

08 EXPORT TO THIRD COUNTRIES

What is needed?

A significant number of countries around the world, including the USA, have weaker data protection legislation than the European Union or no comprehensive legislation at all. In order to re-establish trust, European citizens need to be sure that if their data are being transferred to a third country, his/her fundamental right to data protection and the level of protection provided by EU rules will be respected.

Weak controls on export of data means a weakening of protection of data and an incentive to process data abroad to circumvent EU rules.

Export of data should only be possible when verifiable safeguards are in place that data will be processed in line with the minimum EU standards or better.

negative amendments

A large number of amendments are trying to weaken the protection offered.

Some amendments propose weakening the new EU rules by automatically recognising the applicability of past adequacy decisions even though the rules would have changed (e.g. Amendment 2384 (ALDE)).

Some amendments propose weakening the standards when it comes to processing for historical, statistical and scientific research (for example amendments 3075 (EPP), 3077 (ALDE) and 3094 (ALDE)).

Some amendments seek to recognise an adequate protection when the controller has “adduced appropriate safeguards”, to give data controllers the right to unilaterally overrule a decision of non-adequacy by the European Commission (such as amendment 2145 (ALDE) and 2148 (ALDE)).

positive amendments

The reintroduction of the article guaranteeing safeguards when it comes to disclosure to third countries by virtue of extra-territorial law is very important. (Amendment 256 (Greens))

The review of current adequacy decisions is also a good addition, as proposed by amendments 2412 (EPP) and 250 (Greens). Amendment 259 from the Greens seeks to reintroduce the “Article 42” provision that would explicitly prohibit the transfer of personal data to third country law enforcement authorities outside of agreed legal frameworks.

The prohibition of transfer to third countries when the laws allow processing that would be unlawful under the Regulation, as proposed in amendments 2385 (GUE/NGL) and 2386 (S&D) is also welcome.

LAW ENFORCEMENT ACCESS

The transfer of data of the companies involved in the PRISM scandal to the US is allowed under the EU-US Safe Harbour Agreement. The problem is that the Safe Harbour does not offer enough protection for EU citizens as US data protection is lower than the European standards.

The Safe Harbour agreement is so unclear that the European Commission is certain that only Recital 90 of the draft Regulation was needed in order to clarify

the situation. Meanwhile, the Irish data protection authority is clear that companies are completely within their rights to transfer European data to the US authorities for apparently any purpose, without information being provided to the citizen and regardless of the presence or absence of any safeguards in the United States. This approach profoundly and fatally undermines the fundamental right of European citizens to protection of their personal data.