

ARTICLE 29
Data Protection Working Party



WP29 PRESIDENCY

2014 - 2018

Track Record



20

Plenary Meetings

165

Subgroup Meetings

22

Opinions Adopted

12

GDPR Guidelines
Adopted

6

Joint Investigations :

- > Google Privacy Policy
- > Facebook Privacy Policy
- > Microsoft Privacy Policy
- > Yahoo Data Breach
- > WhatsApp Taskforce
- > Uber Taskforce

Over the 4 years, the Working Party was also involved on an ongoing basis in numerous outstanding data protection conferences (e.g. the IAPP, the CPDP Conference, Privacy Laws & Business, Euroforum) or meetings at regional level (EU Parliament, EU Commission, the APEC, APPA, OECD) and organized itself several events such as press conferences or workshops marking key stages of its work.

HIGHLIGHTS ON THE WORKING PARTY'S ACTIVITIES WITH KEY EVENTS AND KEY ACTIONS

1 - OPERATIONALIZING THE RIGHT TO BE FORGOTTEN AFTER THE CJEU'S GOOGLE SPAIN RULING

«The WP29 helps to empower individuals over their digital identities»

The CJEU's **Google Spain** ruling of 13 May 2014, introducing the so called right to be forgotten and enabling the delisting of data from search engine results, has marked a **major step forward for privacy rights of individuals in the EU**, leading the way for further **control over their digital identities**.

As soon as the CJEU's decision was handed down, the WP29 initiated work with the aim to ensure a **consistent and effective implementation** of this new right throughout the EU. Only six months later, the WP29's actions resulted in the adoption of **operational guidelines** providing common criteria for data protection authorities when assessing individual's complaints and to assist search engines in their decisions. The Working Party also put in place a network of contacts within DPAs on the right to be forgotten for ensuring a harmonized management of individual's requests following the Google Spain ruling.

The **success of this right** and its implementation can be illustrated by the **high rate of delisting requests** submitted by individuals in the EU to Google, as the most used search engine, as well as the **high rate of request that receive a positive outcome**. Recent figures show that 2 million of URLs have been submitted for delisting by individuals in the EU and that 43% of them have been delisted by Google.

WHAT'S NEXT? A decisive moment in further ensuring the effectiveness of this right will be for the CJEU to decide on **upholding of the right to be forgotten beyond EU's borders**.

2 - FROM THE SAFE HARBOR TO THE PRIVACY SHIELD

«The WP29 puts pressure on the EU Commission and the US for building a robust EU-US transfer mechanism»

In October 2015, the invalidation of the Safe Harbor framework decided through the CJEU's Schrems ruling had the effect of an earthquake for all concerned stakeholders in the EU, in the US but also beyond and constituted a **turning point** for the **regulation of transfers of personal data outside of the EU**.

This **landmark ruling** which places at its heart the issue of massive and indiscriminate surveillance and its impact for the fundamental rights of individuals in the EU, **concurred with the Working Party's long standing position** according to which **such surveillance practices are incompatible with the EU legal framework**.

Even before the Schrems ruling, the Working Party had been very active throughout 2014 on the issue of intelligence activities conducted by public authorities, in particular in the US, since the 2013 Snowden revelations. This materialized with the publication of legal assessments and recommendations related to the access to personal data by intelligence services for national security purposes.

Because of the major impact of this ruling, the WP29 **urgently called** on October 16th on the Member States and the European institutions to open discussions with US authorities in order to **find political, legal and technical solutions** for transfers to the United States in respect of fundamental rights. The result was the draft adequacy decision, so called the "Privacy Shield", negotiated with the US and presented

by the Commission beginning of February 2016.

In parallel, the WP29 carried out **considerable work** during 2016 and 2017 to **draw the consequences of this ruling and to contribute building a viable solution for EU-US personal data transfers** with the Privacy Shield framework.

An important step in this regard was the publication in April 2016 of the **European Essential Guarantees** which provides the 4 key principles for the processing of personal data in the context of surveillance. This analysis has been based on the current fundamental European texts of law and of the case law both of the European Union Court of Justice and European Court of Human Rights.

Furthermore, since the adoption of the Privacy Shield framework in July 2016, the Working Party worked intensively, including with its US counterparts on the **implementation of a number of operational elements necessary for the functioning of the framework** and developed specific tools to allow individuals in the EU to better understand their rights under the Privacy Shield.

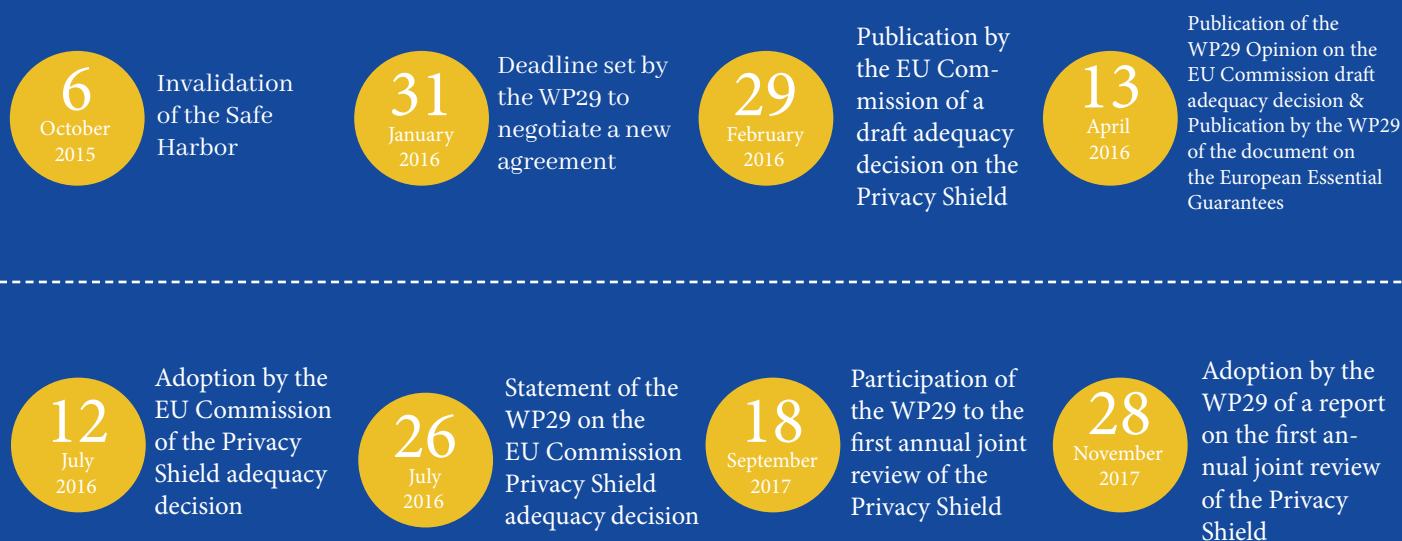
More recently, the Working Party has actively contributed to the preparation and further participated with the European Commission in the first annual joint review of the Privacy Shield to assess the robustness of the mechanism. **The WP has stated its position in a report published in November 2017 highlighting significant remaining concerns that need to be addressed by both the US authorities and the EU Commission.**

Beyond the Privacy Shield, the Working Party's work has wider resonance since in the Schrems ruling the CJEU did not only handed down a decision on EU-US transfers. The Working Party's efforts thus contribute to the **emergence of a new global standard for international transfers** from the EU. This will notably be translated in the WP's upcoming guidelines on adequacy for international transfers.

WHAT'S NEXT RELATED TO THE PRIVACY SHIELD ?

The Working Party identified several priority concerns which need to be resolved by 25 May 2018 along with remaining other concerns to be addressed at the latest at the second joint review. **If no remedy is brought in the specified deadlines, the members of WP29 will take appropriate action, including bringing the Privacy Shield to national courts for a reference to the CJEU for a preliminary ruling.**

SAFE HARBOR / PRIVACY SHIELD





3 - GDPR: A POSITIVE AND DEMANDING STEP FORWARD

«The WP29 anticipates and assists organizations in their transition to the new framework.»

The General Data Protection Regulation which is about to come into application on 25 May 2018, in about three months, marks the **starting point of a new way forward** for the regulation and the protection of personal data in the EU.

From 2014 to 2018, the WP29 has been actively involved both at the **stage of construction** while the new EU data protection framework was being negotiated, and further **following its adoption to support a successful transition** of all concerned actors to the new environment brought by the GDPR.

At different steps of the GDPR's preparation, the WP29 regularly provided its expertise and held several meetings with EU institutions and their representatives involved in the negotiations to share its views and state its position, sometimes on critical aspects, for the shaping of this new framework.

GDPR

January
2012

Publication by the EU Commission of the GDPR Proposal

April
2016

Adoption of the GDPR by the EU Commission, Parliament and Council

July
2016

WP29 GDPR Fablab n°1

April
2017

WP29 GDPR guidelines on Data Portability, DPO and Lead Supervisory Authority

WP29 GDPR Fablab n°2

October
2017

WP29 GDPR Guidelines on PIAs and Pre-adopted guidelines on Profiling, Data Breach

WP29 GDPR Fablab n°3

November
2017

WP29 Pre-adopted GDPR Guidelines on Consent, Transparency, Updated Adequacy and BCR referentials

May
2018

Entry into application of the GDPR

As soon as the final text of the GDPR was adopted, the Working Party defined a **strategic action plan** for 2016-2018 to ensure the GDPR's effective implementation and its translation into an operational reality for individuals, organizations and DPAs themselves. This was complemented with specific action plans for 2016 and 2017 setting out the Working Party's priority actions in this regard.

The actions initiated by the Working Party have been guided by two main objectives :

- > First, to assist controllers and processors in **implementing their new obligations by providing them with operational guidance** to be ready by 25 May 2018. This resulted in the publication of **12 guidelines clarifying key concepts and new requirements** of the GDPR and providing controllers and processors with **common interpretation**. These guidelines have been elaborated on the basis of a co-regulatory approach as the Working Party has relied on Fablabs with civil society, business federations, academics, and DPAs to exchange views, as well as on national public consultations and consultations at EU level for each of the guidelines adopted. The aim pursued with this approach was for the Working Party to produce guidance which would take into account the needs from the field.
- > Second, to build the **new governance model** for Data Protection Authorities, decentralized and integrated at the same time with the introduction of the EDPB. To ensure that this new mo-

del can be fully effective and allow the DPAs to operate under the new framework the Working Party has extensively worked on further defining the various cooperation mechanisms and procedures provided by the GDPR, its sanction powers and also on making the EDPB operational with rules of procedure.

WHAT'S NEXT? With only few months left before the GDPR goes live, the Working Party continues working full steam, finalizing additional guidance for controllers and processors, organizing the DPA's future cooperation and setting up the EDPB with its IT system, website and rules of procedure, so that everyone is equipped on time for entering this new data protection landscape.



Focus on Fablabs

In 2016 and 2017, the WP29 organized three Fablabs, or interactive workshops held in Brussels, gathering more than 250 participants. These workshops enabled the Working Party to hear from and discuss with representatives of civil society, business federations and academics on practical issues relating to key elements of the GDPR in view of its implementation. The Fablabs were thus the occasion for the Working Party to collect valuable feedback from the ground in view of developing its GDPR guidelines and reflecting on future work.

4 – ENFORCEMENT AS A GROWING COOPERATION NEED

«The WP29 launches coordinated enforcement operations over global actors»

During the past four years, the Working Party initiated a series of **coordinated or joint enforcement operations** on global actors such as Google and Facebook through dedicated contact groups or specific taskforces with the aim to carry out **investigations on complex or critical data protection issues** at EU or national level.

WHAT'S NEXT? These actions demonstrated the Working Party's ability to act in a **coordinated and united way** already for several years ago, **prefiguring the DPAs future activities in this field under the GDPR**. Those taskforce have been a laboratory to anticipate and develop the future cooperation under the GDPR.

5 – BRIDGES WITH INTERNATIONAL COUNTERPARTS

«The WP takes steps towards interoperability between EU and other data protection frameworks»

The Working Party's 2014-2018 activities involved initiatives **reinforcing international cooperation** with its counterparts of other regions of the world **creating bridges** and launching the first steps **towards interoperability** between EU and other data protection frameworks.

An unprecedented initiative in this perspective was the development and adoption in 2014 of the BCR – **CPBR referential** setting respective privacy and data protection requirements provided by both frameworks following joint work conducted with the APEC Member Economies.

A further recent initiative in the same direction was the organization in 2017, of **the first WP29/AP-PA-GDPR workshop** hosted by the CNIL, with the purpose to share knowledge and strengthen the cooperation between the participants around the future challenges that will arise in relation to the upcoming application of the GDPR.

WHAT'S NEXT? The Working Party is in the process of contributing to the strategic consultation launched by the International Conference of Data Protection and Privacy Commissioners (ICDPPC) which gathers privacy authorities around the world. Such process aims at defining the upcoming orientations and future development of this organization.

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