

## Q&A With Covington's Henriette Tielemans

Law360, New York (September 14, 2011, 4:23 PM ET) -- Henriette Tielemans is a partner in the Brussels office of Covington & Burling LLP, where she is co-chairwoman of the global privacy and data security practice group. She is also a member of the European advisory board of the International Association of Privacy Professionals. Tielemans was selected by the European Commission in Brussels to join the five-member team of the commission's expert group on privacy. During the past 15 years, she has advised multinational companies on all aspects of EU and national privacy laws and international data transfers, and on the impact of various technological developments including cloud computing, geo location and product tracking, cookies, etc.



Henriette Tielemans

**Q: What is the most challenging case you have worked on and what made it challenging?**

A: One of the more interesting cases that I have worked on lately is the acquisition of Skype Ltd. by Microsoft Corp. We are advising Microsoft on the commercial and regulatory aspects of the acquisition, including intellectual property and privacy aspects, during the due diligence stage and afterward.

This is an ongoing process as the acquisition is awaiting regulatory approval by the antitrust authorities. Skype is headquartered in Luxemburg, but its product is used by millions of people all over the world. It is a truly innovative company, working with cutting-edge technology. The combination of cutting-edge technology, innovative products and business structures, and millions of users worldwide raises many interesting questions across a spectrum of legal and policy areas, including privacy.

**Q: What aspects of your practice area are in need of reform and why?**

A: The list is long. Fortunately, the European Commission is well aware of the current needs for reform and is preparing an amendment to the EU Data Protection Directive. A proposal is expected in November 2011. Of all the issues that need attention, the applicable law provisions rank high on the list. With data flowing in and out of countries at incredible speed, it is important to have clear rules on what laws apply. The current EU rules on applicable law lead to controversy and unexpected results, thereby causing additional burdens for companies and regulators, without bringing any real benefit.

An example would be non-EU data, for instance, human resources data that is brought into the EU for temporary, third-party hosting purposes and then sent back to the originating non-EU country. Since the hosting takes place in the EU, regulators could take the position that “EU based equipment” has been used, and that the data that is sent back therefore is protected by the EU directive. The foreign employees of course are not aware of any of this, so there is no benefit to them. And it potentially puts EU-based service providers at a disadvantage.

Simplification of international data transfers, and the removal of the burdensome and ineffective national notification requirements are also a priority. In addition, we expect the introduction of breach notification. It is also hoped — and expected — that the commission will address the disparities in the national implementations of the revised directive. A directive indeed needs to be implemented (transposed) in all of the EU member states (27 at the time of writing) and under the current regime the national implementations differ on several key issues, even though they are all implementations of the same text.

One possible solution is to replace the directive with a regulation that would be directly applicable in all of the member states, without any further implementation at the national level. Again, the European Commission is aware of the issue and carefully considering all options.

**Q: What is an important case or issue relevant to your practice area and why?**

A: One of the most important developments in the privacy area is the increasing globalization of data processing, exemplified by the uptake of cloud computing. This continues to raise many challenges, in particular in the EU. The EU’s current international data transfer rules are based on a different business model, where transfers were less frequent and less invasive.

The current rules are no longer adapted to the realities of today’s business world. Restrictions of international data transfers risk undermining the benefits of cloud computing, for example, by forcing the creation of fragmented clouds that stop at EU borders. Government access to data stored in clouds (or elsewhere) also creates barriers. The current rules are fragmented and unclear. It is desirable that some form of international instrument be developed to increase confidence among governments and within industry.

**Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.**

A: I name Pascale Gelly of the Paris Bar. Pascale is a sole practitioner, which in and of itself is not easy nowadays. She specializes in privacy and has played on more than one occasion a leading role, including in the area of binding corporate rules. Pascale is well connected, deeply involved in several privacy associations and very knowledgeable about French and EU privacy law and the challenges faced by companies to comply with these laws.

**Q: What is a mistake you made early in your career and what did you learn from it?**

A: Again, unfortunately, the list is long. Looking back at nearly 30 years of private practice, the one mistake I would have liked to avoid was not connecting with the client. This is much more than getting familiar with the client’s industry or company. It is more than avoiding a work product that only recites the law and is too theoretical. Connecting with the client is imagining you are the in-house counsel who is about to receive your work product. It is asking yourself, before you “take the pen” how useful your work product is going to be for the in-house counsel. Will it help counsel save time? Or is it too far removed from the day to day business reality of the ultimate user?

Connecting with the client is taking internal deadlines seriously because not meeting them puts in-house counsel in an awkward position. It is providing a heads-up to counsel of important developments that affect the business. Partnering with the client and showing you care about the relationship. Providing practical advice that is easy to understand, clear and to the point. It is something I learned gradually. It is the key to a successful and long-lasting relationship with in-house counsel based on trust and mutual respect.

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