

26 September 2023

# MEETING WITH TIM COOK

## CEO of Apple

### Scene setter

Apple has built its **reputation** on the **privacy and security** provided by its devices. Nevertheless, CNIL issued EUR 8 million fine in 2022 under the ePrivacy rules for not collecting the consent of iPhone users before depositing and/or writing identifiers (cookies or similar) used for advertising purposes on their terminals. In addition, several **DPC investigations** are still pending (see background). Apple is **not certified under the EU-US Data Privacy Framework** (it was also not certified under the Privacy Shield, although it participated in the Safe Harbour), but uses **standard contractual clauses** for its data transfers from the EU to third countries. You may therefore want to address the following points:

#### **Data protection in the EU:**

- Welcome Apple's commitment to comply with the GDPR, as well as its engagement with the Irish Data Protection Authority and other EU data protection authorities.
- Since **Apple benefits** from **GDPR One-Stop-Shop** mechanism, stress that the fundamentals of this mechanism are sound, but **improvements regarding enforcement are necessary** to ensure quicker and well-reasoned decisions.
- Explain that the Commission adopted on 4/7/2023 **the proposal for a Regulation on additional procedural rules** relating to GDPR enforcement.
- Stress that we are **not reopening the GDPR**. The proposal will not affect any substantial elements of the GDPR, such as role of DPAs as enforcers and the fundamentals of the One-Stop-Shop mechanism.
- The proposal anticipates **the next COM report on the application of GDPR due for 2024**. For this report, we will collect data from stakeholders as we did for the previous one.

#### **International data flows:**

- Recall the EU's **commitment to facilitate trusted data transfers**, as reflected in our work on adequacy (e.g. ongoing adequacy talks with Brazil and other Latam/Asian countries) and trade negotiations (where we systematically table language prohibiting data localisation, e.g. in our free trade agreements concluded with New Zealand and Chile).
- Explain that, following the modernisation of the EU **standard contractual clauses**, we are now working with international partners that have developed similar tools (e.g. in Latin America and Asia) to facilitate the use of model clauses. For example, we developed a Joint Guide with ASEAN that identifies the convergence between the EU SCCs and the ASEAN model clauses, with the aim of helping companies comply with both sets of clauses.
- Inform about the recent adoption of the adequacy decision for the **EU-US Data Privacy Framework**, which replaces the previous Privacy Shield and addresses the points raised by the CJEU in the Schrems II judgment. Stress that all the safeguards negotiated with the US in the area of national security (e.g. the new Executive Order) apply regardless of the transfer tool used and therefore also facilitate data transfers on the basis of e.g. SCCs.

## **BACKGROUND**

### **Apple and the GDPR**

The main establishment of Apple in the EU is in Ireland; the **competent** DPA is the Irish Data Protection Commission (**DPC**). There are **3 open cross-border inquiries into Apple**:

- 1) the **lawfulness** of the processing in the context of behavioural analysis and targeted advertising on its platform. Initiated by La Quadrature du Net as part of GAFAM complaints in 2018.
- 2) **transparency** of processing and
- 3) **right of access** (in relation to an access request for customer service related personal data) initiated by NOYB.

In 2022 following DPC's inquiry **Apple reduced the retention** of unblurred images of the street views from 18 to 12 months for **Apple Maps**.

The number of on-going inquiries concerning Apple is lower in comparison with other big tech companies.

### **Apple and ePrivacy**

In 2022, the CNIL's fined Apple **8 million euros** for not collecting the consent of iPhone's French users (iOS 14.6 version) before depositing and/or writing identifiers (cookies or similar) used for **advertising purposes** on their terminals.

In 2020 NOYB submitted two **complaints against Apple's tracking code "IDFA"** with the Data Protection Authority of Berlin and the Spanish data protection authority in November 2020 on the basis of e-Privacy Directive (Article 5(3)).

- Spanish DPA inquiry is **closed**. The Spanish DPA declared itself not competent in 2021; In 2023 it was confirmed by the appeal court in Spain.
- The complaint in front of the Berlin DPA is **pending**.

### **Apple's views on the GDPR**

Apple's CEO Tim Cook has singled previously out **the GDPR as an example of what the US and other countries should be doing**. " We should celebrate the transformative work of the European institutions tasked with the successful implementation of the GDPR. It is time for the rest of the world, including my home country, to follow your lead" said Cook in a speech about security in 2018.

Apple has built its **reputation on the privacy and security provided by its devices**. The iPhone encryption capabilities caused Apple's clash with the US law enforcement authorities several times.

In the beginning of 2021, in his opening remarks at the annual European Computers, Privacy & Data Protection conference in Brussels, Apple CEO **Tim Cook criticized companies that benefit from gathering customer data**. In his speech, Cook outlined also Apple technologies and efforts to curtail tracking and unwanted snooping.

### **Commission's proposal on GDPR procedural rules:**

On 4 July 2023, COM adopted the proposal for a regulation laying down additional procedural rules relating to the enforcement of the GDPR. The proposal follows up on issues

identified in COM's 2020 report on the GDPR and the EP's resolution on COM's report. It also responds to the "wish-list" the EDPB sent to COM in October 2022, identifying procedural issues that should be harmonised at EU level to streamline the work of the data protection authorities (DPAs).

The proposal supplements the GDPR in a targeted way by specifying procedural rules to be followed by DPAs when cooperating in cross-border enforcement. The proposal does not alter the roles of the actors in the cross-border enforcement procedure and fully supports the One-Stop-Shop mechanism.

The proposal does not affect any substantial elements of the GDPR, such as the rights of data subjects, the obligations of data controllers and processors, or the lawful grounds for processing personal data as set by the GDPR.

COM hopes to progress the proposal as quickly as possible towards adoption in the EP's current mandate. Discussion on the COM proposal is on-going in Council (Data Protection Working Party).

#### **EU-ASEAN Guide on model clauses**

Both the EU (the Standard Contractual Clauses, SCCs) and ASEAN (the Model Contractual Clauses, MCCs) have independently developed model data protection contracts that can be used by companies for their international data transfers. Since these two sets of clauses share a number of commonalities, we have been working with the data protection authority of Singapore (PDPC) on a Joint EU/ASEAN Guide, with the aim of further facilitating the use of these clauses and showcasing their commonalities.

The objective of the Guide is to help companies operating across the ASEAN and EU regions understand the similarities and differences between the respective contractual clauses. This will allow them to adapt their processing operations to the required safeguards and to assess which additional safeguards they need to ensure when switching between the two sets of clauses, thereby facilitating compliance with ASEAN and EU data protection laws.

To this end, the Guide will consist of two parts:

- Part 1 (on which the work is already completed), which identifies the commonalities and differences between the EU and ASEAN model contractual clauses for international data transfers ([https://commission.europa.eu/system/files/2023-05/%28Final%29%20Joint\\_Guide\\_to\\_ASEAN\\_MCC\\_and\\_EU\\_SCC.pdf](https://commission.europa.eu/system/files/2023-05/%28Final%29%20Joint_Guide_to_ASEAN_MCC_and_EU_SCC.pdf)).
- Part 2 (on which we are currently working), which will identify best practices on the implementation and use of both sets of clauses. This part will be prepared on the basis of input received from stakeholders on Part 1 of the Guide.

**CURRICULUM VITAE**

