

ISOC European Regional Bureau Newsletter

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Data protection

EU: European Court will rule on Facebook NSA data-sharing case

- In its **decision** from 19 June, the **Irish High Court announced** that before probing alleged **Facebook data transfers to NSA**, the **EU Court of Justice should say** whether Irish authorities must respect the EU's view that US data protection is adequate as part of a trans-Atlantic pact from the year 2000, the so-called Safe Harbour, or whether they can conduct their own investigation given the revelations about the scope of the PRISM surveillance program.
- The case the Irish court referred to the European Court was brought by **Max Schrems**, Austrian privacy campaigner and co-founder of **Europe v Facebook**. Previously, Irish Data Protection Commissioner had denied Schrem's requests to audit Facebook for allegedly sharing data with the NSA.
- While the Irish privacy watchdog dismissed Schrem's complaints as hypothetical and speculative, the judge underlined that given Snowden's revelations, it is questionable whether US law and practice in relation to data protection provide for effective judicial or legal control.
- In her **speech** at the Centre for European Policy Studies, **EU Justice Commissioner Reding** called on the EU leaders who will gather next week for the European Council to discuss policies for people, highlighting especially justice policy.
- Reding took the example of Max Schrems's dispute with Facebook over data. The Commissioner stated that by modernising the EU data protection framework, the **Commission puts citizens in control of their data**.

EU: Article 29 WP comments on the latest developments in data protection

- The **Article 29 Working Party** (WP) that gathers the EU Member States data protection authorities' representatives has recently published a series of documents that take stock of the **latest developments in the area of data protection**.
- In a **letter** sent to **John Podesta**, Counsellor to the US President, **Isabelle Falque-Pierrotin**, head of the French data protection authority CNIL and chairwoman of the WP welcomed the recent **US report on big data** ('Big data: seizing opportunities, preserving values') which recommended the **extension of privacy protections existing in the United States to non-US persons**. According to the WP, effectiveness of this extension is critical for Europeans in the aftermath of revelations on mass surveillance programmes. With regards to standardisation, the WP noted the US support for **greater interoperability of privacy standards at international level**.
- In the letter, Falque-Pierrotin underlined that although big data bring important benefits, a balance needs to be struck between the **awaited collective benefits and the risks for individuals**.
- The WP said that the EU data protection principles, mainly enshrined in the 1995 Directive, are not being challenged by the development of big data. The body announced it **will undertake its own assessment of big data development**.
- In a separate **press release** on the 96th plenary meeting, the WP reacted to two recent rulings of the

Court of Justice of the European Union: the '**Costeja**' ruling concerning Google on the right to be forgotten, and the ruling that has invalidated the EU Data Retention Directive. The WP said that an official statement on data retention will be issued in the coming weeks.

- In the context of the **EU data protection reform**, the European data protection authorities sent a letter to the EU Institutions deploring the dropped reference to **binding corporate rules for processors** (BRC-P). The WP called on the Commission, Parliament and the Council to maintain the reference to BRC-P, as they currently offer the best protection in transfers of personal data to processors established outside the EU.
- With regards to the role of a **risk-based approach** in data protection legal frameworks, the WP stated that while such an approach is welcomed as proportionate to compliance in respect of accountability obligations, it is **not an alternative to well-established principles**, and should thus not be used to weaken individual rights.
- The WP commented on a draft **Code of Conduct for Cloud Computing** and on a "**Do Not Track**" (DNT) standard for websites. Regarding DNT, the WP encouraged the efforts for definition of an effective DNT standard creating a mechanism for users to express consent (or opposition) through their browser settings.

EU: Upcoming communication on big data

- **Carl-Christian Buhr**, member of the cabinet of **Commissioner Kroes** announced that the Commission is expected to adopt, either in late June or early July, a **communication on big data**.
- The communication would be presented at the same time as a report on implementation of the **EU's cloud strategy**.

Open Internet

EU: Turkish government could acquire tools to censor social media

- According to **reports** in Turkish media, the government plans to acquire software capable of removing content from Twitter.
- NetClean, a Swedish software company which specialises in providing solutions to block, detect and analyse digital media, is said to be the provider of the new system.
- Turkish government claimed that the reason for the acquisition of Twitter censoring software is its fight against child pornography.

Internet governance

EU: Kroes calls for inclusive Internet governance ahead of ICANN meeting

- Ahead of the **High Level Governmental Meeting of ICANN's Governmental Advisory Committee** that is taking place in London on 23 June; EU Digital Agenda **Commissioner Kroes** made public a **letter** she sent to all the Ministers and delegations attending.
- In the letter, the Commissioner stressed that it is the responsibility of the participants to ensure that **Internet governance is open and inclusive** of all stakeholders, complies with human rights and is respectful of the rule of law. Kroes called on ICANN to develop sufficient jurisdictional interoperability to operate globally.
- The Commissioner highlighted that the upcoming event will be an opportunity to discuss the **transition of the IANA functions to the global multi-stakeholder community**, to reflect on the role of governments and public authorities within ICANN, and on improving ICANN's independence, accountability and transparency in Internet governance.

Cloud computing/Cybersecurity

France: State of play of the national industrial strategy

- On 12 September 2013, **French President François Hollande** presented the country's new industrial strategy entitled *La Nouvelle France Industrielle*. The strategy identifies 34 main industry areas in which French industry could become a leader. **Cloud computing and cybersecurity** are among the priority areas. On 18 June, the government published a document on the current state of play.
- With regards to **cloud computing**, there is a plan to develop a **secure cloud label** aiming to increase trust in cloud computing solutions. The plan encourages the development of a chain of French and European cloud to strengthen digital sovereignty over personal data, while boosting the competitiveness of European businesses. Overall, the plan's actions are said to potentially create or consolidate over 100,000 jobs by 2020. The **ANSSI**, the French National Agency for Information Systems security, together with different sector players, will present **recommendations for the development of networks safety regulations** in H2 2014.
- As for **cybersecurity**, the plan has four objectives: significantly increase demand for cybersecurity solutions; develop offers tailored to France's needs, organise the expansion on foreign markets; and strengthen national companies in the field of cybersecurity.

General

France/EU: Tighten regulation of US tech firms

- **Axelle Lemaire, France's junior Minister for digital affairs** announced that the French government will launch public consultations on a new digital law for France, and start working on a common strategy with **Germany** to develop **new digital regulations in Europe**.
- The announcement was preceded by a report of the **French Digital Council**, *Conseil National du Numérique* containing 14 recommendations aimed at ensuring what it calls the **neutrality of platforms**. Data portability and interoperability, as well as better competition law dealing with digital companies, are among the recommendations.