

ARTICLE 29 Data Protection Working Party



Brussels, 15 June 2017

Ms Věra Jourová
Commissioner for Justice, Consumers and
Gender Equality
European Commission

Dear Commissioner,

In the following weeks, will start the first Annual Joint Review on the Privacy Shield.

According to the adequacy decision, the Commission will perform this Joint Review and the participation in the meetings will be open for EU DPAs and representatives of the Article 29 Working Party.

In order to prepare for a meaningful Joint Review, the Working Party feels therefore the need to share its views and recommendations with the Commission in advance of the review itself.

The present letter thus aims to provide the Commission with certain additional elements further to the views and recommendations expressed by the Working Party regarding the preparation of Privacy Shield first annual Joint Review.

1. Scope of the first annual Joint Review

The WP29 would like to first underline the shared understanding of this group on the fact that this Joint Review will be a facts-finding mission to obtain the relevant information and necessary evidence to demonstrate the robustness of the Privacy Shield.

2. Content of the first annual Joint Review

As regards the content of the Joint Review, the Working Party 29 deems necessary that the US authorities answer the precise concerns expressed by the Working Party on the draft Privacy Shield decision, on the concrete enforcement by the decision and also in relation to the evolutions of US Law and jurisprudence since the adoption of the Privacy Shield.

Therefore, the WP29 has prepared sets of questions on the commercial part and on the law enforcement and national security access. The WP29 recommends to address them to the US authorities in advance of the Joint Review in order to have a meaningful exercise. This would allow to focus discussions on unanswered questions and/or on remaining issues. Nevertheless, rather than an exhaustive list, these questions should be seen as expressing the core preoccupations of the WP29, without prejudice to any other additional questions that may appear necessary in the course of the preparation of the Joint Review or of the Joint Review itself.

3. Representation of the WP29 in the first annual Joint Review team

As regards the representatives of the Working Party 29, we would like to propose 8 persons to participate to the Joint Review.

The WP29 also feels necessary to suggest to the Commission to split the Joint Review team to perform the Joint Review in Washington, after a first common meeting, in order to lead discussions on commercial aspects and on law enforcement and national security aspects in parallel. This would allow more extensive and efficient meetings with the US authorities.

4. Timing and duration of the first annual Joint Review

As regards the timing, the WP29 understands that the Joint Review will take place during the week of the 18th of September. The WP29 considers that to be meaningful and to allow for a thorough assessment, it should last 2-3 days of meetings and 1 day of fact-finding drafting on-site. However, the timeline might differ depending on the answers from the US authorities to the sets of questions.

5. Organisation and process of the visit in the US

As regards the US authorities that should take part in the meetings organized during the Joint Review, the WP29 sees the need for the presence of the following agencies in the Joint Review:

As to the commercial part:

- Department of Commerce
- Department of Transport
- Federal Trade Commission

As to the law enforcement and national security part:

- ODNI
- Department of State (represented by the office of the Ombudsperson)
- Department of Justice
- PCLOB
- FBI
- Department for Homeland Security
- CIA
- NSA

As regards other interlocutors the Commission would deem necessary to engage with, the WP29 would like to suggest to the Commission to have contacts with representatives of the Civil Society stakeholders in the EU, in addition to US Civil Society stakeholders, in order to collect their views in advance of the Joint Review, as well as to meet Civil Society stakeholders in the US as part of the Joint Review.

6. Report on the first annual Joint Review

The WP29 understands that the Joint Review will be followed by a report of the Commission to the Council and the European Parliament. In this regard, the WP29 also understands that it will be given the possibility to provide comments on the Commission's report before the report is made public.

Subject to the outcome of the Joint Review and the report of the Commission, the WP29 may also present a separate public report following the Joint review and an updated assessment of the Privacy Shield in a separate statement based on the findings presented to the Plenary by the review team of the Working Party.

Looking forward to the next steps of this important exercise,

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN

Chairwoman