

# ISOC European Regional Bureau Newsletter

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## Data protection

### EU: DP legislation of a Member State may be applied to a foreign company active in the state

- On 1 October, the **Court of Justice of the European Union ruled** that data protection legislation of a Member State **may be applied to a foreign company** exercising in the state, through stable arrangements, a real and effective activity. This applies even if the company's headquarters are elsewhere in the EU.
- The case involved a Slovakian company called Weltimmo which runs a property dealing website in Hungary. Hungarian advertisers lodged complaints with the country's data protection watchdog after Weltimmo did not erase their data upon request.
- In its ruling, the Court of Justice of the EU noted that **in some circumstances**, the presence of only **one employee is sufficient to constitute an establishment** if that representative acts with a degree of stability for the provision of the services concerned in the Member State in question.
- Media reports argued that the judgment might have **far-reaching consequences** for companies operating across Europe. A high number of US data processing companies have their European headquarters in Ireland as they consider the **Irish Data Protection Commission** more favourable to them than some other EU countries.

### EU/US: US Mission to the EU rejects Advocate General's opinion on Safe Harbour

- In an **opinion** published on 28 September, the **United States Mission to the European Union** underlined the **critical importance of the Safe Harbour framework** to the protection of privacy and the conduct of commerce, adding that the agreement serves as a model for privacy protection and international data transfers globally.
- Commenting on the opinion of **Advocate General Bot** which was published last week, the mission stated that it rests on **multiple inaccurate assertions** about US intelligence practices. The US mission stated that the **PRISM programme** Advocate's opinion refers to is **duly authorised by the law**, complies with a number of publicly disclosed controls and limitations and is targeted against particular valid foreign intelligence targets. According to the mission, **Advocate General Bot failed to take into account the Obama administration's push for transparency and accountability**, and the fact that the US and the European Commission have been engaged in a **substantial effort to strengthen the Safe Harbour** framework.
- The US mission said that the Advocate General's reasoning goes well beyond Safe Harbour and could question the ability of other countries, businesses and citizens to rely upon arrangements negotiated with the European Commission.
- Judges of the Court of Justice of the EU will deliver their decision on the case on **6 October**. Media **reports** pointed out that it is rather unusual for a court decision to follow an Advocate's opinion in such a short time-span.

#### EU: Data coalition warns against crossing GDPR red lines

- In a recently published document entitled *GDPR Redlines – the missing link between GDPR and DSM*, the **European Data Coalition** stressed the need to strike the right balance between privacy and innovation.
- According to the coalition, the proposed **General Data Protection Regulation** must ensure conditions for **data-driven innovation**, meaningful harmonisation, open international data transfers, clear separation between the roles and responsibilities of controllers and processors, and provide a proportionate sanctions regime.
- The coalition **warned** that the path currently taken by some of the trialogue negotiators could prevent the EU from realising from improving its digital performance. The proposed rules for **consent and purpose limitation** are among the provisions that would limit data-driven innovations, the coalition underlined.

## Net neutrality

#### EU: Member States approve net neutrality law, Parliament's vote expected in late October

- At the **Competitiveness Council** meeting which took place on 1 October, EU Member States **approved** legislation designed to enshrine net neutrality in law and end mobile-roaming charges. However, according to media reports, the Netherlands voted against the law and five other Member States (Bulgaria, Croatia, Finland, Portugal and Slovenia) lodged formal objections. The Netherlands and Slovenia criticised the fact that the legislation **fails to ban the so-called zero-rating**, the practice which gives customers free access to some online services.
- The **European Parliament** is expected to **adopt the text at its plenary** session which will take place on **23-26 October**.

## Security

#### France: Parliament adopts the proposed law on international surveillance measures

- On 1 October, the **French Parliament** **adopted** the proposed law on **international surveillance** which takes over several provisions of the controversial surveillance law which were censured by the Constitutional court in July.
- Under the new framework, it is the **Prime Minister** (or one of its delegates) who will authorise interceptions on communication systems. As for the **collected data**, whether content or connection, it can be used to monitor individuals and groups of people, but also organisations and geographical areas.
- Commenting on the law, **MP Sergio Coronado** (the Greens) criticised the law highlighting the **risk of a massive surveillance of international communications**. Civil rights organisations, such as Amnesty International and Reporters Without Borders, condemned the bill stating that it has **insufficient oversight provisions** and would lead to **indiscriminate data collection**.
- The text will now be **examined by the Senate**.

## Cybersecurity

#### EU: October – European Cyber Security Month

- The EU's campaign to promote cybersecurity, the European Cyber Security Month, was launched this week. Throughout October over 100 events will take place in 27 countries under the umbrella theme: **Cybersecurity is a shared responsibility– Stop. Think. Connect.**
- **Andrus Ansip**, Vice-President of the European Commission in charge of the Digital Single Market underlined the importance of raising awareness of the risks and threats and the fact that the cybersecurity is indeed a **shared responsibility**.

# Digital Single Market

## EU: Commission's analysis of the role of online platforms is not presumption of regulation

- Speaking at *Digital Platforms: Helping or Hurting Media Pluralism?* event which took place in the European Parliament on 29 September **Martin Bailey** from DG CNECT stated that the **Commission is not analysing the role of platforms with the presumption of regulation**. According to Bailey, the starting point is the fact that they **play a central role** in our societies.
- While the Commission considers platforms as being largely beneficial and spurring innovation, the size of some may make them act as **gatekeepers to certain markets**, Bailey added.
- **Erika Mann**, Facebook's managing director for public policy in Brussels, highlighted that regulation specific to online platforms could **harm innovation**. According to Mann, **competition rules** should be used to **handle violations** as they are better fit for purpose than sector specific regulation.

## EU: ITRE and IMCO Committees publish draft report on Digital Single Market Strategy

- The European Parliament's Rapporteurs on the Commission's Digital Single Market Strategy, **MEP Kaja Kallas** (ALDE, Estonia) from the Industry, Research and Energy Committee of the European Parliament (ITRE) and **MEP Evelyne Gebhardt** (S&D, Germany) from the Internal Market Committee, published their draft **report**.
- In the report, the Parliament called upon the Commission to take swift action to **preserve the integrity of the internal market**, as it is concerned that the Member States are taking a **national approach to regulating the Internet** and the sharing economy.
- The report said that any digital progress needs more private investment in fast communication networks, therefore arguing that the EU should do more to **incentivise the private sector to increase its investment**.
- The Parliament also voiced its support to the Commission's efforts to gather more facts on the **role of online platforms** in the digital economy, and asked the Commission to come forward with proposals, if evidence shows that consumers are suffering from abuses by online platforms.