Basic information

2000/2144(COS) COS - Procedure on a strategy paper (historic)	Procedure completed
Protection of personal data: adequacy of the US safe harbor privacy principles **Subject** 1.20.09 Protection of privacy and data protection	

Key players

European Parliament	**Committee responsible**	**Rapporteur**	**Appointed**
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	PACIOTTI Elena Ornella (PSE)	11/04/2000
Council of the European Union			

Key events

Date	Event	Reference	Summary
31/05/2000	Non-legislative basic document published	N5-0280/2000	Summary
13/06/2000	Committee referral announced in Parliament		
21/06/2000	Vote in committee		Summary
21/06/2000	Committee report tabled for plenary	A5-0177/2000	
03/07/2000	Debate in Parliament		
05/07/2000	Decision by Parliament	T5-0305/2000	Summary
05/07/2000	End of procedure in Parliament		
24/04/2001	Final act published in Official Journal		

Technical information

Procedure reference	2000/2144(COS)
Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 148
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/12821

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, single reading		A5-0177/2000 OJ C 121 24.04.2001, p. 0008	21/06/2000	
Text adopted by Parliament, single reading		T5-0305/2000 OJ C 121 24.04.2001, p. 0038-0152	05/07/2000	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	N5-0280/2000	31/05/2000	Summary
Follow-up document	SEC(2002)0196	13/02/2002	Summary

Protection of personal data: adequacy of the US safe harbor privacy principles

2000/2144(COS) - 05/07/2000 - Text adopted by Parliament, single reading

The European Parliament adopted the report drafted by Mrs Elena Ornella Paciotti (PES, I) on the Draft Commission Decision on the adequacy of the protection provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the US Department of Commerce. The Parliament points out that the draft decision does not describe a situation currently in existence in the United States, but is based on a draft of the safe harbour principles (with the relevant explanations) which the US Department of Commerce will issue for the guidance of companies wishing to meet the adequate protection requirement of the Directve. Furthermore, the Parliament draws the Commission's attention to the risk that the exchange of letters between the Commission and the US Department of Commerce on the implementation of the 'safe harbour' principles could be interpreted by the European Union and/or United States judicial authorities as having the substance of an international agreement adopted in the breach of Article 300 of the Treaty establishing the European Community and the requirement to seek Parliament's assent. With regard to the monitoring of the of the principles, the Parliament insists on the importance on providing the best possible level of consumer protection and, and in this regard must ensure continuous monitoring of the safe harbour principles. It should be noted that the Parliament feels that the free movement of data cannot be authorised until the components of the safe harbour system are operational and the US authorities have informed the Commission that these conditions have been fulfilled. In addition, the Commission and the Member States are called upon: - to provide appropriate information for European citizens on the 'safe harbour', making clear that differences may continue to exist between the 'safe harbour' and European law as regards the processing of personal data; - to set up help-lines to the relevant national authorities and the Commission to deal with any practical difficulties encountered ; - to review the decision in good time in the light of experience and of any legislative developments.

Protection of personal data: adequacy of the US safe harbor privacy principles

2000/2144(COS) - 31/05/2000 - Non-legislative basic document

PURPOSE: Adoption of a Commission Decision on the adequacy of the US Safe Harbor Principles. CONTENT: Art. 25 of Directive 95/46/EC (the Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data) lays down the principles underlying the transfer of personal data to third countries. It states that the Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection. Para. 6 of Art. 25 allows the Commission, assisted by a Committee - composed of the representatives of the Member States and chaired by the representative of the Commission - to find that a third country ensures an adequate level of protection. This finding allows personal data to be transferred from the Member States without additional guarantees being necessary. It is desirable, when that is justified, to make such positive findings in order to provide legal certainty and to simplify procedures for controllers intending to transfer data to third countries. For the same reason, these findings should, if possible, cover all the activities falling within the scope of the Directive. This includes telecommunications, for which the Directive is particularised and complemented by Directive 97/66/EC. Art. 25, para. 2, of Directive 95/46/EC deals with the determination of adequacy: it requires that the level of data protection be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer

operations and that particular consideration be given to the nature of the data, the purpose and duration of the proposed processing operation(s), the country of origin and final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country. Given that the different approaches to data protection in third countries, the adequacy assessment has to be carried out and any decision based on Art. 25 para. 6 has to be enforce in a way that does not arbitrarily or unjustifiably discriminate against or between third countries where like conditions prevail nor constitute a disguised barrier to trade taking into account the Community's present international commitments. The US Government Dept. of Commerce has issued the so-called 'Safe Harbor Privacy Principles' for the protection of personal data transferred from a Member State to the US, and a set of Frequently Asked Questions (FAQs), annexed to the proposed Decision, providing guidance for the implementation of the Principles. Adherence to the Principles is entirely voluntary, but in order to obtain and retain recognition that they provide an adequate level of protection for the transfer of data from the EU to the US, as provided for by this Decision, organisations must comply with the Principles, publicly disclose their privacy policies and be subject to the jurisdiction of theFederal Trade Commission (FTC) under Section 5 of the FTC Act which prohibits unfair or deceptive acts or practices in or affecting commerce, or that of another statutory body that will effectively ensure compliance with the Principles. The FTC Act empowers the FTC to obtain injunctive relief against unfair or deceptive practices, as well as redress for citizens of the US and of other countries and, in carrying out its statutory enforcement responsibilities within the area of its jurisdiction, the FTC has indicated its readiness to investigate complaints, irrespective of the nationality or country of residence of the complainant. The jurisdiction of the FTC is subject to a number of statutory limitations, but in respeect of some of the excluded sectors, the Principles will be enforces by the government bodies in the US (listed in Annex 3 of the Decision), in the areas of their respective competence. Sectors and/or data procession not subject to the jurisdiction of the government bodies in the US listed in Annex 3 fall outside the scope of this Decision. To ensure the proper application of this Decision, it is necessary that organisations adhering to the Principles can be recognised by interested parties, such as data subjects, data exporters and data protection authorities and, to this end, the US Dept. of Commerce or its designee has undertaken to maintain and make available to the public a list of organisations self§certifying their adherence to the Principles and falling within the jurisdiction of at least one of the government bodies listed in Annex 3. This Decision concerns only the adequacy of protection provided in the US under the Principles with a view to meeting the requirements of the Directive's Art. 25, para. 1,. It does not affect conditions or restrictions implementing other provisions of the Directive that pertain to the processing of personal data within the Member States. In the interests of transparency and in order to safeguard the ability of the competent authorities in the Member States to ensure the protection of individuals as regards the processing of their personal data, the Decision specifies exceptional circumstances in which the suspension of specific data flows may be justified, notwithstanding the finding of adequate protection. The 'Safe Harbor' created by the Principles, underpinned by well-established government and private sector mechanisms in the US, represents an innovative approach which may need to be reviewed in the light of experience and of developments concerning the protection of privacy in circumstances in which technology is constantly making easier the transfer and processing of personal data. Where there has been a suspension of data flows, the suspension shall cease as soon as compliance with the Principles is assured and the competent authority concerned in the EU is notified thereof. Member States must notify the Commission without delay if a suspension takes place, and the Member States and the Commission shall also inform each other of cases where the action of bodies responsible for ensuring compliance in the US fails to secure such compliance. If there is evidence that any body responsible for ensuring compliance with the Principles in the US is not effectively fulfilling its role, the Commission shall inform the US Dept.of Commerce and, if necessary, present draft measures in accordance with the procedure established by Art. 31 of the Directive with a view to reversing or suspending the present Decision or limiting its scope.

Protection of personal data: adequacy of the US safe harbor privacy principles

2000/2144(COS) - 13/02/2002 - Follow-up document

This Commission staff working paper concerns the application of Commission decision 520/2000/EC of 26 July pursuant to Directive 95/46 of the European Parliament and of the Council on the adequate protection of personal data provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the US Department of Commerce. On the basis of all the information collected, the Commission's services note that: - all the elements of the Safe Harbour arrangement are in place. The framework is providing a simplifying effect for those exporting personal data to the 129 US organisations in the Safe Harbour as of 1 December 2001 and reduced uncertainty for US organisations interested in importing data from the EU by identifying a standard that corresponds to the adequate protection required by the Directive; - individuals are able to lodge complaints if they believe their rights are being denied, but few have done so and to the Commission's knowledge, no complaint so far remains unresolved; - a substantial number of organisations that have self-certified adherence to the Safe Harbour do not seem to be observing the expected degree of transparency as regards their overall commitment or as regards the contents of their privacy policies. Transparency is a vital feature in self-regulatory systems and it is necessary that organisations improve their practices in this regard; - a wide array of sanctions to enforce Safe Harbour rules exist under dispute resolution mechanisms. But not all dispute resolution mechanisms have indicated publicly their intention to enforce Safe Harbour rules and not all have in place privacy practices applicable to themselves that are in conformity with the Principles, as required by Safe Harbour rules. Enforcement is a key element in the Safe Harbour framework and it is therefore necessary that Safe Harbour organisations use only dispute resolution mechanisms that fully conform to Safe Harbour requirements. The Commission's recent Decisions approving standard contractual clauses for the transfer of data to third countries in no way affect the validity of the Safe Harbour arrangement, which should remain an attractive option for eligible organisations regularly involved in data transfers. The Commission services will continue to co-operate with the Department of Commerce in encouraging US organisations to join and to insist on a rigorous respect for the transparency requirement of the Safe Harbour. The Commission's services and the US Department of Commerce have agreed that transparency is a vital feature in self-regulatory systems and they look to the organisations concerned to improve their practices in this regard. They consider that some at least of the shortcomings identified can be put down to "teething problems". The Commission's services welcome the readiness of the US Department of Commerce to address some of them through improvements in the self-certification process. They consider that it is through the vigilance and enforcement action of the relevant public authorities in the US that the arrangement will remain credible and serve its purpose as a guarantee of adequate protection for personal data transferred from EU to the US. Other stakeholders including consumers and business may find this working document useful in order to make their own assessment ofthe application of the "Safe Harbor" arrangement. These assessment would be a useful contribution to the Commission's evaluation of the Safe Harbor arrangement planned for 2003.