

Privacy & Data Protection

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- Publication of new law delayed, p.17
- Barnes & Noble obtain Borders customer list, p.18
- US Congress examines impact of EU privacy laws, p.19

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EU companies using US cloud providers breaching DP law?

The Dutch minister who recently said that US cloud providers might be banned from doing business in the Netherlands due to US Patriot Act concerns has backtracked, saying that the issue is a “conflict of legislation” that the nations have to deal with.

The Dutch minister in question, Ivo Opstelten, was concerned by the apparent position under the US Patriot Act that vendors based in the US are capable of being compelled to share data with US authorities, without informing affected individuals. As such, EU

organisations utilising US-based servers could well be breaching various aspects of the Data Protection Directive (95/46/EC), including the restrictions on transfers of data and the requirement to inform individuals of the purposes for which their data are processed.

The controversy about the reach of the US Patriot Act follows a separate controversy that arose earlier this year, after the Managing Director of Microsoft UK said that it may have to hand over data being held on its EU-based cloud to US authorities, and keep

details of any such data transfer secret.

Members of the European Parliament have already demanded to know what EU lawmakers intend to do about the problems raised by the conflicts between US and EU laws. Sophia In't Veld, a member of the Parliament's civil liberties committee, asked “does the [European] Commission consider that the US Patriot Act thus effectively overrules the EU Directive on Data Protection? What will the Commission do to remedy this situation, and ensure that EU data

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Binding Safe Processor Rules included in revised law

The European Commission is to introduce new rules that will allow cloud providers to take legal responsibility for the data they host, as part of the update to the Data Protection Directive.

The new ‘Binding Safe Processor Rules’ will ask cloud service providers working in the EU to agree to becoming legally liable should any data breaches occur at their data centres. The system will operate as

an accreditation scheme for cloud providers, meaning that vendors would be required to sign up to the initiative. Companies will have to demonstrate to the data protection authorities in a particular European Union Member State that they meet a series of security criteria. If approval is granted, the order will be effective across the EU.

Though the arrangement

will be voluntary, service providers are likely to sign up to the system due to the risk of commercial harm ensuing from a lack of BSPR approved status.

Stewart Room, Partner at Field Fisher Waterhouse, described the new measure as “a bridge to the cloud” that will enable more firms to take advantage of the technology without the legal repercussions should data be lost or stolen.