

DATA PROTECTION – September 2016

EU data protection watchdog will not challenge EU-US Privacy Shield (yet)

The Article 29 Working Party (WP29) has released a statement on the EU-US Privacy Shield (Privacy Shield) adequacy decision, which was adopted by the EU Commission on 12 July 2016.

Overall, the WP29 welcomes the final changes made to the Privacy Shield and commended the efforts of the EU Commission and the US authorities for taking measures to address its concerns. However, it flags that a number of concerns are still outstanding.

WP29 requested that the Privacy Shield be reviewed post General Data Protection Regulation (GDPR) in order for rights that are equivalent under this to be incorporated into the Privacy Shield going forwards. The WP29 has indicated that it will not challenge the legality of the shield for at least one year – until the first annual review.

Regardless of the introduction of the Privacy Shield, organisations will still be able to rely on Binding Corporate Rules and the Standard Contractual Clauses (Model Clauses) for transferring data from the EU to the United States. Both these methods have been acknowledged by the European Commission as being valid methods of transferring EU personal data across the Atlantic.

BBC News coverage is available [here](#).

The Article 29 Working Party statement is available [here](#)

ICO releases comments on EU-US Privacy Shield

Much has been written about the EU-US Privacy Shield (Privacy Shield) since its adoption in July, and now the Information Commissioner's Office (ICO) has released a statement on how organisations should approach data transfers to the US. The ICO reminds organisations that if they are still relying on the Safe Harbour regime as the basis to transfer data to the US, that they must review their position. The Safe Harbour regime is no longer considered to give adequate protection and should not be included in contracts. The new Privacy Shield is one alternative option for organisations to use when transferring data to the US, and as a starting point, organisations should check whether their US counterparts are intending to become part of the Privacy Shield regime. The US Department of Commerce has released guidance for organisations which contains a link to a current list of Privacy Shield participants.

Alternative options for organisations include putting into place model clauses in contracts with their US partners, or adopting Binding Corporate Rules. But, as the ICO flags, "Doing nothing is not an option".

The ICO statement is available [here](#).

The US Department of Commerce advice is available [here](#)

EU Commission on E-Privacy Directive consultation

The EU Commission has published a summary report of the public consultation on the review of the Privacy and Electronic Communications Directive (2002/58/EC) (E-Privacy Directive). The public consultation forms part of the EU Commission's evaluation of the E-Privacy Directive and could potentially have an impact on upcoming legislative reform. The review of the E-Privacy directive aims to reinforce trust and security in EU digital services and forms a key part of the Digital Single Market Strategy.

Last week, EU data regulators published opinions on the E-Privacy Directive, which advocated extending the scope of the regime beyond traditional telephone and internet service providers, to cover all "functionality equivalent" services such as messaging in social networks and voice over IP services. They also suggested increasing consent requirements.

The full report is available [here](#).

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