

ISOC European Regional Bureau Newsletter

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Security/Open Internet

UK: Home Secretary unveils Internet surveillance bill proposal

- On 4 November, **UK Home Secretary Theresa May** presented the **draft Investigatory Powers Bill** which aims to **reform** the existing Internet surveillance framework. The proposal redefines the ways authorities can gather private communications or other forms of data to combat crime, terrorism and other threats to national security and economic wellbeing.
- If adopted, the law will **require Internet companies to store the so-called Internet Connection Records (ICR)** of their customers for up to a year. ICR encompass details of services, websites and data sources to which users connect.
- The proposal also aims to put the powers of police and intelligence services to **hack** into a suspect's computers on a legal footing.
- Despite much speculation that the bill would establish new rules on **encryption**, the proposal will not impose **any additional requirements in relation to encryption** over and above the existing obligations.
- The draft bill has received **strong criticism** from privacy campaigners who criticised the government's capabilities for **collecting bulk** data about Internet users.
- **Reacting** to the publication of the Draft Investigatory Powers Bill, **ISPA**, the UK Internet Services Providers' Association welcomed the attempt to modernise and clarify the law. ISPA stated that it will work with the Government to **ensure the Bill provides ISPs with a stable legal framework** which balances necessary powers with oversight whilst **minimising the impact on business**. However, ISPA also pointed to the fact that **some of the provisions seem to be an extension of existing powers**, for example the definition of Internet Connection Records.
- The need to reform the current framework was underlined in many **reports** that highlighted the lack of transparency and denounced the complexity of the rules. However, the last attempt to reform the surveillance legislation did not pass the vote in the Parliament.

Data protection

EU: Commission issues guidance on transatlantic data transfers

- On 6 November, the European Commission issued its **guidance** on transatlantic data transfers and called for a speedy **establishment of a new framework**. The Commission said that its objective is to **conclude negotiations** on a renewed and safe framework for data flows **within three months**.
- Until a new framework is put in place, **companies need to rely on alternative tools** available, as the Safe Harbour agreement can no longer serve as a legal basis for transfers of personal data to the US, the Commission underlined.
- Without prejudice to the **independence and powers of the Data Protection Authorities (DPAs)** to examine the lawfulness of transfers, the Commission listed the following alternatives that businesses can use to pursue transfers: contractual solutions and Binding Corporate Rules (BCRs).

- The Commission stated that BCRs for intra-group transfers need to be authorised by the DPA in each Member State from which the multinational wishes to transfer data.
- There are also **derogations businesses can use**: conclusion or performance of a contract; establishment, exercise or defence of legal claims; and if there is no other ground, the free and informed consent of the individual.
- **Commission Vice-President Andrus Ansip** underlined the necessity to quickly strike an agreement with the US as transatlantic data flows are essential for both people and businesses.

EU/US: The US will not be changing laws to seal new Safe Harbour deal, says US coordinator

- On 3 November, the US coordinator for international communications and information policy Daniel Sepulveda **refuted the conclusion** of the Court of Justice of the EU that **intelligence practices are excessive in the United States**.
- Commenting on the prospects of striking a new transatlantic data deal, Sepulveda stated **that a new Safe Harbour agreement would not follow a change in US law**.
- **MEP Jan Philipp Albrecht** (Greens, Germany), together with other Members of the Parliament's Civil Liberties Committee (LIBE), **criticised US intelligence agencies for abusing their investigative powers**, and pointed out that without a change in the US laws, a new Safe Harbour framework would not comply with the EU privacy standards defined by the Court's decision that invalidated the Safe Harbour.

Germany: Privacy watchdogs call for high standards

- On 3 November, **German privacy watchdogs** sent a paper to the main EU stakeholders involved in the ongoing trialogue negotiations on the overhaul of the EU data protection framework underlining the need for **data-friendly EU rules**.
- The paper written by the **German Conference of the Independent Data Protection Authorities** further expanded on **11 specific points** on which they disagree with the current state of negotiations.
- Amongst those points, the German privacy watchdogs underlined the importance of **privacy by default**, and expressed their concerns that Article 19 referring to "available technology" does not allow sufficient data security.

EU: Eurojust underlines lack of harmonised data retention rules undermines fight against crime

- The **analysis** of EU Member States' legal framework conducted by Eurojust revealed that the **lack of EU-wide rules on data retention** has created a fragmentation that **undermines criminal investigations** and prosecutions.
- The Court of Justice of the European Union struck down the **EU Data Retention Directive** in April 2014 concluding that it violated citizens' fundamental rights to privacy and data protection. However, in fourteen Member States (among which France, Spain and Sweden), the domestic law on data retention remains in force.

Copyright

EU: Leaked draft Communication on copyright framework overhaul

- A **leaked version** of the upcoming **Communication of the European Commission** entitled *Towards a modern, more European copyright framework* revealed some details on how the overhaul of the legislation will be approached.
- Together with the publication of the Communication (9 December), the Commission will present its proposal for a **regulation on the portability of online content services**. This should ensure that users who have subscribed to or acquired content in their home country can access it when temporarily in another Member State.
- The Commission said it will support the development of a **European aggregator of online search tools** aimed at end users in the form of online indexation of available legal offers.

- With regards to **copyright enforcement**, the Commission said that it will look at **cross-border injunctions** to prevent content piracy.

General

France: Over 20,000 Internet users participated in the drafting of the digital bill

- On 6 November, French Secretary of State in charge of digital **Axelle Lemaire** presented the **draft** of the **French digital bill** which aims to accompany the society in its digital transition. For the first time, **Internet users had the opportunity to participate in the creation of a new law** by proposing amendments. Over 21,000 participated in the consultation.
- When the consultation opened at the end of September, the bill comprised 30 articles. Thanks to the submitted contributions and the debate which followed, **11 articles were added**.
- **Transparency of algorithms used in public administration** and **accessibility of websites** are among the articles that have been added or modified based on users' contributions.