

Warszawa, 14 grudnia 2015 r.  
KL/679/273/MP/2015

Pani  
**Beata Szydło**  
Prezes Rady Ministrów

Szanowna Pani Premier,

W związku z finalizowaną obecnie unijną reformą przepisów o ochronie danych osobowych przekazuję w załączeniu wspólny list organizacji przedsiębiorców Europy Centralnej i Wschodniej, skierowany do Pani Premier oraz do szefów rządów Austrii, Czech, Słowacji, Słowenii, Chorwacji i Węgier.

W liście i w towarzyszącym mu stanowisku zwracamy się do Rządów tych Państw o zadbanie, by ostateczny tekst Rozporządzenia, wynegocjowany z Parlamentem Europejskim był jak najbliższy kompromisowi uzgodnionemu na forum Rady Unii Europejskiej. Podkreślamy też, że dla zapewnienia polskim i europejskim przedsiębiorcom możliwości rozwoju i wykorzystania potencjału gospodarki cyfrowej konieczne jest ograniczenie obowiązków administracyjnych i stworzenie przewidywalnych, racjonalnych ram prawnych dotyczących przetwarzania danych osobowych.

Wzywamy też wspólnie do wsparcia przez Polskę negocjowanego przez Komisję Europejską porozumienia pomiędzy Unią Europejską a Stanami Zjednoczonymi, umożliwiającego przedsiębiorcom transferowanie danych osobowych pomiędzy tymi państwami (tzw. Safe Harbor II). Unieważnienie poprzednio obowiązującego porozumienia przez Trybunał Sprawiedliwości Unii Europejskiej w orzeczeniu C-362/14 znacznie utrudniło wymianę handlową, narażając przedsiębiorców na dodatkowe koszty i ryzyko prawne.

Złe decyzje lub brak działań w obu kwestiach mogą mieć negatywny wpływ na wzrost gospodarczy i rozwój Jednolitego Rynku Cyfrowego, na którym Polscy przedsiębiorcy zajmują coraz odważniej swoje miejsce. Dlatego liczymy na to, że przesłany list spotka się z zainteresowaniem i poparciem Pani Premier i Polskiego Rządu oraz skłoni do niezwłocznego podjęcia działań w tych sprawach.

Z poważaniem,



Henryka Bochniarz  
Prezydent Konfederacji Lewiatan



LEWIATAN

Załącznik:

Wspólny list przedsiębiorców Europy Centralnej i Wschodniej w sprawie projektu Rozporządzenia o ochronie danych osobowych (2012/0011 COD).

Do wiadomości:

1. Pani Anna Streżyńska - Minister Cyfryzacji
2. Pan Witold Waszczykowski - Minister Spraw Zagranicznych

member of  BUNESSEUROPE



Konfederacja Lewiatan  
ul. Zbyszka Cybulskiego 3  
00-727 Warszawa

tel.(+48) 22 55 99 900  
fax (+48) 22 55 99 910  
lewiatan@konfederacjalewiatan.pl  
www.konfederacjalewiatan.pl

NIP 5262353400  
KRS 0000053779  
Sąd Rejonowy dla  
m.st. Warszawy w Warszawie  
XIII Wydział Gospodarczy KRS



11 December 2015

Your Excellency, Prime Minister,  
Dear Minister,

We are approaching you as the common voice of the Central and Eastern European industry federations regarding an issue of a major importance for the development of the EU's digital economy and the Digital Single Market, the current situation in the field of data protection legislation. With great concern we are observing the last development in this field, the outcomes of the Trilogue negotiations on the General Data Protection Regulation (further referred to as „GDPR“) as well as the consequences of the so called „Safe Harbor Decision“ – the judgement C-362/14 of the Court of Justice of the European Union in the Schrems case.

We feel concerned about severe negative consequences on the European economy, if these issues are not dealt with in a prompt and feasible way. We are well aware that the data protection is crucial for the development of the digital single market and for Europe's competitiveness, as data are driving innovation in all sectors of the economy. Moreover, the use of data delivers efficiency to companies allows the creation of new business models and offers a whole range of new innovative services to consumers. Therefore, we ask you and your administration to be highly active in this field and reflect the recent negative developments.

For the purpose that you are well informed about our common point of view, we attached our Position Paper. We would like to ask you to focus on the mentioned issues and take proactive action to help finding appropriate solutions. Regarding the case of GDPR the final reconciling of the opinions of the Commission, the Parliament and the Council has to lead to a well-balanced Regulation and in the case of the Safe Harbor agreement, the goal has to be a very prompt agreement with the U. S. partners that will ensure legal certainty and a sustainable approach to data transfers for both the European and American businesses. We hope very much for your support in this matter.

Yours faithfully,

**Christoph Neumayer**, Director General  
IV - Federation of Austrian Industries

**Davor Majetic**, Director General  
HUP - Croatian Employers' Association



**Stanislav Kázecký**, Vice-President  
SPCR - Confederation of Industry of the  
Czech Republic



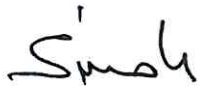
**István Wimmer**, Secretary General  
MGYOSZ - Confederation of Hungarian  
Employers and Industrialists



**Henryka Bochniarz**, President,  
Polish Confederation Lewiatan



**Peter Molnar**, Secretary General  
Secretary General  
RÚZ - National Union of Employers of  
Slovakia



**Jože Smole**, Secretary General  
ZDS - Employers' Association of Slovenia

Attachment: Central and Eastern European Industry Federations (Austria, Croatia, Czech Republic, Hungary, Poland, Slovakia and Slovenia) Perspectives in the Field of Data Protection

**This letter is being sent to the Prime Ministers of the represented countries and to the Ministers responsible for the data protection issues**



December 2015

**CENTRAL AND EASTERN EUROPEAN INDUSTRY FEDERATIONS  
AUSTRIA, CROATIA, CZECH REPUBLIC, HUNGARY, POLAND, SLOVAKIA,  
SLOVENIA**

**CEE PROSPECTIVES IN THE FIELD OF DATA PROTECTION**

**PREAMBLE**

As representatives of the Central and Eastern European industry federations, we strongly support the European Commission's agenda to foster the development of the Digital Single Market in Europe. Given that personal data plays a fundamental role in the day-to-day operations of the digital economy, it is difficult to overstate the importance of the General Data Protection Regulation (GDPR) to Europe's ambitions to secure its digital future and ensure the privacy and security of its citizens. In addition, we need a secure and flexible foundation for international data transfers. The legal framework that is being created in Europe will have a decisive impact on the European Commission's success of creating a truly Digital Single Market. The EU has to ensure a General Data Protection Regulation, which is flexible enough to allow and promote modern technologies and innovations and re-establishes international data flows under a revised Safe Harbor mechanism.

**GENERAL DATA PROTECTION REGULATION**

The GDPR negotiations have entered a crucial final phase. While the signed industrial federations consider the new GDPR an act of major importance, we also share the view that it is possible to reform data protection regulation without restraining growth and job creation in Europe. Fundamental rights must be protected, but Europe also needs to create an environment that secures investment and competitiveness.

The EU Council has worked very hard over the last few months to reconcile different national positions, with the protection of fundamental rights at the forefront. However, we now urge to focus attention on the following points, which risk having a negative impact on the Digital Single Market, and on growth and job creation as a whole. There are five key issues that must be resolved to ensure the GDPR underpins Europe's Digital ambitions:

1. Avoid creating an environment that discourages investment in data driven innovation by providing a clear and feasible legal basis for data analytics;
2. Eliminate unnecessary costs and confusion resulting from fragmented national implementation of data protection rules through meaningful harmonisation;
3. Set a secure and flexible foundation for data transfers that facilitates international collaboration and global trade;
4. Clarify the system of liability between controller and processor, avoiding duplication and joint or uncertain liability, and provide clear accountability to citizens. Companies

need legal certainty concerning liability. A system with joint and several liabilities for both controller and processors would clearly introduce significant uncertainties and burdens on companies, whilst also increasing uncertainties for data subjects.

5. Provide a proportionate sanctions regime that punishes non-compliance but avoids discouraging investment in data-driven innovations.

We urge the Council during its discussion in Trilogue to make sure that the final outcome will demonstrate Europe's ability to resolve sensitive and challenging issues, while also focusing on its future economic growth and the employment opportunities of its citizens. Unfortunately, we are very concerned that this is not being reflected in the final negotiations of the Trilogue, and will thus undermine the potential success of the Digital Single Market Strategy.

## **INTERNATIONAL DATA FLOWS**

A very pressing and serious challenge for Europe's digital economy stems from the recent judgement of 'Safe Harbor' by the European Court of Justice ("ECJ"). The digital economy, innovation and progress rely on global data flows. Unfortunately, the immediate invalidation of Safe Harbor by the ECJ renders data flows between the EU and the US and as a consequence doing business across the Atlantic very burdensome and in some cases impossible. Several thousands of companies, including SMEs, rely on Safe Harbor when transferring data between the EU and US. The solution is not to revoke Safe Harbor, but to improve it. Action is needed to restore confidence and to ensure that Member States have a crucial role to play. We ask the European Commission to intervene with the National Data Protection Authorities to reconfirm the importance of international data flows and to help that the Commission:

1. Accelerates the negotiations leading to a prompt conclusion of a revised Safe Harbor agreement;
2. Helps provide certainty to European businesses by:
  - Keeping issuing guidance for businesses on how to move forward and deal with the current legal uncertainty;
  - Aiming to coordinate action from Data Protection Authorities through the Art. 29 Working Party, to avoid disruptions in the EU digital single market. If national regulators start providing individual guidance without consistency – as we have seen in recent days- the complexity and fragmentation of the process will become unmanageable;
  - Securing an adequate transition period in the enforcement approach to allow companies to move to alternative ways of transfer.

The undersigned industrial associations are hereby asking for your support and active role in reaching a satisfactory conclusion regarding these two important issues.

