

ISOC European Regional Bureau Newsletter

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Data protection

EU: Negotiators reached agreement on 70% of GDPR text, final deal possible before the end of 2015

- On 12 October, **MEP Jan Philipp Albrecht** (Greens/EFA, DE), Rapporteur on the proposed **General Data Protection Regulation**, provided an update to the European Parliament's LIBE Committee about the state of play of the trilogue negotiations. According to the Rapporteur, the negotiators reached an **agreement on approximately 70-80% of the text**. However, provisions on how national data protection watchdogs should cooperate and the amount of fines to be imposed for violations remain controversial.
- The Rapporteur also stated that the negotiators will need to **revisit a number of questions**. They include the following issues: how individuals authorise companies to process their personal information, how the provision enshrining the principle of data minimisation is defined, and when companies storing customer data should be able to reuse the information for purposes unrelated to, but compatible with, the original purpose.
- According to Albrecht, despite the number of outstanding issues, the **prospect of signing a deal by the end of the year is realistically possible**.

EU: National DPAs fail to reach agreement on post-Safe Harbour arrangements

- At an extraordinary plenary session of the **Article 29 Working Party**, which took place in Brussels on 15 October, national data protection authorities **failed to reach an agreement** on how to address some of the **issues raised by the Safe Harbour judgment**.
- Following the invalidation of the agreement, companies transferring data to the US need to rely on so-called **model clauses** (templates for contractual terms the Commission provides for companies dealing with overseas data processors) or **binding corporate rules** which outline a company's policies on international transfers of personal data within the same corporate group.
- At the plenary, national watchdogs also discussed the issue of **French and UK mass surveillance policies**. Johannes Caspar, Hamburg Data Protection Commissioner commented that the Commission has to face the fact that there are similar standards and deficiencies [as in the US] on a national level in the EU.
- This week also, the regional data protection authority of Germany's **Schleswig-Holstein** published a position paper in which it stated that **model clauses were also invalid for transatlantic data transfers**. Next week, German regional data protection authorities will meet with the federal agency to discuss a common approach.

EU: Industry calls on the Commission to ensure harmonised implementation of Safe Harbour judgement

- In an **open letter** sent to the President of the European Commission **Jean-Claude Juncker**, industry representatives, including the **European Internet Services Providers Association**, called on the **European Commission to ensure a harmonised implementation of the Safe Harbour judgement**, working in collaboration with national data protection watchdogs. The letter underlined that a lack of

harmonisation could impair the ability of the EU to develop its Digital Single Market.

- The representatives highlighted the crucial importance of national DPAs recognising a **sufficient transitional period** which would allow companies to adjust their practices and called on the European Commission and the US to **rapidly conclude their negotiations and adopt a strengthened Safe Harbour framework**.

EU: Justice Commissioner believes in feasibility of a new EU-US data transfer deal

- **EU Justice Commissioner Věra Jourová** stated that a **new data transfer agreement between the EU and the US is achievable**. However, the Commissioner highlighted the need for the EU to be much more assertive and stronger in the negotiations.
- The Commissioner will **travel to Washington DC** in November to catalyse negotiations.

EU: Court President defends the decision to invalidate Safe Harbour

- **Koen Lenaerts**, the new president of the Court of Justice of the European Union, defended the decision of the Court to invalidate the Safe Harbour agreement.
- While Lenaerts agreed that the **decision risked disrupting businesses**, he argued that the **Court was right to uphold fundamental rights**. The Charter of Fundamental Rights which came into force in 2009 enshrines data privacy as a fundamental right.

EU: Privacy regulators block cloud-computing code

- According to an opinion by the **Article 29 Working Party**, a proposed **privacy code of conduct for cloud computing services** drafted by technology companies **cannot be formally approved** as the draft does not fully meet the minimal legal requirements.
- Work on the code which is expected to drive market uptake of cloud computing services began in 2013. However, according to the Party, **many improvements still need to be delivered**.
- While the opinion argued that the code provides guidance about applicable data protection rules, it **lacks clarity** on issues such as security, the location of processors, international transfers and access to data by law-enforcement agencies.
- In its opinion, the Working Party also said that clarity is needed with regards to the role of cloud providers as data processors, the powers of privacy regulators, and the conditions for adhering to the code.

Germany: Parliament adopts proposed data retention law

- By 404 votes to 148, with seven abstentions, the **German Parliament adopted the proposed data retention law**. The country's data retention rules were scrapped by the Federal Constitutional Court in 2010.
- According to the government, the **law contains additional safeguards** such as limited times for which telecommunications providers will need to store details of customers' communications. Also, providers will not be required to store details of emails, and authorities will only be able to **access stored data upon court order**.
- German states will vote on the law in early November.

Copyright

EU: Commission is said to be finalising its data portability proposal

- According to media reports, the European Commission plans to publish its **proposal on data portability in December**. The proposal is expected to address the issues of **consumers' access to their legal online subscriptions across EU borders**.
- The issue of portability has been separated from the rest of the copyright proposal which should be published in spring 2016.