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# PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

## Safe Harbor invalid: What to expect after the ruling?

**Sarah Cadiot** and **Laura De Boel** explain what businesses can do to enable transfers to the US.

**O**n 6 October 2015, the Court of Justice of the European Union (CJEU) issued a landmark judgment<sup>1</sup> invalidating the European Commission's Decision of 2000<sup>2</sup> which recognised the adequacy of the EU-US Safe Harbor framework

(Safe Harbor). In addition to the invalidation of this adequacy decision, the CJEU upheld the power of national Data Protection Authorities (DPAs) to independently investigate international data

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## ECJ clarifies meaning of territorial scope in DP Directive

Hungarian data protection law applies to a company's activities in Hungary, although registered in Slovakia. **Andrea Klára Soós** reports.

**O**n 1 October 2015, the European Court of Justice (ECJ) published its decision in case No. C-230/2014<sup>1</sup>. In this decision the ECJ followed the argumentation of Advocate General Pedro Cruz Villalón<sup>2</sup> and came to

the conclusion that the principle of establishment should be applied by the authorities of other EU Member States. Consequently, a data controller could be investigated

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Companies from other industries have also been subject to similar fines: Telefonica, (one of the leading telecommunications companies) has already been found guilty and required to pay more than ten fines in 2015 of varying amounts up to a maximum of 50,000 euros. In the legal procedures involving Telefonica, the issue is that the company failed to properly prove the existence of a contract with the consumer and therefore the consent of the data subject. The case law goes from identity theft cases to errors which lead to incorrect names in the data files.

In all of these decisions, the SDPA has applied article 6 of the Data Protection Act and article 12 of the Data Protection Regulation (Royal Decree 1720/2007) which states that the data controller needs to be able to prove it has obtained consent of the data subject for the processing of data. In this sense, these companies have been sanctioned as they failed to provide such proof.

As for the criteria to determine the value and level of the sanctions, Spanish Law establishes that among others, the following will be taken into account:

1. the volume of the processing operations carried out
2. the degree of intentionality
3. the repetition of the infringement
4. the connection between the prosecuted organisation's activity and its processing of personal data.

The context of these fines is that all of these companies regularly process data and tend to repeat the same or similar infringements of the law, which explains the high fines imposed.

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## South Korea chooses active use of 'Big Data' to stimulate 'Creative Economy'

When South Korea's President Park Geun-hye, who studied electronic engineering, declared a "Creative Economy" policy<sup>1</sup> in early 2013, Korea's IT industries responded. Big businesses in charge of creative economy and innovation centers in 17 cities nationwide all tried to adopt IT-related projects without exception. Even in Sejong City, a government administration hub, they proposed to develop IT-based agriculture<sup>2</sup>.

The technologies in the Sejong Centre trial included smartphone-controlled greenhouse systems and CCTV video analytics for surveillance of greenhouses and farming properties. Last year there was a trial run of infrastructure for smart farms in a small village called Yeondong-myeon, Sejong City. Water supplies, CCTVs and boilers inside greenhouses were controlled through farmers' smartphones enabling them to access information about temperature and humidity in real time. Participants reported reduced production costs<sup>3,4</sup>.

As part of this momentum, attention has been paid to FinTech (financial technology), Internet of Things and Big Data industries. When massive credit card data breaches occurred in early 2014, the financial authorities cancelled their plan to allow financial companies to share financial transaction information between each

other so as to start new financial services. Legislative reforms now make a financial company responsible for any data breach incident subject to harsh punishment such as punitive damages, statutory damages up to US \$2,500 per person affected, and administrative penalties. Also, ISPs cannot store personal data more than one year (previously three years).

The wind of change is now blowing again. It is reported that the Financial Services Commission plans to reorganise the credit information consolidation institutions, and to introduce a self-regulatory mechanism to make use of big data in financial transactions. It is believed that financial associations will be able to adopt de-identification or anonymisation techniques on a sectoral self-developed basis. Such credit information consolidation institutions will provide anonymous processed data on financial transactions to FinTech businesses so as to provide new services. These government plans seem to go further in allowing use of such data than the Big Data Guidelines which the Korea Communications Commission established in spite of the opposition of civic groups in 2014 (see 'Big Data Guideline' [http://koreanlii.or.kr/w/index.php/Big\\_Data\\_Guideline](http://koreanlii.or.kr/w/index.php/Big_Data_Guideline)).

Against this backdrop, a variety of FinTech services will be introduced in

the near future. For example, new Samsung smartphones equipped with the Samsung Pay system are expected to replace credit cards in wallets, and will facilitate online and offline payments. It remains to be seen if President Park's IT-based experiment in the name of Creative Economy will succeed or not. South Korea is living up to its reputation as an IT test bed.

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#### REFERENCES

- 1 Creative economy is explained at [http://koreanlii.or.kr/w/index.php/Creative\\_economy](http://koreanlii.or.kr/w/index.php/Creative_economy)
- 2 IT-based agriculture is the 6th item in the "Location and theme" section at [http://koreanlii.or.kr/w/index.php/Creative\\_economy\\_%26\\_innovation\\_center#Location\\_26\\_theme](http://koreanlii.or.kr/w/index.php/Creative_economy_%26_innovation_center#Location_26_theme)
- 3 <http://koreaJoongAngDailyJoins.com/news/article/article.aspx?aid=3006064>
- 4 A short video explaining this agricultural Internet of Things project and its impact on the wider economy is at [http://www.arirang.co.kr/News/News\\_View.asp?nseq=180979](http://www.arirang.co.kr/News/News_View.asp?nseq=180979)