

Privacy & Data Protection

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Headlines

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- Further sweeping cybersecurity changes in China, p.19
- Tribunal decision highlights need to notify breaches right away, p.20

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Working Party wants e-Privacy framework harmonised with GDPR

The Article 29 Working Party has given its Opinion on the review of Directive 2002/58/EC (the e-Privacy Directive), emphasising that the revision should take into account technological developments in the digital market as well as the provisions of the General Data Protection Regulation.

Among the specific recommendations, the Working Party argues for an extension of the scope of e-Privacy rules beyond traditional electronic services providers to ‘functionally equivalent services’, such as internet telephony and instant

messaging services.

The Working Party also notes the need to provide clearer definitions of the terms ‘public electronic communications network,’ ‘electronic communications services,’ and ‘information society services’ in order to extend the application of the revised e-Privacy instrument to these functionally equivalent services.

In another key recommendation, the Working Party wants to see the restriction on the interception of electronic communications content extended to ensure that users are protected, regardless

of whether they are direct electronic communications between users or communications within a defined user group (e.g. a conference call). It said the terms ‘interception’ and ‘surveillance’ must be interpreted in the broadest technological sense, to include the injection of unique identifiers to the communication.

The Working Party suggests rephrasing the cookies consent rule in Article 5(3) of the e-Privacy Directive so that it is as technologically neutral as possible, and captures all tracking techniques used on

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Privacy Shield — initial take up slow

More and more companies are signing up to the new Privacy Shield, but the take up in the first two weeks has been slow according to the US agency responsible for certifications.

The US Department of Commerce reported in mid August that approximately 40 US companies have been certified since it began accepting applications on 1st August 2016.

Approximately 200 applications are currently being processed, but that is well below the 4,000 companies that were certified under the former Safe Harbor agreement for transatlantic data transfers.

Google, Microsoft and Salesforce are among the large companies that have signed up to the scheme.

One possible explanation for the slow uptake is the uncertainty created by the Article 29 Working Party, which only conditionally approved the framework in late July. In its Opinion on the draft EU-US Privacy Shield adequacy decision, the Working Party expressed concerns and asked for various clarifications, though it gave a one year grace period to iron out the concerns.

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