

Privacy Shield: The National Data Protection Authorities Hold Fire

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The Article 29 Working Party (WP29) has released a [brief updated statement](#) on the final form of the Privacy Shield adequacy decision and supporting annexes. WP29 is an important advisory group made up of representatives of each of the EU's national data protection authorities. In a nutshell, WP29 has said that Privacy Shield isn't perfect, but it will wait until the first annual review to raise specific objections, which gives the Privacy Shield program enough time to get up and running. The WP29 statement promises that, during the first annual review of Privacy Shield, "the national representatives of the WP29 will not only assess if the remaining issues have been solved but also if the safeguards provided under the EU-U.S. Privacy Shield are workable and effective." WP29 goes on to say that "[t]he results of the first joint review regarding access by U.S. public authorities to data transferred under the Privacy Shield may also impact transfer tools such as Binding Corporate Rules and Standard Contractual Clauses."

While WP29's statement has been interpreted by at least one legal news source as a one-year moratorium on Privacy Shield litigation, that seems rather unlikely. The WP29 does not have the legal power to deprive any EU data subject of his or her right to challenge Privacy Shield on human rights grounds, or to materially delay such a challenge. If a national DPA refused to hear a complaint on the basis of the putative WP29 moratorium, the national courts would most likely find against the DPA.

A more modest -- and realistic -- interpretation of the WP29 opinion would be that the DPAs themselves won't seek to scupper Privacy Shield during its first year. Instead, they will leave that to Max Schrems and other individuals who remain skeptical of the EU-US privacy deal.

Authors