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data protection & privacy EU developments

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Data protection – EU developments

2014-2016: a state of limbo until 2018

Key Developments:

- May 2014 European Court of Justice (ECJ), “*Gonzalez*”, establishes right to be forgotten
- Oct 2015 ECJ in “*Shrems*” kills US-EU safe harbour -
- Oct 2015 ECJ ruled that a company operating a service in the native language of a country with representatives in that country may be held accountable by the country’s national data protection agency despite being headquartered elsewhere
- Dec 2015 EU Commission agrees General Data Protection Regulation (GDPR) reform:
 1. more citizen rights, stiffer fines, broad vendor liability, impact assessments
 2. one-stop-regulation
 3. less red tape for SMEs – December 2015
- 2016 Commission & US working party agree «Data Shield»
- Art. 29 Group criticises Data Shield, opinion from Art. 31 expected April/May 2016

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Key Developments (contd.):

- 2016 GDPR passes EU Parliament, reform Data protection directive for 2018 looks more certain, air passenger information
- 2016 ePrivacy Directive is next, focus on internet data collection, cookies, eg Do Not Track (DNT)
- contradiction of data protection regime & eprivacy regime, eg location information
- Anti-terrorism directive allows mass spying
- Pending ECJ case on GCHQ practices of mass spying

EU/US: Data shield or not data shield - what should you do / know about data shield

Options other than Data Shield

- express consent
- Binding Corporate Rules
- EU-approved model clause agreements.

Data Shield elements:

- Commitments
- Transparency rules
- Complaint procedures with firm deadlines to respond
- ❑ But: scheme is heavily criticised by data watchdogs – provisional only / mid/year should be clearer

CSL Evaluation:

both options are solutions with problems.

preference will depend on varying attributes of entities

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Upshot:

Already today, publishers doing business in Europe, vendors in Europe and Customers will expect US partners to answer questions on their data privacy policy; questions will increase if Data Shield falls through. E-commerce sites also need to comply on cookies and DNT.

Run-up to 2018, data flow and data collection policy should be ready/comply GDPR. Harmonization likely to increase across EU. EU influence increases.

QUESTIONS, COMMENTS?

THANK YOU!

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