



# PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

## US Safe Harbor under fire

Under-achieving, beset with flaws and neglected by both business and regulators - has the Safe Harbor privacy programme had its day?  
By Alan Pedersen.

When the European Union adopted the Data Protection Directive in 1995, its policy makers were faced with a dilemma. While they recognised the need to protect peoples' rights by imposing controls on the flow of personal data outside EU borders, these restrictions risked damaging trade relations with the United States - a country which lacked the comprehensive scope of Europe's high privacy standards.

American businesses suddenly discovered their ability to move customer and employee data from their European offices had been drastically curtailed - their options limited to signing complex and unwieldy contracts or relying on a handful of legal exemptions.

Strong economic ties with the US, however, were enough for the European Commission to warrant the situation as a 'special case', and officials on both sides of the Atlantic endeavoured to find a workable solution. In 2001, after nearly two years of extensive negotiations between the Commission and the US Department of Commerce, the Safe Harbor privacy programme was born. It was hailed as the tool that would bridge the gulf between the two regions' contrasting approaches to privacy protection - a

scheme advocating consumer rights, yet grounded in commercial reality. Essentially, Safe Harbor was a compromise, blending European privacy principles with the US self-regulatory approach to compliance.

Four years on, and the optimism that greeted the launch of Safe Harbor appears to have faded, with privacy experts questioning its credibility, both in terms of its success in persuading businesses to sign on and as a viable way of protecting European citizens. An independent status report published by the European Commission in October has exposed poor adoption rates, patchy compliance by participating companies and virtual neglect by the regulatory authorities responsible for enforcing the scheme (see table, p.10).

As a proportion of the companies importing data from Europe, the numbers are insignificant and a poor return for the effort that was put into establishing the Safe Harbor framework.

### Steering clear

The 600-plus companies registered on the Safe Harbor list marks a significant improvement from two years ago when barely 150 organisations had signed up. But as a proportion of the companies importing data from Europe, the numbers are insignificant and a poor return for the effort that was put into establishing the Safe Harbor framework. Part of the problem, observes

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