

ISOC European Regional Bureau Newsletter

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Data protection

EU: Negotiators reach agreement on a new transatlantic data transfers framework

- On 2 February, EU Justice Commissioner Jourová and Commission Vice-President for the Digital Single Market Ansip announced that the **EU and the US reached an agreement on a new framework for transatlantic data transfers** – the **EU-US Privacy Shield**. The agreement was reached two days after the deadline set by the **Article 29 Working Party (WP29)**, an umbrella organisation of the EU national data protection authorities.
- The new arrangement for data transfers is designed to **address loopholes** identified in the judgment of the Court of Justice of the European Union (CJEU), which in October 2015 struck down the **Safe Harbour** agreement that provided framework for transatlantic data transfers until then.
- According to the Commission, the EU-US Privacy Shield will provide **strong guarantees for the protection of EU citizens' data transferred to the US**, establish safeguards with regards to the US authorities access to the data transferred and **effective redress mechanisms** designed to solve contentious cases.
- The European Commission believes that the **commitments made by the US limiting access to data by public authorities** for law enforcement and national security purposes address the concerns raised by the CJEU.
- As **announced** by Commissioner Jourová, the Privacy Shield will be a **living mechanism** which will be **reviewed continuously**. The functioning of the new framework will be subject to an **annual joint review** by the European Commission and the US Department of Commerce, with the participation of EU data protection authorities and US national intelligence experts.
- Companies which will sign up to the Privacy Shield will commit to **strong data processing obligations** which will be monitored by the US Department of Commerce and enforceable under US law.
- In order for EU citizens to be able to ascertain their rights if they consider their data has been misused, the **Privacy Shield will provide several redress mechanisms**. It is understood that companies will be playing a more central role in tackling complaints about data handling. Also, there will be greater cooperation between EU data protection authorities and the US Federal Trade Commission to ensure that complaints are investigated and resolved. Should a case not be resolved, the arrangement provides for an **arbitration mechanism**. With regards to contentious cases in the area of data access for national security purposes, a new **Ombudsman function** will be created in the United States.
- At its meeting which took place on 2 February, the **College of Commissioners backed the agreement** and mandated Commissioner Jourová and Vice-President Ansip to draft a Commission's adequacy decision. The Commission announced that after obtaining the advice of the WP29, and consulting EU Member States representatives, the College of Commissioners will adopt the decision.

EU: Article 29's cautious welcome to the EU-US Privacy Shield

- **Isabelle Falque-Pierrotin**, chairwoman of the WP29 and of the French data protection authority (CNIL), **welcomed** the conclusion of the negotiations and called on the Commission to submit all documents related to the new framework by the end of February so that the party could complete its assessment of all personal data transfers to the US by April.
- The WP29 reiterated that any company which transfers data to the US on the basis of the Safe Harbour is acting illegally. In the absence of the Safe Harbour, companies can **use alternative tools** (Standard Contractual Clauses, Binding Corporate Rules) to transfer data to the US. However, the **alternative tools are currently under scrutiny** by the WP29.

EU: A wide range of reactions to the EU-US Privacy Shield

- While the business community's reactions to the Privacy Shield were positive, several Members of the European Parliament and privacy campaigners criticised the proposed agreement.
- **MEP Sophie in 't Veld** (ALDE, the Netherlands) stated that the **weaknesses and uncertainties** around the Privacy Shield may result in the deal being struck down by the CJEU. **Jan Philipp Albrecht** (Greens, Germany) stated that the provisions of the new framework represent a **sell-out of the fundamental EU right** to data protection. **MEP Claude Moraes** (S&D, the UK), Chair of the Parliament's Civil liberties Committee said that the Parliament is still **deeply concerned** that the new arrangement does not address the loopholes identified in the Safe Harbour judgment.
- **Max Schrems**, Austrian privacy campaigner whose complaint to the Irish Data Protection Commissioner led to the CJEU judgment said that the commitments made by the US should not be considered as a legal basis to guarantee the fundamental rights of Europeans.
- **EuroISPA**, European Internet Services Providers Association, welcomed the Privacy Shield as a **step in the right direction**. **DIGITALEUROPE** stated it believes that the new framework will provide significant improvements to the protection of EU citizens' personal data when it is transferred to the US.
- **Swedish government** also welcomed the EU-US data transfers agreement and stated that it is ready to **help drafting the implementing decision**.

Ireland: Data protection authority expands its resources

- **Helen Dixon**, the Irish Data Protection Commissioner, presented the 2016 priorities of her office. The key priority is to expand the authority's resources.
- The move should allow the Irish regulator to handle the **growing importance of privacy-law enforcement** given that a number of Internet multinationals established their headquarters in the country.

Open Internet

Sweden: Proposal to criminalise net hate could increase liability of online services providers

- **Swedish government revealed a proposal** which could make social networks, news websites and other online services **criminally liable for defamatory and libellous** content referred to as **net hate**.
- Providers falling under the scope of the proposed law would be **required to take down net hate content** and **take measures to avoid its spreading**. Such a liability would entail stricter responsibility compared to the existing notice-and-takedown mechanisms linked to copyright infringement.
- Following a conformity review of the proposed provisions with the national and EU law, the proposal will be passed onto the Parliament for approval. The law could **enter into force on 1 July 2017**.
- The proposal is accompanied by a 653-pages long **report** commissioned by the Swedish department of Justice which reviews protection of individuals' privacy.

Taxation/Open Internet

Russia: Federal agencies work on proposals creating equal operating conditions for Internet companies

- **German Klimenko**, President Vladimir Putin's Internet adviser, is considering a technology tax on Internet companies designed to create more equal operating conditions with Russian tech companies.
- Russian news agencies reported that following recommendations made by the Institute for the Development of the Internet, which is headed by Klimenko, on 29 January President Putin signed an order asking a group of federal agencies to work on **proposals to amend legislation** in order to ensure equal operating conditions.
- The Federal Anti-Monopoly Service, Ministry of Economic Development, Ministry of Finance, Federal Tax Service, Ministry of Industry and Trade and Ministry of Communications have until **1 September** to submit their proposals.