

Question and Answer: Applicable law and cloud computing
Brussels Data Protection Day

Two of the major challenges to traditional data protection jurisdiction are applicable law and cloud computing. At the Brussels conference, there was a question on applicable law. Which national law(s) applies when and where?

Peter Hustinx, European Data Protection Supervisor, replied that the EU Art. 29 Data Protection Working Party had recently published a substantive document on applicable law in the context of an establishment in a Member State (Art. 4 of the EU DP directive) which advises on ways forward in the future. "The idea of a single applicable law, one national law applying anywhere in the Europe Union, is closely related to the need for harmonisation. The more identical it becomes, perhaps a binding regulation, the less relevant applicable law within the European Union will be."

Stewart Dresner, Chief Executive, Privacy Laws & Business, asked the panel how data protection law could apply to cloud computing outside the 30 European Economic Area countries and the few countries which have been accepted by the EU as "adequate"? Israel is the latest country to receive adequacy status (p.5), Uruguay is probably the next (p.17) and maybe New Zealand after that (p.5). Peter Hustinx replied: "If something happens in a cloud, it does not mean that it happens in a free zone. The present principles simply apply, if the responsibility is established in Europe and if the means [processing] are used in Europe. This would even be even stronger if the future framework will be based on targeting and offering services. Do not be confused. Clouds are not a data protection free zone."