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Safe Harbor Regime

The Past

As the number of signed-up organisations increased concerns began to arise in different quarters that the Safe Harbor regime did not provide the standards of protection of personal data required under EU law. A number of organisations were found not to be in compliance and certain data protection authorities questioned their effectiveness. Revelations regarding US surveillance programmes added to these concerns, and EU institutions began to suggest that Safe Harbor needed to be suspended. The EU and US then began negotiations to revise the Safe Harbor regime.

In 2000, the EU and US agreed to the Safe Harbor regime which allowed for the transfer of personal data from the EEA to the US in a streamlined way. Organisations that signed up to the Safe Harbor principles and self- certified their compliance with them could legitimately transfer personal data to the US.

The Present

On 6 October 2015, the Court of Justice of the European Union found that the European Commission's approval of the Safe Harbor regime was invalid under EU law.

It found that the regime breached individuals' fundamental rights because of the mass and indiscriminate surveillance engaged in by US authorities and the lack of legal remedy in the US for a breach of the Safe Harbor principles.

The Future

There are other means by which personal data can be legitimately transferred outside of the EEA, such as by way of model contract clauses, so it is likely that we will see greater use of these means.

In the near term, the EU Commission is working with data protection authorities across the EU in order to provide guidance on the transfer of data to the US.

The effect and ramifications of the decision have not yet been fully identified. The immediate implication appears to be that organisations cannot (or at least should not) rely on Safe Harbor to transfer personal data from the EU to the US.

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