Minutes of the extraordinary meeting of the Article 29 Data Protection Working Party

Brussels, 25 July 2016

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For

☒ Information
☐ Discussion
☒ Adoption
Before the main meeting, DPA UK read a statement from Ms. Elizabeth Denham, the UK Information Commissioner, that DPA UK would continue to be active in the Working Party, and would work towards implementing the GDPR in the UK. She thanked delegates for the messages of support she had received since the Brexit vote.

The Commission presented the Privacy Shield (PS) adequacy decision adopted on the 12th July, and gave a detailed explanation of the issues which had previously been of concern to the delegates, including on the improvements introduced in the decision and its annexes to address such concerns.

DPA France informed the WP about the work of the drafting team, noting that further clarification was still necessary. As regards commercial aspects,   and explanatory comments were needed, and a citizens' guide should be published as soon as possible.

With respect to access by public bodies, it was essential that the EU centralised body for complaints to the Ombudsperson consist of EU data protection authorities, and access should be limited to what is strictly necessary.

The Chair noted that the WP was still awaiting the CJEU decisions in the EU-Canada PNR and the Tele 2 cases, and therefore the will be the key moment for the PS. DPAs should have strong powers in the joint review, and have . In the meantime, the other transfer tools can be used.

DPA Netherlands The ideal outcome is to accept the work of the drafting team, and to now agree on a short statement that the decision is a positive start; that there are still a number of issues with which the WP is not satisfied, and that the joint review will be crucial to see if the concerns of the WP have been taken into account. In the meantime DPAs will deal with complaints as and when they are received.

The EDPS agreed largely with DPA Netherlands that this was the best the WP could achieve. He noted that the    legal analysis, and . Such a statement should be pragmatic, include

DPA Germany supported the EDPS, and advised abstaining from a final decision so as to come up with a more robust statement in September, noting that the Schrems decision acknowledged the power of the DPAs to make such assessments.

The DPAs of the UK, Spain, Italy, Belgium, Austria, Ireland, Luxembourg and Denmark were in favour of a short statement, some of them reminding that it was for the CJEU, if anyone, to assess the decision. DPA Austria urged delegates to now focus on the new EU complaints
panel. DPA Belgium noted that the current draft statement lacked internal coherence, and was inconsistent with the April opinion. DPA Ireland warned that if the WP now issued a negative opinion on the PS, it would put the focus on DPAs as enforcers, without it being clear precisely what kind of enforcement action could be taken. DPA Hungary favoured both a short statement now as well as a new analysis to be adopted in September. DPA Bulgaria saw the benefits of a detailed analysis, but suggested that it was now a question of implementation and participation in the 2017 joint review.

Accordingly, there should be a short message, recalling the improvements, but noting that concerns remain. The joint review should be mentioned as the opportunity for the final WP assessment; the citizens’ guide and the EU complaints panel should also be included, and the statement should conclude that the other transfer tools are valid at least from the 1st August 2016 until the joint review in 2017. The WP is expecting answers to its concerns at the joint review. The WP also has to be ready for the CJEU decisions in relation to bulk collection.

The Chair reiterated... Following discussions on the details of the text, the statement was adopted.