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.

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➢ 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

EU National Security Exemption

EU Charter of Fundamental Rights (EUCFR)

European Convention of Human Rights
The role of the EU Court of Justice

- Digital Rights Ireland v Minister for Communications..., 8 April 2014, Joined Cases C-293/12 and C-594/12
- Schrems v. Data Protection Commissioner of Ireland, 6 October 2015, Case C-362/14

- Invalidated the Safe Harbor Decision
- 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

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PS Redress mechanisms

Mariana Opris, EDPS
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."

Presidential Policy Directive 28, footnote 2
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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