

## CLIENT ALERT

### German Data Protection Authority Fines Three Companies for U.S. Data Transfers

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In a [press release of June 6, 2016](#), the Data Protection Authority (DPA) of Hamburg announced that three fining decisions it has issued against companies unlawfully relying on the invalidated “U.S.-EU Safe Harbor Framework” (Safe Harbor) have become final. The Hamburg DPA concluded that after the [invalidation of the former “U.S.-EU Safe Harbor Framework”](#) by the European Court of Justice in October 2015, the companies had failed to otherwise adequately ensure the protection of employee and customer data transferred from Europe to the U.S.

At least two of the companies fined are not typical “data-related” businesses: addressees of the fining decisions are consumer goods manufacturer Unilever (€ 11,000), software company Adobe Systems Inc. (€ 8,000), and fruit juice maker Punica, a subsidiary of PepsiCo Inc. (€ 9,000).

The fines issued are relatively low. However, Mr. Johannes Caspar, director of the Hamburg DPA, underlined that the fact that the companies had implemented standard contractual clauses (SCCs) after the start of the investigations, had been taken into account in favor of the companies when determining the amount of the fines. This confirms the need for companies who relied on Safe Harbor in the past, to make sure that they install other safeguards, in particular Standard Contractual Clauses.

However, the overall situation regarding the transfer of personal data from the EU to the U.S. [remains uncertain](#). The draft “EU-U.S. Privacy Shield,” a recently drafted framework [designed to replace the invalidated “Safe Harbor,”](#) still needs to be approved by the Article 31 Committee in a binding opinion before it can be confirmed by the European Commission in an adequacy decision. In addition, the [Standard Contractual Clauses are possibly also soon to be challenged](#) before the ECJ based on an initiative of the Irish DPA, a process that may however take several years to play out.

At bottom, the underlying political issue of a clash between European fundamental rights and U.S. government mass surveillance activities remains. And according to many, only a change in the U.S. legal system with regard to surveillance practices could solve the issue, which is highly unlikely to occur.

In light of the above, for now, Standard Contractual Clauses are the best solution for personal data transfers from the EU to the US. In addition, companies should keep monitoring further developments. Crowell & Moring’s Privacy & Cybersecurity team will continue to closely monitor and provide updates on future developments.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Jeffrey L. Poston**

Partner – Washington, D.C.

Phone: +1 202.624.2775

Email: [jposton@crowell.com](mailto:jposton@crowell.com)

**Emmanuel Plasschaert**

Partner – Brussels

Phone: +32.2.282.4084

Email: [eplasschaert@crowell.com](mailto:eplasschaert@crowell.com)

**Jeane A. Thomas, CIPP/E**

Partner – Washington, D.C.

Phone: +1 202.624.2877

Email: [jthomas@crowell.com](mailto:jthomas@crowell.com)

**Evan D. Wolff**

Partner – Washington, D.C.

Phone: +1 202.624.2615

Email: [ewolff@crowell.com](mailto:ewolff@crowell.com)

**Frederik Van Remoortel**

Partner – Brussels

Phone: +32.2.282.1844

Email: [fvanremoortel@crowell.com](mailto:fvanremoortel@crowell.com)