



## “Safe Harbor” invalidation: First fines imposed for transferring personal data to the United States

After the invalidation, by the European Court of Justice in October 2015, of the European Commission Decision which declared that entities adhered to the so-called “Safe Harbor” granted a level of protection equivalent to this applicable to the Member States, a large number of companies have been forced to seek alternative mechanisms to legitimate their data transfers to the United States.

The judgement of the European Court of Justice affects not only to those companies using service providers located in the United States, but also to European subsidiaries of multinational groups, heavily dependent on corporate systems for the processing of both clients and employees’ data.

Last year, in the context of a coordinated action between the European Authorities, the Spanish Data Protection Agency (“SDPA”) contacted different data controllers that relied on the “Safe Harbor” system, informing them of the invalidation of such mechanism.

In addition, the SDPA communication (whose full text, in Spanish, is available in this [link](#)) set up a non official deadline for the implementation of other methods, such as the Standard Contractual Clauses approved by the European Commission, or the exceptions established in article 34 of the Spanish Data Protection Act:

*“As a result, in the exercise of this Agency powers, you are required to, as soon as possible and in any case before 29 January 2016, inform the General Data Protection Register if the data transfers shall continue to be carried out and, in this event, confirm the alignment with the new data protection requirements.”*

The rest of European Authorities carried out similar actions. In the case of Germany, the Hamburg Data Protection Commission conducted 35 inspections to companies that have been affected by the “Safe Harbor” invalidation. It has been precisely this Authority who has **imposed the first fines for transferring personal data to the United States without a legal basis that legitimates the transfer**. According to the released information, the fined companies are a technology company (8.000 €); a subsidiary of a multinational food company (9.000 €) and a multinational consumer goods company (11.000 €), all of them part of international groups with strong links with the United States.

The sanctions imposed are not precisely high. In this regard, the Hamburg Commissioner for Data Protection, Johannes Caspar said: *“The fact that the companies have eventually implemented a legal basis for the transfer had to be taken into account in a favourable way for the calculation of the fines. For future infringements, stricter measures have to be applied”*. The press release of Hamburg Data Protection Commission is available [here](#).

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