

ICS 35.040

English version

**Standard form contract to assist compliance with obligations
imposed by article 17 of the Data Protection Directive 95/46/EC
(and implementation guide)**

This CEN Workshop Agreement has been drafted and approved by a Workshop of representatives of interested parties, the constitution of which is indicated in the foreword of this Workshop Agreement.

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Foreword

This CEN Workshop Agreement has been drafted and approved by a Workshop of representatives of interested parties, the constitution of which was supported by CEN following the public call for participation made on 12 May 2003.

A list of the individuals and organizations which supported the technical consensus represented by this CEN Workshop Agreement is available to purchasers from the CEN Management Centre. These organizations were drawn from the following economic sectors (Oil, Law, IT vendors, Automotive, Telecommunications, Consultants, Health and Data Auditors).

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The date of acceptance for this Workshop Agreement was 2004-12-31.

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Comments or suggestions from the users of this CEN Workshop Agreement are welcome and should be addressed to the CEN Management Centre.

Introduction

Contracts have to work within national law so European precedents or standard forms have to allow for national variations over matters such as legal formalities but they are still capable of achieving a high level of commonality. Contracts have long been considered as useful tools in achieving data protection compliance.

The achievement of a form of contract accepted by all sides of an industry, containing generic phraseology that can be adapted according to the individual circumstances, is a most valuable form of business standard for trade. A good example is the agreement on INCOTERMS standardization of business trading terms, which has practically eliminated contractual disputes over misunderstandings in traded goods. In the study produced by the Initiative for Privacy Standardization in Europe (IPSE) Project Team, it was recommended to take a broad view of the term “standardization”. In other words, it would be helpful to have a wide consensus agreement on the generic phraseology that can be used in contracts; this would be a very valuable and indeed essential area to be addressed. A contract allows some or all of the obligations of a data controller to be transferred in an accountable way to the recipients of personal data, whether they are processors, agents, affiliates, business partners, or other organizations. Depending on applicable law, many different types of provisions may be relevant here. There is clearly no need to re-invent the wheel every time a contract is drafted, and indeed there are standard contracts for a variety of purposes. In view of this it was decided to undertake work within the CEN/ISSS Workshop on Data Protection and Privacy (WS/DPP), to define generic contract clauses and an implementation guide. The work was partly sponsored by the European Commission under its eEurope Support action programme.

1 Scope

The present document defines a standard form contracts for contractual relations in common areas of professional and other services, reflecting the requirements of Article 17 of Directive 95/46 for use within the EEA. The contract form shall be defined according to the requirements of data controllers who employ or use third party processors to use such contracts. It shall contain generic descriptions that can be adapted according to specific business requirements and thus represent a valuable form of business standard for trade.

The contract is for use by data controllers and data processors located within the European Economic Area where the parties have entered into a separate data processing agreement. It may be used as a complete agreement to accompany a separate data processing services agreement or the operative clauses can be extracted and incorporated into the processing services agreement.

Annex A gives guidance on its implementation.