

ISOC European Regional Bureau Newsletter

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Data protection

EU: Parliament and Council expected to rubber-stamp GDPR

- The European Parliament asked the Council of the European Union to ensure that it rubber-stamps the proposed **General Data Protection Regulation (GDPR)** in time for the plenary session which will start on 11 April. An agreement in principle was reached by the negotiators in December.
- According to a memo that the Council's secretariat sent to EU Member States representatives, the **Council will adopt the proposed Regulation by written procedure** as there are no Council meetings at which the proposal could be adopted before the Parliament's plenary.
- Following the **adoption by the Parliament which should take place on 14 April**, the Regulation will **become legally binding by mid-2018**.

EU: Chair of Article 29 Working Party confirms opinion on Privacy Shield will be published next week

- **Isabelle Falque-Pierrotin**, President of the French data protection authority CNIL and chair of the Article 29 Working Party (WP29), confirmed that **WP29 will deliver its opinion on the EU-US Privacy Shield** next week as planned, following a **plenary session on 12-13 April**.
- Pierrotin stated that WP29 is still discussing the new transatlantic data transfers agreement with the US public authorities, **seeking clarifications on certain provisions and ensuring consistency**, as the agreement consists of several documents.
- With the publication of opinion, the Article 29 Working Party aims to **reduce legal uncertainty** that followed the scrapping of Safe Harbour agreement by the Court of Justice of the European Union in October 2015; **even if it means calling for complementary work on the Privacy Shield** to prevent further legal controversy in front of the court, Pierrotin stated.

EU: Parliament's Vice-President for Informatics stresses the importance of the Privacy Shield

- **MEP Adina-Ioana Vălean** (EPP, Romania), European Parliament's Vice-President for Informatics and Telecommunications, stressed the **importance of a transatlantic data transfers framework** as businesses need effective and clear rules to function.
- Talking to *Politico*, Vălean said that **critics of the Privacy Shield are overly focused on the weaknesses of the US** instead of looking at the EU and its Member States where there are no more guarantees for data flows.

France: CNIL says master key to encrypted phones would weaken digital society

- The French data protection watchdog **CNIL warned against measures** that would **give public authorities a master key enabling access to information stored** on personal mobile devices.
- Stressing that the Internet is an open, public network which supports the majority of communications, **CNIL argued that encryption is a vital element of security** contributing to the robustness of digital economy.

EU: Commission to launch a public consultation on ePrivacy review

- **Rosa Barcelo**, Head of Sector Digital privacy at DG CONNECT, stated that the review of the **2009 ePrivacy Directive** will focus on assessing whether privacy rules for the telecom sector are still up to date, given the **arrival of online communication tools**, and checking for **possible conflicts with the General Data Protection Regulation**. In the review, the Commission will also consider cookie rules to ensure that they have the intended effect.
- Speaking at an event organised by the European Parliament's Greens group, Barcelo confirmed that a **public consultation on the ePrivacy review will be launched shortly**. The European Commission plans to have a **proposal ready in December**.

France: CNIL publishes its 2015 report

- On 8 April, CNIL presented its **2015 activity report** which confirmed an important increase of the number of requests submitted to the authority.
- In 2015, **CNIL recorded over 7,900 complaints**, which represent a **36% increase** compared to the 2014 figures. According to CNIL, the increase can be explained by growing awareness of citizens in terms of management of their online reputation, and by media coverage of high profile cases, such as the 2014 decision of the Court of Justice of the European Union on the **right to be forgotten**.
- Last year, the watchdog received over **5,800 requests for indirect access** which refer to citizens' requests to consult the files held by the police, gendarmerie, intelligence services or by tax authorities. This represents a 12% increase.
- The year 2015 was characterised by a **sharp increase in the number of formal notices** adopted by the President of the CNIL; 93 were adopted in 2015 against 62 in 2014.

Online platforms

EU: A letter signed by 11 Member States calls on the EU not to regulate online platforms

- In a **letter** addressed to **Commission Vice-President Andrus Ansip**, the United Kingdom, the Czech Republic, Poland, Luxembourg, Finland, Sweden, Denmark, Estonia, Latvia, Lithuania and Bulgaria, called on the Commission to primarily see online platforms as an opportunity, not a threat.
- The signatories highlighted that **platforms are already subject to existing legislative and non-legislative instruments**, such as data protection, competition law and consumer law. The Member States stressed that the **focus should be on effective and consistent implementation of the existing laws**. The capacity of the industry to self-regulate should also be explored.
- A **regulation targeting online platforms could unintentionally damage innovation**, competitiveness and economic growth of the EU.
- A **communication** by the European Commission on online platforms is **expected in June**.

Cybersecurity

EU: ENISA analyses current state-of-play of EU-level cyber crisis management

- **European Network and Information Security Agency (ENISA)** published a **report on the current state-of-play of EU-level cyber crisis management**. ENISA analysed management frameworks in five sectors, including cyber-terrorism to **make recommendations** on more efficient cyber crisis cooperation and management.
- ENISA's analysis revealed that despite a number of initiatives, **cyber crisis management lacks mechanisms and consistency** to provide effective support to the EU-wide cyber community.

- Development of an **EU-level crisis management plan** and **cyber standard operating procedures**, creation of an **EU-wide pool of cyber experts**, and the development of an **EU-level cyber crisis cooperation platform** are among the recommendations made by ENISA.
- The agency also underlined that the European Commission, jointly with the Member States, should review the current legislation on cyber crisis management to better **reflect the distinction between cause and effect**.

Copyright

EU: Advocate General's opinion on hyperlinks to pirated content

- On 7 April, Melchior Wathelet, Advocate General at the Court of Justice of the European Union, published his **opinion** on *GS Media BV v Sanoma Media Netherlands BV* case which concerns **publication of a hyperlink linking to pirated material**. The Advocate General argued that posting of a hyperlink to a website which published photos without authorisation does not in itself constitute a copyright infringement.
- The opinion argued that **facilitating access to copyright-protected material is not a copyright-infringing act if that material is already freely available on another website**. It was concluded that it is the company or the person who posted the material without permission that needs permission from right holders.
- The court's statement said that **if Internet users risk liability for copyright infringement** by placing a hyperlink to works that are freely accessible on another website, it would be **detrimental to the functioning of the Internet**, its architecture, and the development of information society.