



WOJCIECH RAFAŁ WIEWIÓROWSKI
ASSISTANT SUPERVISOR

Mr Michael MANN
Head of Division EEAS SG.AFFGEN.1,
Strategic Communications
European External Action Service
(EEAS)
B-1046 Brussels

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Please use edps@edps.europa.eu for all
correspondence

Dear Mr Mann,

By letter of 18 December 2015, the EEAS consulted the EDPS on the use of a US-based company for sending out alerts and newsletters to subscribers from EU institutions, member states administrations and partner countries. The company, MAILCHIMP, was registered and certified itself under the Safe Harbour scheme. Due to the European Court of Justice's ruling of 6 October 2015 in the case C-362/14, which annulled the Safe Harbour Decision 2000/520, other adequate safeguards need to be considered for transferring personal data to the U.S. In the letter it is mentioned that EEAS has analysed the matter and come to the conclusion that adequate safeguards could be adduced through Standard Contractual Clauses to ensure that the processing operation is in line with Regulation (EC) 45/2001.

On 18 January 2016, the EDPS requested the EEAS not to proceed with the processing activity until the Article 29 working party (the WP29) releases its analysis on the impact of the judgment on other transfer tools in the beginning of February¹, since we would not be in a position to answer your request until the WP29 as a group, of which the EDPS is a member, has agreed on such analysis.

On 3 February 2016, the WP29 released its statement where they call on the Commission to communicate all documents pertaining to the new arrangement "EU-U.S. Privacy Shield" by the end of February. The WP29 will then be in position to complete its assessment for all personal data transfers to the U.S. and consider whether transfer mechanisms, such as Standard Contractual Clauses, still can be used for personal data transfers to the U.S. In the meantime, the WP29 considers that this is still the case for existing transfer mechanisms.²

¹http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/2015/20151016_wp29_statement_on_schrems_judgement.pdf

²http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/2016/20160203_statement_consequences_schrems_judgement_en.pdf

It results from the WP29 analysis that other means of ensuring a lawful transfer, such as Standard Contractual Clauses, are for the time being still a valid legal basis for carrying out the transfer to the U.S. However, we draw your attention to the fact that the WP29 has not yet completed its assessment of whether the EU-U.S. Privacy Shield will alleviate concerns regarding the U.S. legal framework and to what extent this new arrangement will provide legal certainty for the other transfer tools, such as Standard Contractual Clauses. This will take place after the end of February. We therefore recommend that, once the WP29 assessment is finalized and made public, you revise your practices and where necessary bring them in line with the outcome of the WP29's assessment with the help of the Data Protection Officer of the EEAS.

We thank you for your cooperation. Do not hesitate to contact us should you have any further query in that respect.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: Emese SAVOIA-KELETI, Data Protection Officer - EEAS