



11194/02/EN
WP 62

**Working Document on
Functioning of the Safe Harbor Agreement**

Adopted on 2 July 2002

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 14 of Directive 97/66/EC.

The secretariat is provided by Directorate A (Functioning and impact of the single market - Coordination - Data protection) of the European Commission's, Internal Market Directorate-General, B-1049 Brussels, Belgium, Office No C100-6/136.
Website: www.europa.eu.int/comm/privacy

THE WORKING PARTY ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA

set up by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995¹,

having regard to Articles 29 and 30 paragraphs 1 (a) and 3 of that Directive,

having regard to its Rules of Procedure and in particular to Articles 12 and 14 thereof,

HAS ADOPTED THE PRESENT WORKING DOCUMENT:

Given the forthcoming conclusion of the first two-year implementation period of Commission's decision of 26 July 2000 concerning the *Safe Harbor* agreement, this Working Party has found it necessary to start considering the state of implementation of said agreement.²

The Working Party took note, in the first place, of the Commission staff working paper recently issued³, in which information was provided on whether all the elements of the Safe Harbor were in place as well as on the initial known experiences concerning transparency requirements, functioning of dispute resolution mechanisms and protection of rights.

The Working Party subsequently performed a visit to Washington, on 13 and 14 March 2002, where a delegation carried out an initial in-depth analysis in co-operation with various competent authorities, non-governmental organisations and dispute resolution bodies.

The information collected through this first set of initiatives is quite helpful in highlighting the need for co-operation of all the authorities concerned with a view to full implementation of the Agreement.

The Working Party will contribute shortly to the analysis of this issue in discharging its tasks of supervision over application of national laws on transborder data flows and the level of protection in third countries as well as of advisor as to the appropriate measures to be taken with a view to the protection of rights and freedoms of natural persons⁴, in

¹ Official Journal no. L 281 of 23/11/1995, p. 31, available at:
http://europa.eu.int/comm/internal_market/en/dataprot/index.htm

² Commission decision 520/2000/EC of 26 July 2000 pursuant to Directive 95/46 of the European Parliament and of the Council on the adequacy of the protection provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the US Department of Commerce in OJ 215 of 28 August 2000, page 7.

³ Working Paper SEC(2002)196 of 13.02.2002.

⁴ Article 30(1), Directive 95/46/EC.

addition to the guidelines provided in the six opinions issued before adoption of the Commission's decision of 26 July 2000.⁵

In particular, the Working Party would like to consider in a constructive fashion whether possible differences in the opinions concerning implementation of certain Safe Harbor requirements may be overcome, and how to bridge possible gaps between the principles set forth in the Agreement and the implementing practices. It will also pay special attention to the transparency requirements to be met by the organisations as regards both their self-certified adherence to the Safe Harbor agreement and their privacy policies.

The Working Party is therefore of the opinion that it is appropriate for it to be provided with up-to-date information with particular regard to a few issues related to implementation of the Agreement. The Working Party reserves, on the basis of that information, to call upon all the authorities, organisations and companies concerned to make renewed efforts in order to enhance compliance with the principles and prerequisites of an Agreement that is approaching the conclusion of its breakout period – which started on 1 November 2000, when the Safe Harbor framework came into force. This is also appropriate in the light of the possibility for this specific Agreement, which is closely related to the peculiar US experience, to be applied to other processing operations concerning personal data in the US.

Given the above premises, the Working Party considers it necessary to rapidly analyse the arrangements to be made in order to enhance knowledge in Europe of possible infringements of the relevant principles.

Additionally, the Working Party considers it appropriate to assess data subjects' awareness of the use of their personal data for further purposes.

In line with the request made by the European Parliament in its resolution of 5 July 2000⁶, the Working Party calls upon all the authorities, organisations and associations concerned to cooperate in order to collect - in particular by way of the national data protection authorities and the European Commission - updated, specific information with particular regard to

- arrangements to increase transparency in respect of the signatory organisations, especially if a declaration of adherence to the SH is not accompanied by appropriate privacy policies,
- the possibility to provide for additional verification mechanisms in respect of the procedure for adhering to the Agreement, compliance of harborites' conduct with their privacy policies and the possible loss of Safe Harbor benefits,
- the initiatives to be adopted in order to enhance knowledge of the prerequisites for adherence to the Safe Harbor, also by means of short, easily understandable documents and the possible integration of the *Safe Harbor Workbook*,
- the measures to be adopted in order to refine dispute resolution mechanisms, enhance uniformity and publicity of the relevant criteria, increase transparency of the outcome of those disputes and streamline their publication mechanisms,

⁵ Opinion no. 4/2000, Opinion no. 3/2000, Opinion no. 7/1999, Opinion 4/1999, Opinion 2/1999, Opinion 1/1999.

⁶ European Parliament resolution on the Draft Commission Decision on the adequacy of the protection ..., published in the OJ no. C 121 of 24.04.2001, page 152.

- the difficulties that may arise from the existence of multiple privacy policies declared by the same operator,
- the priority criteria and possible additional initiatives undertaken by the competent US bodies and the arrangements for renewed co-operation between the European data protection panel, dispute resolution bodies and the Federal Trade Commission.

The Working Party is of the opinion that it would be desirable for the above information to be collected within the next 31 October and reserves the right to issue an opinion on this matter as soon as it is provided with updated information.

Done at Brussels, 2 July 2002

For the Working Party

The Chairman

Stefano RODOTA