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European Data Protection Board Recommendations 01/2020 on measures that supplement transfer tools

Assintel's point of view

The EDPB – European Data Protection Board, in response to the European Court of Justice decision in the Schrems II case, issued on November 10 its Recommendations on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data and opened a public consultation, welcoming comments from all the stakeholders potentially involved and affected. The Shrems II decision invalidated the so-called Privacy Shield, creating a fair level of uncertainty in the personal data protection field. Hence, the measures laid down by the EDPB are designed to cover this regulatory gap.

Assintel, as the Italian business association of ICT and digital companies, strongly believe that, on behalf of the companies it represents, its comment on the subject matter should be submitted and taken into account.

In the light of the measures laid down by the Recommendations and taking into account what the Italian Data Protection Authority stated publicly, Assintel recognize the wider scope of the EDPB norm, which would involve any other third Country whose regulatory system is not considered by the European Commission as able to offer a level of personal data protection equivalent to the European one. Also, it is fairly clear that a normative misalignment between EU and US (as well as thirt Countries) regulatory systems exists. A misalignment which could be solved through adjustments at EU or US (or both) regulatory level.

Albeit contractual and technological remedies may not suffice, Assintel strongly believes that a focus on encryption should be essential to ensure a baseline level of data protection and security. Now more than ever, in order to avoid unlawful accesses and, at the same time, allow companies to transfer data to third countries, it is of the utmost importance to develop a system that guarantees upstream encryption. In case third country authorities request access to data stored in their territory or by their companies abroad, they can send a request to the respective European authority who can evaluate if this request is lawful. In conclusion, guaranteeing a strong encryption system, combined with traceability and access management, is a solid first step to increase the level of data protection and assure that companies can continue transferring data in a secure environment. Nevertheless, a long term vision must take into account the need to achieve a legal understanding between the US (and other third countries potentially involved) and the EU.

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