



THE REGULATORY FUNDAMENTALS GROUP LLC

The RFG Weekly Roundup™ provides weekly thought leadership alerts on developments and trends of interest to the investment offices of non-profit endowments and foundations, available to members of the Regulatory Fundamentals Group.

U.S. Companies Fined by German Data Protection Authority

Privacy laws are important, but sometimes overlooked in compliance programs. If a manager you allocate to, or a portfolio company, has operations in the EU or receives data from the EU, this is something to be seriously considered. With this in mind we have a report from [Dr. Christian Schröder](#) and [Sophie Ratzke](#) of Orrick, Herrington & Sutcliffe.

As [announced](#) earlier this year, on June 6, 2016, Hamburg's data protection commissioner, the head of one of 16 Federal German data protection authorities ("DPA") has now fined three Hamburg-based subsidiaries of large U.S. companies which were still transferring personal data of EU citizens to the U.S. based on the invalid EU-U.S. Safe Harbor Framework. Fines were imposed on Adobe, Punica and Unilever in amounts between EUR 8,000 and EUR 11,000. Much larger fines were possible, as discussed below.

After the EU-U.S. Safe Harbor Framework was declared invalid by the EU Court of Justice last October, the Hamburg DPA granted the 35 internationally active Hamburg-based companies a transitional period to adapt their methods for continued transfers of personal data to the U.S. Afterwards, the Hamburg DPA inspected to determine whether these adaptations were actually taken care of. The inspections have shown that the majority of the companies changed their data transfer to comply with the so-called standard contractual clauses. DPA then initiated proceedings against those companies failing to do so. With some proceedings still ongoing, three fine notices have been issued by the DPA.

Theoretically, fines up to EUR 300,000 are possible. However, as all three companies altered their transfer methods after being under investigation, fines were reduced by the DPA. The

head of the Hamburg DPA announced that any firm found still not to be complying with the requirements shall be issued a larger fine than the ones issued now.

While the “EU-U.S. Privacy Shield” has been proposed by the EU Commission in February as a replacement to the Safe Harbor Agreement it is still under discussion but may be adopted by late June/early July. Some U.S. companies may still be relying on the defunct Safe Harbor Agreement to transfer personal data across the Atlantic.

If a company conducts transatlantic data transfers, in particular from subsidiaries in Germany, it should take note of these investigations and consider alternatives to reduce the risk that it will be the next target. You can read about alternative solutions for transatlantic data transfers in a previous [post](#) on the U.S.–EU Safe Harbor or contact the German IP/IT team of Orrick, Herrington & Sutcliffe led by [Christian Schröder](#).

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