Dear Director Coats,

Following the reports from Reuters on October 4th 2016 that Yahoo! had scanned customer emails for US intelligence purposes at the request of US intelligence agencies, the Article 29 Data Protection Working Party addressed a letter to Yahoo! in order to obtain additional information regarding the legal basis and justification for any surveillance activities concerning individuals subject to EU law.

Yahoo! answered the WP29 by way of a letter dated December 9th 2016, stating that on these issues related to national surveillance it referred to your services to provide more information as it found itself unable to respond in detail and attached the letter dated October 19th, 2016 that Yahoo! had addressed you.

We have also been informed of the letter you sent to the Commission on this issue (among others) on April 3rd 2017. However, as Data Protection Authorities (DPAs) charged with the protection of European individuals’ data, we are deeply concerned by the aforementioned report and the significant number of EU data subjects which may be affected by the scanning of their emails for US intelligence purposes and consider we should exchange directly on these issues. As competent interlocutors on these matters, we also hope to receive additional substantive information on the following points.

Given the requirements of EU law and the relevant case law of the European Court of Justice as regards access to personal data of EU data subjects for national security purposes, as well as the commitments undertaken by your services within the framework of the Privacy Shield (annex VI), we request you to provide us with certain information.

In particular, we ask that you inform us as to whether any order was issued or any access request was sent to Yahoo! concerning its European customers. If so, in order to evaluate the compatibility of these access requests with EU law as regards the protection of personal data and the right to privacy, we invite you to provide more detailed information regarding the legal basis for such an order or request. We also invite you to provide any additional information as to the purposes of and legitimate objectives pursued by these requests and as to the criteria used to tailor them and ensure that they were strictly necessary and proportionate to the protection of national security in order to avoid any indiscriminate surveillance of EU individuals and collection or interception of their personal data carried out on a large scale.

In addition, should any personal data of European customers of Yahoo! had been (or are currently being) accessed for U.S. national security purposes, we would also request that you
send us explanations about the procedures in place to ensure that the dissemination and retention of these data are limited to the minimum necessary, about the oversight exercised over the access requests issued, and about the rights, including the rights to have access to effective remedies and judicial review, afforded to EU data subjects in this context.

We appreciate sensitivities relating to national security that such a response may generate and remain open to agreeing a mutually acceptable format for the information sharing.

We ask you to provide your response on these important issues to the Chair of the WP29.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN
Chairwoman

Copy to Ombudsperson