



# DELTA legal

## Legal News

### Do you understand the developments in the personal data transfer regulation in respect to the "Safe Harbour" certification?

*Are you transferring personal data for further processing abroad? You might be doing so illegally!*

**According to ECJ Safe Harbour principles can no longer be used**

Lawyers and the general public were surprised last October by the ground-breaking decision of the European Court of Justice in the Facebook case (C-362/14, Maximilian Schrems v Data Protection Commissioner, the "ECJ ruling"). In this ruling, the ECJ took the side of the Attorney General, whose opinion we shared with you in our Legal News last September. The ECJ **ruled as invalid the Commission decision** dated 26 July 2000 on adequacy of the protection provided by the Safe Harbour privacy principles (the "Commission Decision"), **based on which it was possible to transfer personal data to US companies that comply with the Safe Harbour principles.**

Below we present a brief summary of what the ECJ ruling brought in practice, the reaction of the regulators in Europe and the Czech Republic, and information about the most recent developments in this area.

#### Safe Harbour

Safe Harbour certification was recently a commonly used legal basis for personal data transfers to a parent company or other recipients in the USA, where it was sufficient to notify the Czech Office for Personal Data Protection (the "Czech DPA") about the data processing and related transfers. It was not necessary to request special permission from the Czech DPA for the transfer or to implement personal data protection safeguards, and the Czech DPA did not inspect such transfers. Under the Commission decision, the Safe Harbour certification guaranteed that the USA would provide an adequate level of protection for the transferred personal data. **This is no longer the case.**

#### Reaction of the data protection authorities to the ECJ ruling

Based on the statement of the Working Party created according to Article 29 of Directive 95/46/ES (WP 29, formed by representatives from the data protection authorities of each EU member state) and dated 16 October 2015, the EU data protection authorities should have waited until **the end of January 2016** to impose fines on companies that continued to transfer personal data to the USA based on the Safe Harbour certification. It was expected that until that date a new agreement between the EU and the USA would be agreed, i.e. Safe Harbour 2.0.

#### Recent developments

On 2 February 2016, only the agreement on a new framework on data flows between the EU and the USA was achieved, i.e. the **EU-US Privacy Shield**. According to the

**EU-US  
Privacy  
Shield**

**Opinion of the  
Czech DPA and  
our  
recommendations**

agreement, the **EU-US Privacy Shield** will be based on the following principles:

- **strong obligations on US companies handling Europeans' personal data and robust enforcement and control of these obligations according to US law;**
- **clear limitations, safeguards and oversight over US government access to Europeans' personal data;**
- **effective protection of EU citizens' rights with several redress possibilities (e.g. the national data protection authorities may refer data subjects' complaints to the relevant US authorities regarding possible access of Europeans' personal data by US national intelligence authorities, and a new ombudsperson will be created).**

Reaction of the Czech DPA

According to the opinion of the Czech DPA issued in response to the ECJ ruling, personal data may be transferred to the USA only based on:

1. **Standard Contractual Clauses;**
2. **Corporate Binding Rules;**
3. **Special permission** for the transfer. This is an administrative challenge and there is no legal claim to it, because it is at the discretion of the Czech DPA whether to grant it or not.

Bearing in mind the more complicated and time-consuming process of approval of the Corporate Binding Rules (especially in the case of multinational corporations present in a number of states), our recommendation for those transferring personal data to the USA to a Safe Harbour certified recipient is to immediately conclude an agreement with the recipient that includes standard contractual clauses according to the relevant Commission's decisions and to update your registration with the Czech DPA accordingly. Otherwise you face the risk of a fine up to CZK 10,000,000.

In addition, it seems that the requirements on Corporate Binding Rules and standard contractual clauses will also soon be revised and updated. We will keep you informed of future developments.

**We will be happy to help you assess the risks of personal data transfers to the USA as well as to implement the Corporate Binding Rules and draft standard contractual clauses or requests for special permission from the Czech DPA.**



For more information, please contact Lýdia Cadete at [lydia.cadete@deltalegal.cz](mailto:lydia.cadete@deltalegal.cz) or Michal Zahradník at [Michal.zahradnik@deltalegal.cz](mailto:Michal.zahradnik@deltalegal.cz) or your usual contact person in our office.

This document is intended as a general communication and is not an advice in specific circumstances.

If you do not wish to receive these Legal News, please advise us accordingly at the e-mail address [office@deltalegal.cz](mailto:office@deltalegal.cz).