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## Safe Harbor EU Enforcements

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FPF Colleagues:

Heads up to those of you who reference Safe Harbor in your privacy policies, but now rely on model contracts/standard clauses. Note that the CNIL [claim](#) this week against Microsoft follows a similar claim against Facebook regarding Safe Harbor language in their privacy policy. The CNIL points to the Safe Harbor language in the privacy policy as evidence the company has no legal basis to transfer data to the US. In each case, the company **had** model contracts in place.

In the case of Microsoft, the policy even specifically explains that "we use a variety of legal mechanisms, **including contracts**, to help ensure your rights and protections travel with your data".

Most companies have left Safe Harbor language in their policies, after adopting model contracts as these two did, for a number of logical reasons - they still follow the rules, previously collected data is certainly covered, temporarily changing the policy could be confusing, contractual obligations to be in Safe Harbor continue etc. This has been the opinion of many outside counsel.

Given the CNIL position, perhaps adding even more language explaining the purpose of the SH language and expressly detailing that it is not the current legal basis for data transfer is a good idea. Perhaps removing the language altogether is a good idea. Perhaps the CNIL and other DPAs will only raise this issue with big companies as an aside to others issues. I don't know if the similar claims made some months ago by German DPAs involved companies that were only in Safe harbor, or whether those companies also had contracts in place.

Just flagging this!

See CNIL complaint page 10

<https://www.cnil.fr/en/windows-10-cnil-publicly-serves-formal-notice-microsoft-corporation-comply-french-data-protection>

[Microsoft policy:](#)

Personal data collected by Microsoft may be stored and processed in your region, in the United States or in any other country where Microsoft or its affiliates, subsidiaries or service providers maintain facilities. We take steps to ensure that the data we collect under this privacy statement is

processed according to the provisions of this statement and the requirements of applicable law wherever the data is located.

When we transfer personal data from the European Economic Area to other countries, we use a variety of legal mechanisms, including contracts, to help ensure your rights and protections travel with your data. Microsoft also adheres to the principles of the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data from the European Economic Area and Switzerland. To learn more about the Safe Harbor program, and to view our certification, please visit <http://www.export.gov/safeharbor>.

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