

BRE-JBZ

From: Kaai, Geran
Sent: vrijdag 3 april 2015 15:58
To: Verweij, Ellen
Subject: FW: Informal JHA Council - Industry comments on international data transfers
Attachments: ICDP letter Ambassador Netherlands.pdf

From: BRE-JUS
Sent: dinsdag 21 januari 2014 18:59
To: Grave, Martijn-de; Ruiter, Mieneke-de; Dam, Caroline-ten; Alink, Marnix; Kaai, Geran; Timmermans, Marieke; Sorel, Alexander; Lijsterburg, Sander; Bos, Noline; Zwart, Jan
Subject: FW: Informal JHA Council - Industry comments on international data transfers

Van: BRE-CDP
Verzonden: dinsdag 21 januari 2014 18:58:33 (UTC+01:00) Brussels, Copenhagen, Madrid, Paris
Aan: BRE-JUS
Onderwerp: Fw: Informal JHA Council - Industry comments on international data transfers

From: [redacted] [mailto:[redacted]]
Sent: Tuesday, January 21, 2014 04:47 PM
To: BRE-CDP
Subject: Informal JHA Council - Industry comments on international data transfers

Dear Ambassador de Gooijer,

I am contacting you ahead of the informal Justice and Home Affairs Council on 23/24 January where you will be discussing the issue of international data transfers.

The Industry Coalition for Data Protection (ICDP) - comprised of 16 leading association representing thousands of European and international companies - would like to highlight the importance of international data flows and we would like to respectfully submit some thoughts to you ahead of your discussions.

Please do not hesitate to contact me for any further question you may have.

Kind regards,

[redacted]
Digital Economy Policy Group

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[REDACTED]

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His Excellency Pieter de Gooijer
Permanent Representation of the Netherlands to the EU
Avenue de Cortenberg, 4/10
BE - 1000 Brussels

DIGITALEUROPE
14 Rue de la Science
BE-1040 Brussels

Brussels, 21st January 2014

Dear Ambassador de Gooijer,

We are writing to you as the Industry Coalition for Data Protection (ICDP) * in light of the upcoming informal meeting of the EU Justice Council regarding the reform of Europe's data protection rules. We particularly wish to address the issue of international transfer of data.

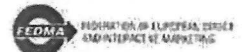
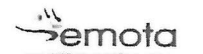
The **importance of international data flows** is well recognised not only by industry, whether big or small, but also by public stakeholders. The European Commission in their 2013 Communication¹ notes that technological developments and shifts in consumer behaviour have led to a significant increase in international data transfers. Such development and the prospect that by 2015 the internet economy will contribute 4-7% of GDP² across most European Member States underpins the need to find the right balance between facilitating the free flow of information and safeguarding European citizens' privacy in a global context.

Transfers of data to countries outside of the EU, whether customer or employee data, are by default not allowed unless either (1) the EU determines that the country in question meets its high standards (adequacy rule) or (2) adequate mechanisms are put in place by companies to enable such transfer such as Binding Corporate Rules (Article 43), model contract clauses (Article 42) or Safe Harbour certification (for transfers to the US). These mechanisms are of crucial importance for the proper functioning of the economy and society not only within the EU but globally. Therefore we ask Ministers not only to follow the line the European Commission has taken in its draft proposal, but also to promote dialogue on data transfers with third countries that are not yet subject to an adequacy decision but account with robust privacy frameworks, so that personal data can be transferred swiftly to and from those third countries.

ICDP is aware that the **Safe Harbour framework** has been in the spotlight recently due to the NSA revelations. However, managing the scope of government surveillance and using data for commercial purposes are two very

¹ European Commission, Communication from the Commission to the European Parliament and the Council, « Rebuilding Trust in EU-US Data Flows », p. 2, 27 November 2013.

² McKinsey Global Institute, Internet Matters: The Net's sweeping impact on growth, jobs, and prosperity (2011)



distinct issues. Safe Harbour, designed for commercial data flows, is essential for businesses and citizens on both sides of the Atlantic and provides significant economic value to both the EU and the US. We caution against a suspension of, or dramatic changes to Safe Harbour. In line with the EC's recommendations, the ICDP supports a meaningful and targeted review to achieve improvements in its implementation and enforcement. What matters is ensuring a continued strong protection of personal data.

The **position of the European Parliament's LIBE committee** has resulted in significant limitations on cross-border data transfers. The LIBE proposal foresees the expiry of existing and well-functioning mechanisms that enable the international transfer of data ("**sunset**" clause). Such clauses would create enormous legal uncertainty, affect the existing protection of personal data and would unnecessarily strain relations with trade partners and users. A recent paper by ECIPE estimates that if cross-border data flows were seriously disrupted the negative impact on EU GDP could reach between – 0.8% and – 1.3%³. This would translate into a direct negative welfare effect of 1.041 EUR per year for a household of four people.⁴

Moreover, the ICDP is seriously concerned by the so-called "**anti-FISA**" clause introduced by the LIBE committee. It states that a transfer of data on request of a court or administrative authority from a third country is not valid unless an international agreement is in place. If a company receives such a request, under legal obligation, it must inform the data subject and get clearance from the Data Protection Authority before complying. This will put companies in a difficult position stemming from jurisdictional clashes and we believe the Council should avoid such wording.

We hope that you find our input useful to the discussions you will be having next week and in the near future. We are of course at your disposal should you or your services wish to discuss the issues in greater detail.

Yours sincerely,




 DIGITALEUROPE on behalf of the ICDP

³ H. Lee-Makiyama, *The Economic Importance of getting data protection right*, European Centre for International Political Economy (ECIPE), 15 April 2013, p. 15

⁴ Ibid

***About the Industry Coalition for Data Protection**

The Industry Coalition for Data Protection (ICDP) is comprised of 16 associations representing thousands of European and international companies who are building, delivering, and advancing the digital experience. Members of ICDP include: Association for Competitive Technologies (ACT), American Chamber of Commerce to the EU (AmCham EU), BSA | The Software Alliance (BSA), DIGITALEUROPE, European Association of Communications Agencies (EACA), European Digital Media Association (EDiMA), European Multi-channel and Online Trade Association (EMOTA), European Publishers Council (EPC), European Internet Services Providers Association (EuroISPA), Federation of European Direct and Interactive Marketing (FEDMA), GS1, IAB Europe, Interactive Software Federation of Europe (ISFE), Japan Business Council in Europe (JBCE), TechAmerica Europe and the World Federation of Advertisers (WFA).