

ISOC European Regional Bureau Newsletter

31 May – 6 June 2014

<http://www.Internetsociety.org/what-we-do/where-we-work/europe>

Data protection

EU: Justice Council agrees on two important pillars of the data protection reform

- At this week's meeting of the **EU Justice Council**, the Ministers agreed on **two important pillars** of the proposed **overhaul of EU's data protection framework**: an **agreement on the rules that govern data transfers to third countries** (Chapter V of the proposed Regulation) and an agreement on the **territorial scope of the Regulation**.
- With regards to data transfers, the proposal sets out **three securitisation roads**: the first one is when the **Commission classifies a third country as adequate** in terms of data protection; the second road concerns the **existence of appropriate safeguards** (e.g. existence of binding corporate rules approved by local data protection watchdogs); and the third road which refers to **clearly defined specific situations** requiring the transfer, such as a tax or competition investigation.
- With regards to the **territorial scope** of the proposed Regulation, the Ministers agreed that the Regulation would **apply to non-European companies active in the European Single Market**. EU Justice **Commissioner Reding** commented that the territorial scope of the EU law was confirmed by the recent EU court's **ruling on the right to be forgotten**.
- The Ministers also discussed the **one-stop shop principle**. The Commission's press release confirmed that the positions of Member States are coming closer with a **general understanding** that there would be a **lead authority** working closely with other concerned watchdogs.
- Commissioner Reding stated that the **reform of EU data protection framework is on track**, ensuring the **completion of the Digital Single market by 2015**.

EU: Data protection overhaul on the Italian EU Presidency's list of priorities

- Talking at a briefing organised by the European Policy Centre, **Stefano Sannino, Italian Ambassador to the EU**, stated that the **overhaul of the EU data protection framework** is among the **priorities of the incoming Italian Presidency** of the Council of the EU (1 July – 31 December).
- Sannino described Italy's stance as **ambitiously realistic** with regards to what could be achieved by the end of the year. The Presidency is to steer the discussions focusing on the broad direction of the legislation that should avoid national fights over details. Sannino admitted that the work of the Italian Presidency will be challenged by Brussels' institutional environment as both the Parliament and the Commission are changing.
- While the European Parliament already adopted its version of the law, EU Member States have not been able to reach a common position yet.

EU: Hustinx calls on the EU to ensure an area of freedom, security and justice

- In an **opinion** piece published on 4 June, **Peter Hustinx**, the European Data Protection Supervisor (EDPS), called on the **European Council to ensure that the rights of individuals** are at the **core of justice and security policies** the EU is to promote in the next years. The opinion comes as the

European Council intends to **define strategic guidelines for further legislative planning** in the area of justice. According to Hustinx, the future guidelines represent an opportunity to **revitalise EU's approach** in the data protection area that has been affected by a **loss of trust** resulting from the revelations about mass surveillance.

- The supervisor underlined the need for **deeper integration of privacy and data protection** in all activities of the EU institutions. Commenting on the **European Court of Justice's recent annulment of the data retention Directive**, Hustinx stated that the annulment should serve as a wake-up call to the EU, to ensure that **policy makers apply proper limitations** when launching proposals that have an impact on fundamental rights.
- In its recommendations, the EDPS stated that in the new strategic guidelines, the **processing of large scale personal data** required by EU justice and home affairs laws and operations, including in agreements with third countries and cooperation with the private sector, should be recognised by the European Council.
- As for the next steps, the EDPS called for a swift agreement on the proposed overhaul of the EU data protection framework.
- In a separate **policy paper** entitled *The EDPS as an advisor to EU institutions on policy and legislation: building on ten years of experience*, the EDPS explained, on the basis of ten years of experience, how the office has been advising the EU institutions on policy and legislation.

EU: Commissioner Reding invites Parliament to participate in Safe Harbour revision

- In her **answer** to MEP Marc Tarabella's (S&D, Belgium) **question** on the potential suspension of the so-called **Safe Harbour** agreement, **EU Justice Commissioner Viviane Reding** stated that the **Commission will first review the implementation of the recommendations** formulated last November. Following disclosures that US intelligence services were harvesting personal data of EU citizens, the Safe Harbour agreement has been under scrutiny since last summer.
- On 27 November 2013, the European Commission issued two Communications on the regime. In the **Communication on the Functioning of the Safe Harbour**, the Commission identified 13 recommendations to ensure the continuity of data protection according to EU standards. The measures include **four major areas of improvement**: transparency, possibility of effective redress, effective enforcement and limitations of access by public authorities. In the **Communication on Rebuilding Trust in EU-US Data Flows**, the Commission highlighted that the remedies must be identified by summer 2014 and should be implemented as soon as possible.
- The Commission is due to review the functioning of the Safe Harbour scheme based on the implementation of the issued recommendations.
- At the **press conference** following this week's Justice Council, **Commissioner Reding** stated that the **13 recommendations made by the Commission are not negotiable**. Reding said that 12 points have already been addressed in a positive way but the 13th point, which concerns the National security exception, remains unanswered. The Commissioner reiterated that all **13 points need to be addressed before the Commission gives its agreement to Safe Harbour**.

EU: Commission publishes factsheet on the right to be forgotten ruling

- The European Commission has published a **factsheet on the right to be forgotten ruling**. The fact sheet explains the ruling, and compares the provisions on the right to be forgotten comprised in the current EU data protection framework with those in the proposed Regulation. A quick section with frequently asked questions completes the factsheet.

EU: Data protection issues may be considered in merger assessment

- Speaking at the **European Data Protection Supervisor's Workshop on Privacy** that took place this week in Brussels, **Julie Brill**, commissioner at the US Federal Trade Commission, stated that **privacy issues could play a role in how watchdogs in Europe and in the US analyse mergers**.
- In the past, while assessing merger cases, the European Commission declined to assess privacy concerns in transactions involving online services.

Copyright infringement

EU: Web browsing does not require copyright clearance

- In its **ruling** on **copyright online** from 5 June, the **Court of Justice of the European Union** stated that for **accessing copyrighted content using a web browser**, there is **no requirement for a separate copyright clearance** as reproduction of content on a screen and cached copies of websites in a browser are temporary and constitute an **integral part of the technological process of websites display**.
- The case concerned an association of public relations professionals (Public Relations Consultants Association, PRCA) that uses a media monitoring services offered by Meltwater agency. The Newspaper Licensing Agency, representing UK newspapers, entered into a licensing agreement with Meltwater but held that the reading of the content by Meltwater's clients constituted a separate reproduction that would require a separate copyright licence. PRCA argued that its members do not need authorisation from rights holders when they confine themselves to viewing the reports on Meltwater's website.
- The Court has ruled that the reproduction in question that goes on to display is part of an integrated technical process. As for the **cached copies** maintained by web browsers of the websites visited, the Court argued that without the creation of such copies, viewing of websites would be less efficient and would not function properly. Thus, such copies are to be considered incidental to the viewing process and don't have an independent function. The same applies to **on-screen copies**, stated the Court.

Cybersecurity

EU: Ministers discuss Network and Information Security

- The **EU Ministers for Telecommunications** who gathered for a **Council meeting** on 6 June exchanged views on how the proposed **Network and Information Security Directive** contributes to the Member States cooperation.
- The Greek Presidency of the Council of the EU announced that there was a **general convergence of views** regarding most of the provisions of the proposed Directive.