Privacy Shield adopted but likely to face legal challenge

Improvements to the first version include better data retention provisions and an independent Ombudsman, but DPAs are still cautious. Laura Linkomies reports.

The Privacy Shield was eventually adopted on 12 July, and entered into force in European Economic Area (EEA) Member States immediately. In the US, the documents will have to be published in the Federal Register which is the equivalent of the EU Official Journal. This adequacy decision, designed for data transfers between the EU (including EEA countries, Norway, Iceland and Liechtenstein) and the US, is an amended version of the draft decision published on 29 February. Laura Linkomies reports.

German privacy law can catch overseas businesses unaware

International companies offering goods or services to German consumers can find themselves drawn into the jurisdiction of German Data Protection Authorities. Tom Cooper reports.

When companies from other EU countries offer goods and services to German consumers the businesses become subject to German data protection law if processing of data is in the context of an establishment operating in Germany. “The general concept is quite easy,” Ulrich Wuermeling, Partner, Latham & Watkins, told a session at the 29th Privacy Laws & Business Annual International Conference. Tom Cooper reports.
Nowhere to hide if you are an international company

The world of data protection is increasingly globalised and EU-style laws are emerging worldwide. The EU level of data protection is now influencing the US framework as well – the EU-US Privacy Shield has been adopted and EU Data Protection Authorities have given it a year to see how the system works [p.1].

Recently the Council of Europe has been working on revising Data Protection Convention 108 in order to bring it more into line with the EU Data Protection Regulation – GDPR (p.14). As our front page story shows, right now, emerging case law continues to have a major influence on how ‘applicable law’ and ‘establishment’ are interpreted. In Germany, it is not only the EU DP Directive’s provision on applicable law, but also action by consumer groups that can catch foreign companies offering goods and services to German consumers.

Also, read about the most recent case involving Amazon on p.6. Luxembourg-based Amazon Europe says that terms and conditions of Luxembourg law applies, but it may also share data with other Amazon group companies. An Austrian consumer protection organisation was the one to take this case to the courts. Unfortunately for anyone seeking a definitive ruling, the Court of Justice of the European Union (CJEU) only said that this is a matter for national courts.

The GDPR will affect existing adequacy decisions as they will need to be revised. Read on p.8 an analysis of Canada’s situation.

An emerging issue which is given close attention by the European Data Protection Supervisor (EDPS) is cooperation between data protection, consumer and competition authorities (p.12). A revised EDPS opinion is expected later this year after its conference in Brussels on 29 September.

In New Zealand, a new position has been created to manage personal information across Government agencies (p.26). Meanwhile the UK government has introduced an identity scheme, which relies on private-sector identity providers undertaking verification according to government defined standards (p.22). The author suggests that this programme could be useful for other countries.

Laura Linkomies, Editor
PRIVACY LAWS & BUSINESS

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