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Safe Harbor invalid; Model Clauses and BCRs still stand

EU data protection regulators have advised organisations to make use of Model Clauses and Binding Corporate Rules to legitimise data transfers from Europe to the United States, until a long term solution can be found.

The guidance comes after Europe's highest court invalidated the Safe Harbor framework, the basis on which thousands of EU organisations have transferred personal data to the US during the past 15 years.

The joint statement of the national Data Protection Authorities (issued by the Article 29 Working Party) called for US authorities and EU Member States to find an urgent solution to the challenges created by the ruling.

They said that if an agreement (which could be Safe Harbor-style) wasn't in place by January 2016, then they may begin taking coordinated enforcement action against organisations that are still using Safe Harbor at that date.

Panic about the implications of the ruling, which was delivered on 6th October in the case of *Schrems v Data Protection Commissioner of Ireland,* is widespread.

Compounding matters, national regulators issued diverging guidance on how to apply the ruling.

One German regulator (in the state of Schleswig-Holstein) issued a position paper saying that a proper application of the judgment meant that alternative methods of legitimising transfers — including Model Clauses — were also not safe.

The authority called for a 'comprehensive change' to US law to ensure that there is adequate data protection for personal data being transferred from the EU to the US.

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European Court rules on which regulators can fine companies

The European Court of Justice has given another ruling (the *Weltimmo* case) that has vast ramifications for companies, affecting which data protection authorities have jurisdiction over their activities.

In *Weltimmo,* which was a case referred to the ECJ by the Hungarian authority, the Court said that if a company operates a service in the native language of a country, and has representatives in that country, then it can be held accountable by the country's national data protection agency.

The Hungarian authority's issue was with Slovakian property company (Weltimmo) which operates a property advertising service in Hungary.

The ECJ decided that Weltimmo could be liable for fines imposed by the Hungarian authority for breach of national data protection law.

It decided this on the basis that the property company had a representative in Hungary who (1) was responsible for recovering the debts resulting from the activity, (2) represented the controller in administrative and judicial proceedings,

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