

The Safe Harbour is Dead, long live the Unsafe Harbour?

Reaction of the Transatlantic Consumer Dialogue (TACD) to the announced EU-US Privacy Shield

Back in October 2015, both EU and US organisations strongly welcomed the European Court of Justice ruling to declare the Safe Harbour agreement on transfers of personal data between the EU and the US illegal. “It’s time to get serious about privacy in the US”, our members said.

The deal announced by the Commission and the US Administration yesterday, replaces the “Safe Harbour” with a “Privacy Shield”, but it has little flesh on the bones, so it is difficult to evaluate. On the evidence available, a few extra bells and whistles may have been put in place to improve privacy protections for consumers – and it is not even clear whether it is a deal based on company promises or the assurances are firmer. What is certain is that it is not based on the rule of law, as the Court requested in its judgement. No new legislation is forthcoming in the US to protect consumers, as the TACD has previously urged and continues to do. Nor does it appear to be based on sound data protection principles, at least from what we have so far, which is very little.

Jeff Chester, US Chair of the TACD Information Society committee said: *‘The U.S Commerce Department has steadfastly opposed providing Americans with strong privacy rights. Now it is also working to weaken the EU’s data protection framework and fundamental rights. Its loyalty lies with the U.S data collection industry, not consumers’.*

The ‘Privacy Shield’ PR fanfare was clearly designed to buy the Commission more time before the European authorities started enforcing the law. This it has achieved – today the European Data Protection Authorities announced that they will wait for the details and the documents to start analysing whether the new deal meets all the requirements of the Court. The grace period goes on for another two months or so, and so does the uncertainty for both consumers and businesses.

On the evidence so far, we remain sceptical of the adequacy of the new system for data transfers being put in place and urge the Authorities to begin data protection enforcement proceedings in due course and without delay, for the companies that are relying on the now illegal Safe Harbour only.