

# ISOC European Regional Bureau Newsletter

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## Data protection

### EU: Irish Data Protection Commissioner questions validity of standard contractual clauses

- **Helen Dixon**, the Irish Data Protection Commissioner, announced that her office will seek declaratory relief in the Irish High Court and a referral to the Court of Justice of the European Union (CJEU) to **determine the legal status of data transfers under the so-called standard contractual clauses**.
- The contractual clauses, effectively legal text approved by the European Commission, are used by a high number of multinational companies to **transfer data outside the EU**. Their importance further increased following the **annulation of the Safe Harbour** agreement in October 2015. According to the Irish watchdog, the **clauses do not offer EU citizens suitable redress** if they feel their rights have been infringed.
- Commenting on the decision of the Irish data protection watchdog, privacy activist **Max Schrems** whose complaint led the CJEU to strike down the Safe Harbour agreement, stated that there is no way that the CJEU can say that model contractual clauses are valid, considering the continued existence of US surveillance practice which prompted the annulation of Safe Harbour.
- Dixon added that a wider investigation into whether the United States provides **adequate privacy protection** of EU citizens is under way.

### EU: Parliament adopts resolution calling for improvements to the Privacy Shield

- By 501 votes in favour, 119 against and 31 abstentions, on 26 May, the Members of the European Parliament adopted the proposed joint motion for a **resolution on transatlantic data flows**.
- The resolution calls on the European Commission to continue negotiating with the US in order to **improve the provisions of the Privacy Shield agreement**. The resolution highlighted that the agreement still allows for bulk collection of personal data of non US citizens therefore it does not meet the criteria of necessity and proportionality which are required under the **EU Charter of Fundamental Rights**. Furthermore, the text pointed out the perceived **lack of independence of the proposed ombudsman**.
- Commenting on the ongoing negotiations, **MEP Sophie In't Veld** (ALDE, the Netherlands) underlined that the Commission is taking a risk by adopting a decision that is not rock solid legally.

### EU: Data protection supervisor considers Privacy Shield an interim solution and calls for robust solutions

- **Giovanni Buttarelli**, the European Data Protection Supervisor (EDPS), stated that he has serious concerns over whether the **Privacy Shield agreement** would make it through a court challenge. According to the Supervisor, the Commission is bound to make robust improvements.
- Commenting on the future of transatlantic data transfers, Buttarelli said that the **Privacy Shield is at best an interim solution** as in the long term, **more robust solutions are needed**.
- The data protection watchdog is expected to release his opinion on the Privacy Shield on 30 May.

#### EU: EDPS highlights the importance of DPAs in the digital ecosystem

- Giovanni Buttarelli delivered a **keynote speech** at the **Conference of European Data Protection Authorities (DPAs)** which took place in Budapest on 26 May.
- In his speech, the Supervisor underlined the importance of Europe's DPAs being sufficiently **aware, equipped and cooperative**. Going forward, DPAs should strive for further transparency, accountability and responsiveness to stakeholders.
- As DPAs in Europe are **entrusted with greater powers**, they should equally bear more responsibility, Buttarrelli stated and added that the authorities should be fully independent and at the frontline of the digital ecosystem.

## Digital Single Market

#### EU: Council agrees on general approach to cross-border portability of online content

- On 26 May, the Council of the European Union struck an **agreement** on a **draft regulation** on **cross-border portability of online content services** which will allow it to start negotiations with the European Parliament once the Parliament has set its negotiating position.
- The suggested approach would apply to **online content services provided against payment**. However, free to air services could also benefit from the regulation provided that they verify the country of residence of their subscribers.

#### EU: Commission presents its Communication on online platforms

- On 25 May, the European Commission presented its **Communication on Online Platforms and the Digital Single Market Opportunities and Challenges for Europe**. The text confirmed that the Commission will only consider **targeted policy measures** designed to **address specific clearly identified problems**. The adequacy of the existing regulatory framework will be assessed before any new rules are proposed.
- The Communication said that the principle of applying same or similar rules to comparable digital services will guide the reviews of **EU telecoms legislation** and of the **e-Privacy Directive**. Where possible, the Commission will also seek to reduce the scope and extent of existing regulation.
- The Commission confirmed that the existing **intermediary liability regime**, set out in the **e-Commerce Directive** should be maintained. Targeted instruments such as **audiovisual or copyright rules** will be used to address specific problems. The upcoming **code of conduct on combatting hate speech online** was given as an example of the Commission seeking to **enhance voluntary efforts** of the industry to act responsibly.
- With regards to **data portability**, the Commission confirmed that an initiative on **free flow of data** will be unveiled by the end of the year. The initiative will be designed to facilitate switching and portability of data among different online platforms and cloud computing services.
- In order to ensure a fair and innovation-friendly environment, the Commission's **fact finding mission will carry on** and look into concerns identified in the public consultation e.g. unfair terms and conditions and lack of transparency. Depending on the results, the **Commission will by spring 2017 decide whether further action is needed**.

#### EU: Commission presents its proposal to update the Audiovisual Media Services Directive

- On 25 May, the European Commission presented its **proposal** for an updated **Audiovisual Media Services Directive**. The Commission proposed to update the 2010 Directive to address the latest developments in the media landscape.
- The proposal foresees a **limited extension of the Directive's scope to video-sharing platforms** which tag and organise content. Member States were called upon to ensure that video-sharing platforms put in place measures to: **protect minors from harmful content**, and **protect all citizens from incitement to**

**hatred.** The Commission will invite video-sharing platforms to work within the **Alliance to better protect minors online** to come up with a code of conduct for the industry.

#### **EU: Slovak Presidency to focus on the review of telecoms framework and connectivity**

- A leaked work programme of the **Slovak Presidency** of the Council of the European Union, which will start on 1 July, indicated that in terms of the Digital Single Market policies, the country wants to primarily address the **review of telecoms framework** and **wholesale roaming prices**.
- The Presidency's work programme also listed finalisation of talks with the European Parliament on the proposal on freeing up of the 470-790 MHz spectrum band to help establishing **5G connectivity**.

#### **EU: Standardisation package expected on 1 June**

- The Commission's plan on **harmonisation of technology and service standards** across the EU is expected to be published on **1 June**.
- A **joint initiative on standards** which will bring together representatives of public authorities and industry shall be established as part of the package.

## Encryption

#### **EU: Decryption should be discouraged, says Europol and ENISA**

- On 20 May, Europol and ENISA issued a **joint statement** in which they called for new tools to investigate cybercrimes in the context of secure communication services. The statement urged for a **proportional use of intrusive investigative tools** and legislative provisions on **appropriate supervision**. Interception of **encrypted communication** should be proportional to an individual suspect, the agencies stated.
- **Decryption is discouraged** while alternative solutions are considered in the statement. In cases where circumvention is not possible and access to encrypted information is imperative, **feasible solutions to decrypt without weakening the protective mechanisms must be in place**, the statement reads.