

ISOC European Regional Bureau Newsletter

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Data protection

EU: Court of Justice of the European Union invalidates Safe Harbour

- On 6 October, the judgement of the **Court of Justice of the European Union** invalidated the Safe Harbour agreement and confirmed that **national data protection watchdogs** need to play a strong role in ensuring high levels of data protection.
- The Court ruled that a decision of the European Commission which finds a third country ensures an adequate level of protection of the personal data transferred, does not reduce the power of national data protection authorities (DPAs) to **independently examine** whether the transfer to a third country complies with the requirements laid down in the EU Data Protection Directive.
- Safe Harbour, which provided a framework for data transfers between the EU and the US, came under criticism in the wake of Snowden's revelations about US intelligence services activities.

EU: Ensuring legal certainty after the Safe Harbour ruling

- Following the decision of the Court to invalidate the Safe Harbour agreement, **EU Justice Commissioner Jourová** stated that, in order to **ensure uniform application of EU law** in the internal market, the Commission will provide clear guidance for national DPAs on **how to deal with data transfer requests to the US**. This approach should avoid fragmentation which may result from national authorities adopting potentially contradicting decisions.
- The umbrella organisation of the national DPAs, the **Article 29 Working Party**, pledged to **provide a coordinated analysis** of the Court's decision and to **determine the consequences** for data transfers.
- In a press conference following the ruling, First Vice-President of the European Commission **Frans Timmermans** said that the judgment is an **important step** towards upholding Europeans' fundamental rights to data protection. The Vice-President also stressed that given the importance of transatlantic data flows for the EU economy, **the continuation of transfers with adequate safeguards is one of the Commission's priorities**.
- The Commission recalled that there are **alternative ways for lawful transatlantic data transfers**, for example the so-called **Binding Corporate Rules** for data transfers between organisations developed by the Article 29 Working Party.
- **Commissioner Vice-President Andrus Ansip** in charge of the Digital Single Market and **EU Commissioner for the Digital Economy and Society Günther Oettinger** will invite business associations to **discuss the invalidation of Safe Harbour**. The meeting will take place next week but no precise date has yet been confirmed.

EU: Will EU-US negotiators agree on a new binding agreement on data protection?

- The EU and the US are engaged in negotiations to **make Safe Harbour more secure**. However, the progress has stalled since the issue of data collection for national security purposes remains contentious. Following the Court's judgement, **Commissioner Jourová pledged to intensify talks with US**

authorities on a renewed and safe framework for the transfer of personal data across the Atlantic.

- However, in an interview with *Der Spiegel*, Commissioner **Oettinger voiced his scepticism** with regards to the EU and US striking a binding agreement on data protection.

EU/US: Reactions to the Safe Harbour judgment

- **EuroISPA**, the pan European association of European Internet Services Providers Associations (ISPAs), stressed that **SMEs will be the most affected** by the ruling considering that they comprise 60% of Safe Harbour participants. EuroISPA urged EU and US negotiators to **develop a new and improved Safe Harbour** which would incorporate the concerns raised by the Court and **restore legal certainty**.
- **DIGITALEUROPE** voiced its concerns regarding the immediate invalidation of transatlantic data flows which in its opinion will **harm the EU's data economy**. The association urged the Commission to provide immediate guidance to companies and establish a new framework as soon as possible.
- Digital right advocacy group **La Quadrature du Net** welcomed the ruling highlighting that the Court stated that **conditions of personal data transfers must be revised**.

Copyright

EU: Plan to overhaul EU copyright rules postponed until 2016

- European Commission sources announced that **plans to update the EU copyright framework will be delayed** until next year. Originally, the Commission planned for the reform to be announced before the end of 2015.
- The proposal is expected to address the issue of **content access across the EU** and **align the existing national exceptions to copyright protection** granted to research organisations, libraries, schools and other institutions.
- A proposal to **address cross-border portability of content** is expected to be the first part of the reform. The plan is likely to allow subscribers travelling within the EU to access legally purchased content when visiting other Member States.

Open Internet

EU: Commissioner Jourová intends to gather stakeholders to discuss hate speech online

- Speaking at the **Colloquium on Fundamental Rights** which took place last week in Brussels, Commissioner Jourová announced that she intends to bring together IT companies, business, national authorities and civil society to **address the issue of online hate speech**.
- With regards to the **prevention of radicalisation**, the Commissioner recalled that the **EU Agenda on Security** to support cooperation between Member States in stepping up the fight against terrorism and cybercrime was set out in April.

Digital Single Market

France: Online consultation on upcoming digital bill proves popular

- An online public consultation on **the outline of the upcoming digital bill** received over **3,500 contributions** in one week. The amendments proposed received nearly 30,000 votes by Internet users.
- In order to dig deeper into the amendments, **Secretary of State in charge of digital Axelle Lemaire** invited four participants to the consultation for an exchange of views.
- More open access to research publications and online management of pseudonyms were among the themes discussed.

Bandwidth management

France: Regulator publishes advice on measuring the use of bandwidth on Internet access networks

- On 7 October, **ARCEP**, the French telecommunications regulator, publicised an **advisory** statement to the French government on **measuring the use of bandwidth on Internet access networks** in France.
- According to the authority, measuring the volume of data traffic on a given link thanks to **SNMP (see RFC 3411)** would be relatively easy to implement and would make it possible to obtain accurate and verifiable results.
- As for where the measurements should be taken, ARCEP concluded that measuring volume using SNMP at **Internet exchange points** would prove a reasonable undertaking for ISPs from a technical and economic standpoint. However, the regulator warned about **limitations of this type of measurement** (e.g. in most cases, streams are coming from technical intermediaries and not a service provider).

General

EU: Launch of the EU Code Week

- The **EU Code Week** will be launched on 10 October with a large number of events taking place across the European Union. **Andrus Ansip**, Commission Vice-President in charge of the Digital Single Market stressed the **importance of digital skills** in the modern workplace.
- In line with the **Digital Single Market Strategy**, the Commission will present an **EU-wide skills agenda** early next year focusing on how to help people develop and upgrade their digital skills and setting out measures to better anticipate which skills are needed.