

From:

JUST ARTICLE29WP SEC (EC)

Sent:

02 March 2017 09:36

To:

To:

Subject: Urgent Written Procedure - draft letter to the U.S. State Department and its annex - deadline 09/03/2017 16:00
Attachments: WP29_letter_US_Department of State_final_adoption.doc; Annex_Responses_Privacy Shield Ombudsperson Mechanism_final_adoption.docx
Categories: DPA

Dear Members of the Article 29 Data Protection Working Party,

By decision of the Working Party, the draft letter to the U.S. State Department and its annex is hereby submitted to a vote by written procedure.

In this urgent case, the Chair of the Working Party has exceptionally fixed **a deadline of 7 days**.

May I remind you the content of the relevant provisions of the rules of procedure concerning the adoption of documents by written vote:

"Article 13:

The Working Party may decide unanimously to submit a specific question to a written vote.

The Chairperson in urgent cases may submit any matter to a written vote.

*The draft which is subject to a vote shall be sent by the Secretariat to the members entitled to vote in accordance with article 17. The members entitled to vote shall inform the Secretariat of their vote in writing within a term fixed by the Chairperson and in no case in less than fourteen days. **However, in urgent cases the Chair may decide to shorten this deadline to at least 7 days.** Failure to inform the Secretariat in such term shall be considered to be an abstention. The Secretariat shall inform the members of the results of the vote. The result of the vote is recorded in the minutes of the following meeting of the Working Party.*

The written procedure initiated in accordance with paragraph 2 shall be interrupted if one of the members entitled to vote in accordance with article 17 requests within 5 days of receiving the draft that the draft be discussed during a meeting of the Working Party."

Please indicate clearly if you are in favour (yes), against (no) or you abstain.

Responses such as "we have no objection", "we agree" or similar will be treated as abstentions.

Members who are entitled to vote pursuant of Article 17 of the Internal Rules are requested to inform the Secretariat of their vote in writing (either by fax to +32.2.299.80.94 or by e-mail to the following address:

JUST-ARTICLE29WP-SEC@ec.europa.eu

at the latest by 9 March 2017 at 16.00.

Best regards,

The Secretariat of Article 29 Working Party



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http://ec.europa.eu/justice/newsroom/data-protection/index_en.htm

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To the Ombudsperson:

On behalf of the Article 29 Working Party (WP29), as chair, I would like to thank the State Department and the Department of Commerce for attending to the December 2016 plenary of the WP29. The presentation given by your Department regarding the organisational preparations made in order for the Ombudsperson mechanism under the EU-U.S. Privacy Shield to become operational in the United States was very welcome.

Following that meeting, you asked the WP29 questions related to the implementation of the Ombudsperson mechanism by the EU supervisory authorities, in particular related to the setting up of the EU Centralised Body (EUCB). The answers to these questions are annexed to this letter.

I am pleased to inform you that, at its last plenary meeting, the WP29 decided that the data protection authorities (DPAs) of France, the United Kingdom, Bulgaria, Austria and Germany will act on behalf of the EUCB and bring it into operation. Those DPAs are working to establish what is technologically possible in regards to the contact method between the Ombudsperson and the EUCB. This will be a temporary measure until the European Data Protection Board becomes operational in 2018, and until then a compromise solution may have to be reached. My office will provide further information in due course. We also are looking forward to continuing discussions regarding the portal to exchange information regarding requests to the Ombudsperson. Further information as to how the EUCB DPAs see this working is contained in the annex.

As explained in the December meeting, the WP29 considers that it is obliged to provide those EU individuals wishing to submit a request to the Ombudsperson with all the necessary information on how their personal data included will be handled by the Ombudsperson and, in order to respond to the request, with which agencies that personal data will be shared. In this respect, I would be grateful for additional information regarding how the personal data will be retained and for how long, by the Ombudsperson and by the other agencies involved in the process. It would also be appreciated if you could assure us, on behalf of the U.S. agencies involved in the process, that the personal data included in the requests will only be used for the purpose of processing such requests. It would also be helpful if you could confirm whether there are any laws, rules or other restrictions on the way in which any body or person involved in the Ombudsperson mechanism or the in the process is required to handle a request and the information relating to it, for example, any duty of confidentiality.

As I am sure you are aware, the implications of the recent Executive Order 'Enhancing Public Safety in the Interior of the United States' have also been widely discussed in the privacy community. Specifically, different views are expressed as to whether section 14 of this Executive Order impacts on the written assurances provided by the previous US Administration and annexed to the adequacy decision by the European Commission. I would appreciate if you could share your view with the WP29 as to whether the Executive Order or other decisions by the new U.S. Administration have impact on the Privacy Shield and specifically provide confirmation that the new U.S. Administration continues to honor those assurances.

The first joint annual review, in the autumn of 2017, will be a key moment for the robustness and efficiency of the Privacy Shield mechanism to be further assessed including the effect of any legislative changes made since the adoption of Privacy Shield.

Please be assured that the WP29 looks forward to continuing to work together with the new U.S. administration in order to fulfil the joint responsibilities our institutions have under the new Ombudsperson mechanism.

Sincerely,

Chairwoman of the WP29.

OFFICIAL