

Minutes of the 106th meeting of the Article 29 Data Protection Working Party

Brussels, 7 - 8 June 2016

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For

- ☒ **Information**
- ☐ **Discussion**
- ☒ **Adoption**

C.1 EU-U.S. Privacy Shield

(a) Update from the European Commission - The Commission informed that, as regards the Privacy Shield negotiations, the Ombudsperson's powers and functional independence had been strengthened, and that EU data subjects could now submit complaints to EU DPAs, which would be channelled to the Ombudsperson through a common EU contact point mutually agreed among them. The US has also agreed to specify in writing the circumstances in which bulk collection of data would be deemed necessary, as well as the applicable limitations and safeguards. Member States continue to meet regularly in the Article 31 committee.

The WP will not be formally consulted again, since the procedure is clearly laid down, and the WP has already fulfilled its function.

(b) Next steps for the WP on adequacy – DPA France informed about discussions about next steps in the Future of Privacy subgroup. Generally, a WP reaction after the decision is adopted is preferred to intervention in current negotiations, either by a communiqué, or by referring the decision to national courts. The effect on other transfer tools will have to be considered, and data controllers could be consulted to see if any legal methods of transfer can be identified. A coordinated, consistent approach is essential, both as regards any reaction to the decision, as well as to enforcement in cases of non-compliance.

Most delegates agreed that the WP had issued its opinion, and that it was now up to the negotiators. The WP decided that it would keep abreast of developments without becoming involved in the negotiations.

DPA Germany reminded that there were still current PS-related issues apart from the draft decision, such as the proceedings in the Irish courts, and that other transfer tools also depended on what the US did with the PS. Safe Harbour was being kept alive because controllers thought

that it was still in force, and if data protection authorities waited for the adoption of the PS decision, enforcement action would have been deferred until October 2016, almost a year after the *Schrems* decision. DPA Belgium considered that Safe Harbour issues should be kept separate from standard contractual clauses.

The DPAs of Germany, Spain and France informed that they were investigating complaints concerning controllers continuing to transfer personal data pursuant to Safe Harbour.

In relation to possible next steps in the event that the PS decision was not acceptable, the Chair noted the consensus of the WP that the International Transfers and Cooperation subgroups could work on a common enforcement strategy, depending on the timing of the decision. As regards ongoing transfers pursuant to Safe Harbour, the actions of the DPAs of Germany, Spain and France should be coordinated in a working group, with DPA Germany taking the lead, and the group reporting to the WP.

(c) Consequences on other transfer tools – DPA Ireland informed that, in the course of its investigation of complaints against Facebook, it had identified one aspect in relation to which the complaint appeared well-founded, as a result of which DPA Ireland will, by application, request the High Court to refer the question to the EU Court of Justice. This could take place at some time between the end of July and the autumn.

The Chair reminded that the WP should not be calling into question the validity of its findings of October 2015, according to which standard contractual clauses could be used as a transfer tool until the adoption of the successor to the Safe Harbour decision, recognising the need for an interim means of effecting onward transfers. The Chair acknowledged, however, that action in relation to transfers based on Safe Harbour was necessary.