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Data protection

EU: Advocate General Bot publishes his opinion on the Safe Harbour and the power of national DPAs

- On 23 September, **Yves Bot**, Advocate General at the Court of Justice of the European Union, published his **opinion** on *Maximillian Schrems v Data Protection Commissioner* case in which he said that the **Safe Harbour agreement is invalid** and highlighted that **Member States must be able to take the measures necessary to safeguard fundamental rights**: the right for private and family life to be respected and the right for the protection of personal data. Although the Advocate's opinion is non-binding on the court's final decision, it caused widespread reaction across stakeholders.
- The case is linked to the 2013 **revelations about the US surveillance programme Prism**, which allowed US authorities to access data held by major US tech firms. The revelations led Max Schrems to complain to the Irish Data Protection Commissioner about the protection of his Facebook data which should have been guaranteed under the Safe Harbour agreement. The Irish authority rejected the complaint, arguing that Safe Harbour precluded any investigation as the Commission concluded that the level of protection of personal data in the US is adequate. Following the rejection, Schrems complained to the Irish high court which then referred the case to the European court to decide whether national data protection authorities (DPAs) are entitled to investigate and suspend international data transfers.
- In the opinion, Advocate General Bot argued that under the EU Data Protection Directive, a **Commission decision** finding that a third country ensures an adequate level of protection of the personal data transferred **cannot eliminate or reduce the powers of national supervisory authorities**.
- It continues, stating that following Snowden's revelations, the **Commission should have suspended the Safe Harbour agreement**. The fact that the Commission launched renegotiations of the agreement suggests that it knew that the agreement was inadequate, Bot stated.

EU: Reactions to the Advocate General's opinion

- French advocacy group *La Quadrature du Net* **welcomed** the advocate's conclusions and expressed its hopes that the Court will follow the opinion and challenge the Safe Harbour agreement. *La Quadrature* also noted that the advocate's analysis of the NSA's practices should also apply to mass surveillance by EU countries.
- In a letter published in the *Financial Times*, John Higgins, Director General of DigitalEurope expressed **concerns about the potential disruption to international data flows** should the Court follow the opinion of Advocate General Bot. Higgins wrote that he hopes for weaknesses identified in the opinion to be adequately addressed in the Safe Harbour revision talks.

France: CNIL maintains its order for Google to expand right to be forgotten to its websites world-wide

- On 21 September, CNIL, the French data protection watchdog, rejected Google's appeal against its order to **expand the right to be forgotten to all domain names** of the search engine. The company

reiterated its position stating that the French authority does not have the power to expand the scope of the rule.

- Google has argued that applying the right to be forgotten beyond the EU could incite authoritarian regimes to try to apply **Internet censorship** beyond their own borders. CNIL responded that it does not ask for extraterritorial application of the law but application of European law by companies doing business in Europe.

EU: Parliament's research on big data and smart devices and their impact on privacy

- According to a study entitled *Big Data and smart devices and their impact on privacy*, commissioned by the Parliament's Civil Liberties Committee (LIBE), there is a **high degree of opacity** in many **contemporary data processing activities**.
- While the development of a Digital Single Market (DSM) is one of the Commission's priorities, the study highlighted that the promotion of a **data-driven economy** should not overlook the key legal and social challenges regarding privacy and data protection. The study noted that while big data, the Internet of things and smart devices are often presented as enablers of economic and social dynamics and market prediction, **the processing of data inevitably raises the questions of who controls one's data**.
- Looking in the specific context of the proposed data protection reform, the study stressed that **big data reveals gaps in the EU legal framework**, especially in terms of transparency, consent, regulation of profiling and proper safeguarding of digital rights.
- In order to address the issues raised, several **recommendations** were made. The study stressed that the proposal currently under negotiation should ensure **complete and effective protection** in the face of current and upcoming technological developments of Big Data and smart devices. However, the study concluded that the proposed Regulation alone cannot be the only guardian of privacy and data protection, and called for a **review of the e-Privacy Directive**.

Digital Single Market

EU: European Commission launches a public consultation on Internet platforms and geo-blocking

- On 24 September, the European Commission launched a **public consultation** on the **role of online platforms**. Transparency and information use are among the key issues identified. In addition to online platforms, the consultation also looks at **liability of intermediaries**, ways to facilitate free flow of data in the EU, promotion of a European cloud and the sharing economy.
- The Commission also launched a public consultation **on geo-blocking** in the e-commerce sector, asking consumers and traders whether practices such as **IP rerouting** represent a significant barrier to the Single Market and how to best overcome these barriers.
- The Commission will be using the evidence collected in this exercise to determine what next steps it should take. At the moment, **no decision has been taken whether or not to regulate online platforms**, or let the industry self- or co-regulate itself. Respondents have until late December to respond to the consultations.
- **MEP Dita Charanzová** (ALDE, the Czech Republic) **warned** that over-regulation would translate into more and more EU start-ups leaving for the US. She also said that the belief that online platforms could be regulated through the Digital Single Market strategy in order to make them work better with each other and consumers is wrong, also because of the **likelihood of an online regulation being outdated rapidly**.

EU: European Commission launches a public consultation Priority ICT Standards Plan

- On 23 September, the European Commission **launched** a public consultation on the **Priority ICT Standards Plan** announced in the DSM strategy back in May. The public consultation will end on 16 December giving all interested stakeholders twelve weeks to respond.

- The goal of the consultation is to **identify the fields in which the EU needs to prioritise its standardisation efforts**. The Commission seeks to create one common European voice in the international debate on standardisation.
- The Commission has singled out **10 policy fields** including 5G communications, cloud computing, cybersecurity and data driven services. Respondents are invited to indicate to the Commission where they believe a concerted EU action is necessary.
- After the Commission has collected the stakeholders' views, the Priority ICT Standards Plan will be used for the production of technical specifications, standards or architectures where there is a need or a gap.

EU/US: Commissioner seeks to dispel US concerns with regards to DSM

- During his visit to the US, EU Digital Economy and Society **Commissioner Oettinger** stated that the EU **digital regulatory plans are not protectionist** and that there is no intention of discriminating against US tech companies. In his **speech** at the Johns Hopkins University, the Commissioner explained that in fact the strategy was rather focusing on **breaking down barriers in Europe**, aiming to create one single market.
- However, Oettinger did stress that **Europe will not be lectured on how to proceed with the Digital Single Market** and **will not shy away from probing deeper** into any issues they believe are distorting competition in the markets.

EU/US: MEPs refutes allegations of European digital protectionism

- A group of over 50 MEPs signed an open **letter** to Members of US Congress refuting allegations of EU digital protectionism. The MEPs wrote that while many of legislative proposals on the digital agenda are in early stages of proposal, strong **statements denouncing an alleged EU digital protectionism multiply**.
- While the signatories expressed their excitement with regards to the opportunities offered by technology and disruptive business models, they also underlined that **safeguarding principles and values is key**.
- The letter warned that the political debates on the future regulatory framework and the differences in opinion should not become a transatlantic rift, stressing that the EU-US cooperation is vital.

France: Internet users will have the opportunity to participate in digital law drafting

- On 26 September, **Prime Minister Manuel Valls** and **Secretary of State in charge of digital Axelle Lemaire** will **present the outline of the upcoming digital bill** and launch an **online platform** which will **enable citizens to get actively involved in the law's drafting**.
- It will be the first time that **Internet users will have the opportunity to participate in the creation of a new law** by proposing amendments on which Internet users will vote. The amendments receiving the most votes will receive an official response from the government.