

DATA PROTECTION PANEL

(related to FAQs 5 and 9 issued by the US Department of Commerce, and annexed to Commission Decision 2000/520/EC on the adequacy of the 'safe harbor' privacy principles)

25 July 2005

This note provides some basic information in the form of Q&A on the European Data Protection Authorities Panel (“Data protection panel”) foreseen by the Safe Harbour Decision¹, including the procedures to lodge a complaint before the panel.

This note does not intend to provide a thorough legal description of the Data protection panel. Instead, it aims to be a useful tool to help those individuals who believe that their personal data has been processed in violation of the Safe Harbour Decision to file a complaint. Accordingly, the individuals particularly concerned by this paper are those whose personal data has been transferred to United States based companies that have subscribed to the Safe Harbour Principles (hereinafter “harborites”) and have chosen the data protection panel as their independent recourse mechanism.

QUESTIONS AND ANSWERS

1. Data protection panel: What is it?

The Data protection panel is an informal body created under the Safe Harbour Decision, which, among others, is competent for investigating and resolving complaints lodged by individuals for alleged infringement of the Safe Harbour principles².

2. Who are the members of the data protection panel?

The data protection panel is composed of representatives of various EU data protection authorities. A full list of the data protection authorities that are members of the panel is available at: <http://forum.europa.eu.int/Public/irc/secureida/safeharbor/home>

3. How do I file a complaint and how does the data protection panel work?

Complaints forms are available on this web site and also on the web site of the data protection panel <http://forum.europa.eu.int/Public/irc/secureida/safeharbor/home>

¹ Commission decision 520/2000/EC of 26 July 2000 pursuant to Directive 95/46 of the European Parliament and of the Council on the adequacy of the protection provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the US Department of Commerce in OJ 215 of 28 August 2000.

² The full list of the panel’s functions is contained FAQ 5 of the Safe Harbour decision.

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The web site of the data protection panel also provides a document with the operating procedures for the data protection panel. The data protection Unit of the European Commission acts as the Secretariat of the Panel.

4. What would constitute a potential infringement of a Safe Harbour principle which could be investigated by the data protection panel?

Let us first describe one of the Safe Harbour principles and continue later with an example that illustrates how it could be infringed.

One of the Safe Harbour principles is the so-called “onward transfer principle” according to which harborites must provide individuals with the possibility to opt out of disclosure of their personal data to third parties.

The following illustrates a potential violation of the above principle:

If your EU based employer transferred your personal data to the US based headquarters operating under the Safe Harbour agreement and the latter disclosed such information without your consent, this action may be tantamount to a violation of the onward transfer principle. In this case, the data protection panel would be competent to investigate whether such action constitutes an infringement of the Safe Harbour principles.

5. Is the data protection panel competent to investigate *all* the complaints that derive from an alleged infringement of the Safe Harbour principles?

No, the data protection panel does not have competence to investigate *all* the complaints that derive from an alleged infringement of the Safe Harbour principles. In certain cases, individuals will have other recourse mechanisms described under answer number 6 below.

6. How can I know if the data protection panel will be competent to investigate my complaint?

First, if your complaint refers to personal information that is part of human resources data, then the data protection panel will be competent to investigate such complaint.

Second, if your complaint refers to personal information that it is not human resources data, the data protection panel will be competent to investigate such complaint if the US based organisation that imported the personal information selected the EU panel as their independent recourse mechanism. In order to ascertain whether this is the case, you can check it in the publicly available Safe Harbour certification list maintained by the US Department of Commerce:

<http://web.ita.doc.gov/safeharbor/shlist.nsf/webPages/safe+harbor+list>

As you can see, this list features the names of the companies that have self certified to the Safe Harbour. By clicking on each individual company, additional

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information on self certification to the Safe Harbour is provided. This includes a reference to the effective mechanism for assuring compliance chosen by the company in question (see section “Safe Harbour information”, question “Dispute Resolution”). If the response to the question “Dispute resolution” is “the data protection panel”, then the panel will be competent.

Finally, if the panel is not competent, it does not mean that there is no effective mechanism for assuring compliance with the Safe Harbor principles. In such case, the company will have designed another mechanism to ensure compliance with the principles and remedy the problems arising out of failure to comply with the principles. Other such mechanisms are private dispute resolution systems such as for example BBB OnLine, TRUSTe, AICPA WebTrust, etc.