



EU-US JHA SOM

8 – 9 September, Bratislava

**Page 1: NOT RELATED TO THE SUBJECT**

**On Privacy Shield**

*The Privacy Shield became operational on 1<sup>st</sup> of August 2016. However, a number of arrangements need to be put in place, notably by the US, to ensure its smooth functioning. Meanwhile, the Privacy Shield is being criticized in the EU and might be subject to judicial challenges.*

*A judgment in a case pending before the Irish High Court (other means of transfers- tools which are now used for data transfers after the Safe Harbour invalidation) may indirectly impact its validity. The US will intervene in the procedure as amicus curiae to defend the compliance of the available redress avenues with the EU law requirements.*

**Pages 2 through 3: NOT RELATED TO THE SUBJECT**

## **2) Privacy Shield**

The Privacy Shield package was adopted by the College in written procedure on **12 July 2016**. The Privacy Shield is essential for the continuation of transatlantic data flows. But it must also guarantee an essentially equivalent level of protection to the personal data of Europeans when used by US companies.

The Privacy Shield arrangement has become operational. However, there are still some technical arrangements to be put in place and the US have a central role to play in ensuring the success of the Shield.

In this regard, the most important thing remains to agree on the procedural rules for the Arbitral Panel and on the choice of the arbitrators. We also need to work together on making the Ombudsperson operational.

**Finally, the US involvement in relevant cases in European courts** (such as an *amicus curiae* in the Irish case concerning alternative tools for data transfers) could be useful in offering a clearer picture. **The case is directly relevant for the Privacy Shield** and the US intervention will need to show that the remedies we have agreed on, in particular the Ombudsperson mechanism, are meaningful, effective and function well in practice.

The European Parliament intends to draw up a resolution on the Privacy Shield, which will not have a legal effect, but is likely to put pressure on the Commission in view of the 1<sup>st</sup> annual review.

### **European Parliament - 26 May 2016 resolution on transatlantic data flows (Privacy Shield)/ EP views concerning Umbrella agreement:**

Although the resolution was focused mainly on Privacy Shield (EU – US data transfers in the commercial area), it showed also the sensitivity the EP is giving to the data transfers and data protection issue in relation to US.

**Pages 5 through 7: NOT RELATED TO THE SUBJECT**