



The Privacy Shield: towards a new “Safe Harbor”?

Alba Bosch Moliné
Barcelona, 20 May 2016
WJA Congress

The “collect it all” approach

Rather than look for a single needle in the haystack, let's collect the whole haystack

Collect it all, tag it, store it. And whatever it is you want, you go searching for it.

Former senior US intelligence on the approach of the former NSA Director Gen. Keith B. Alexander. The Washington Post. July 14, 2013

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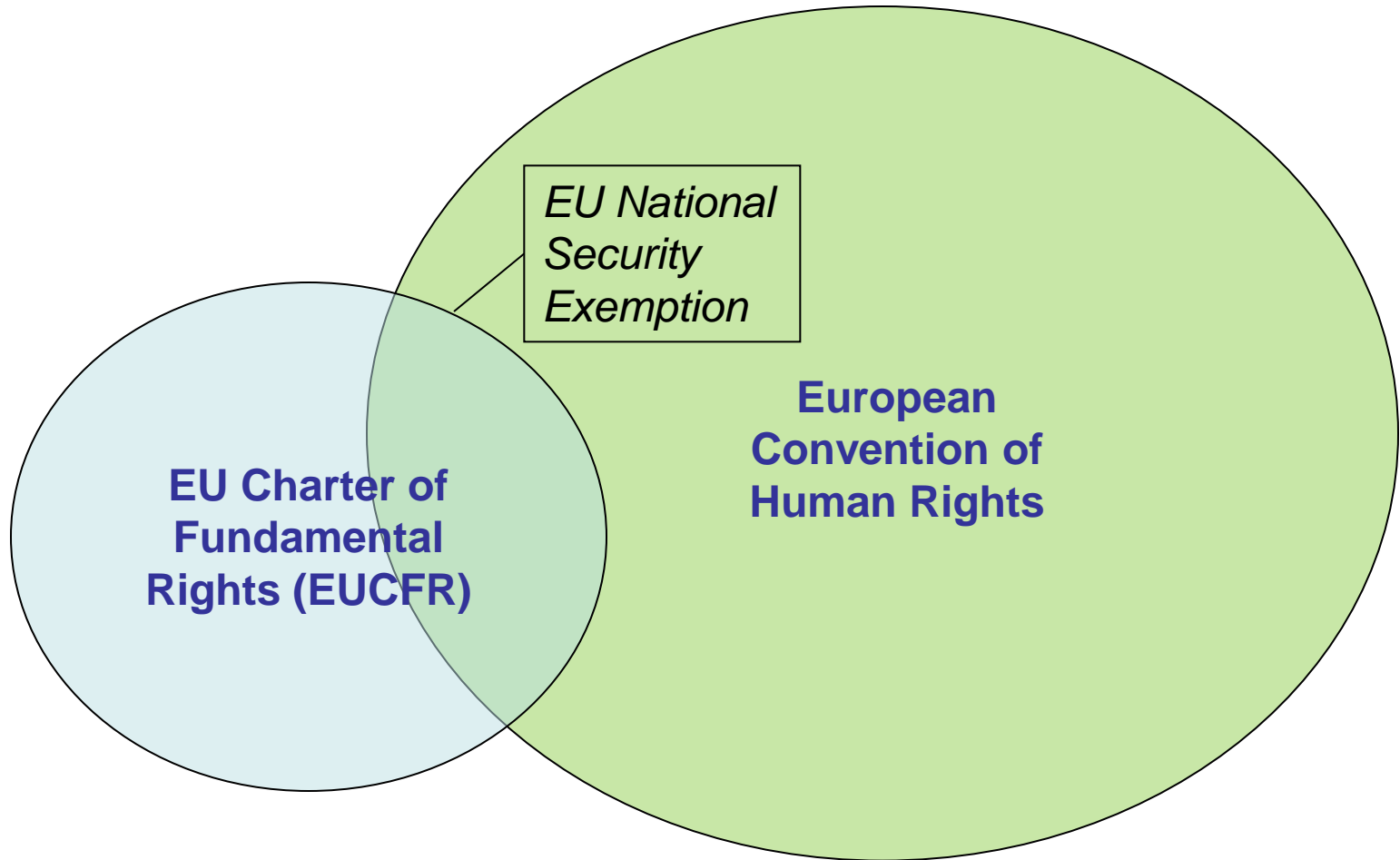
1. The role of the EDPS
2. From Safe Harbour to Privacy Shield
3. Improvements
4. Concerns
5. Where are we now?

➤ *All opinions are personal*

The role of the EDPS

1. **Monitoring** the EU administration's processing of personal data;
2. **advising** on policies and legislation that affect privacy;
3. **cooperating** with similar authorities to ensure consistent data protection.

The National Security Exemption



The role of the EU Court of Justice



Invalidated the
Safe Harbor
Decision

➤ **Schrems v. Data Protection Commissioner of Ireland, 6 October 2015, Case C-362/14**

➤ **Digital Rights Ireland v Minister for Communications..., 8 April 2014
Joined Cases C-293/12 and C-594/12**

Annulled the Data
Retention Directive

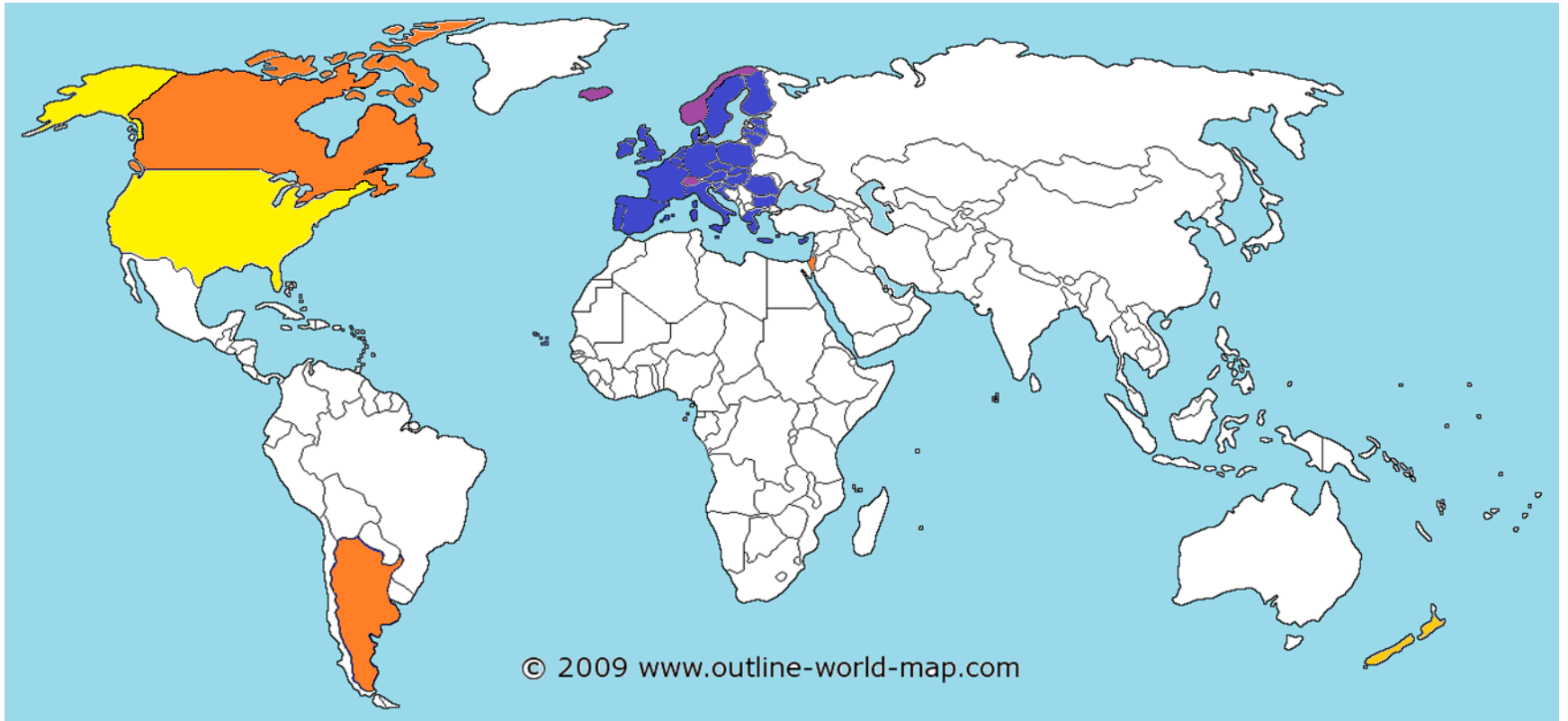
Safe Harbor

- **July 2000** Commission Decision that Safe Harbor ensures an “adequate” level of protection

Companies that enter Safe Harbor:

- a) adopt self regulatory privacy policy
 - sign up with privacy seal organisation; or
 - develop own policy that conforms with Safe Harbor
- b) promise to respect the 7 Principles + 15 FAQs
- c) subject to US jurisdiction - FTC, DoT
- d) breach actionable under s.5 FTC Act

EU Adequacy Decisions



The Privacy Shield

COMMISSION [DRAFT] ADEQUACY DECISION

Privacy Shield
Principles
(Annex II.II)

DoC letter
(PS presentation
and DoC role)
(Annex I)

**ODNI
letter**
(Signals
intelligence
collection)
(Annex VI)

US federal and *state*
laws, regulations,
case law,
international
agreements

General
derogations
to the PS
Principles
(Annex II.I.5)

DoS letter
(Ombusperson)
(Annex III)

DoJ letter
(Law
enforcement
access)
(Annex VII)

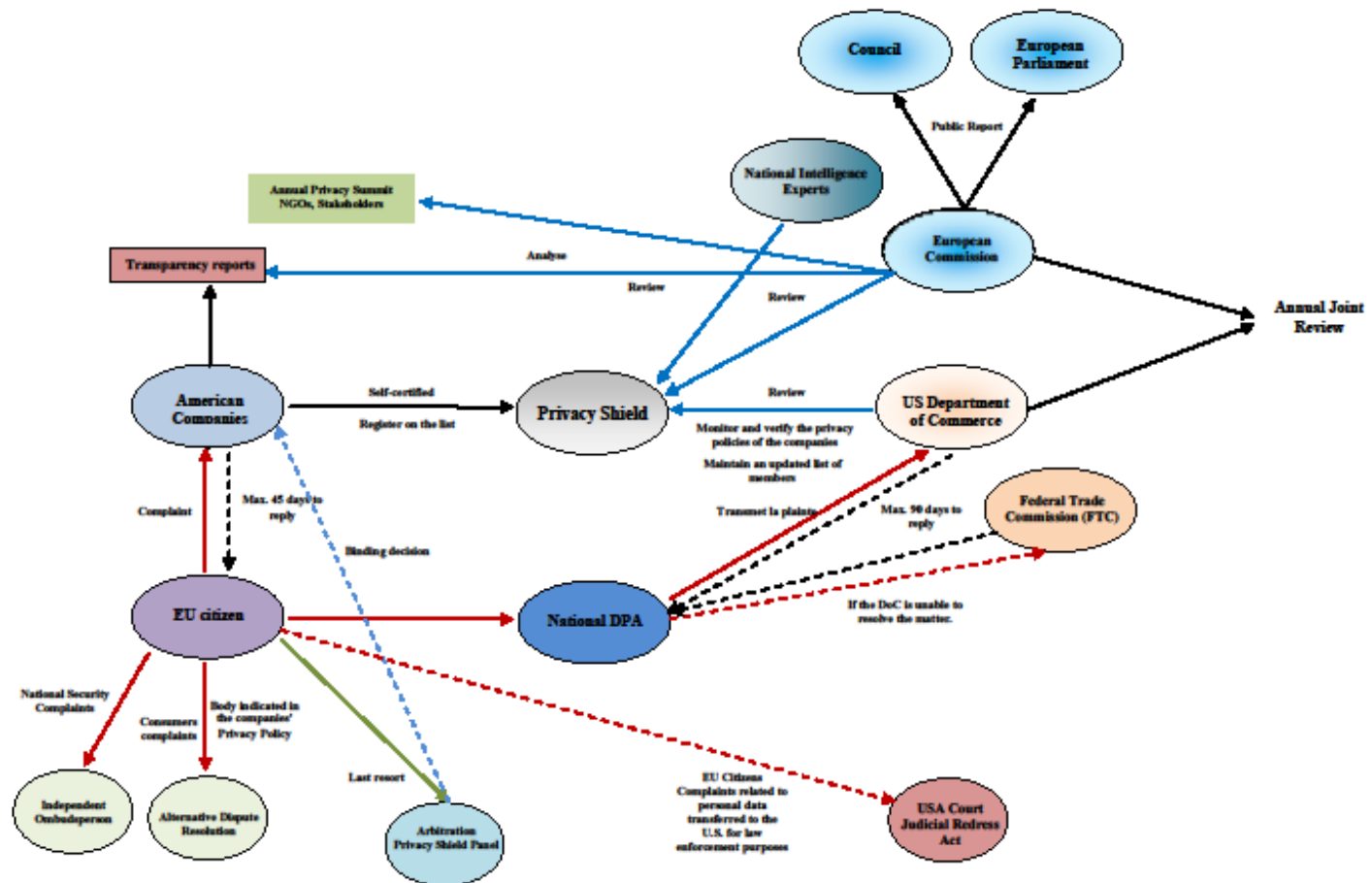
- National security
- *Law enforcement*
- *Access for other public interest purposes*
- *Privacy*

PS
Supplemental Principles
(specific
exceptions)
(Annex II.III)

FTC letter
(FTC enforcement)
(Annex IV)

DoT letter
(DoT role)
(Annex V)

PS Redress mechanisms



Terminology

² For the purposes of this directive, the terms "foreign intelligence" and "counterintelligence" shall have the same meaning as they have in Executive Order 12333. Thus, "foreign intelligence" means "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists," and "counterintelligence" means "information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities." Executive Order 12333 further notes that "[i]ntelligence includes foreign intelligence and counterintelligence."

Where are we now?

- European Parliament votes next week
- European Commission continues negotiating with the US
- EU Member States opinion to be delivered in upcoming “Article 31 Committee” meeting(s)



Thank you for your attention!

For more information:

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