to the operator's files were performed by user code and passwords.

Due to these conclusions, the Spanish Agency provided certain **RECOMMENDATIONS** to be observed by firms in order to adapt automated processing they perform to the principles of the regulations in force on matters of personal data protection.

These recommendations were related to:

1. The level of security,
2. The duty of confidentiality with regard to personal data that the employees had access due to their activity
3. The obligation to conclude a contract between the data exporter and importer including the standard contractual clauses mentioned above.
4. The duty to inform the Workers' committee of the controller telecom company.
5. The obligation to report the files concerned to the Spanish General data Protection Registry.
6. and the obligation to publish the authorisation for the transfer to third countries in the Spanish Official Journal.

I hope you have found this speech informative and stimulating. I think we have a few minutes left so If you have any questions I will be very pleased to answer then.

Thank you very much for your attention.