

Use of the title 'ombudsman' in the 'EU-US Privacy Shield' agreement

Correspondence - 22/02/2016

Case SI/4/2016/EA - Opened on 22/02/2016 - Decision on 06/10/2016 - Institution concerned European Commission |

Ms Věra Jourová

Commissioner responsible for Justice, Consumers and Gender Equality

European Commission

Strasbourg, 22/02/2016

Re: Use of the title 'ombudsman' in the 'EU-US Privacy Shield' agreement

Dear Commissioner Jourová,

Recent reports on the political agreement between the European Commission and the US on a new framework for transatlantic data flows refer to an office with the title 'ombudsman'. I understand from reports that the office in question would be established within the US State Department to handle complaints from EU citizens concerning access to their personal data by US national intelligence authorities.

According to the International Ombudsman Institute, an Ombudsman " *offers independent and objective consideration of complaints*"; it " *should not receive any direction from any public authority which would compromise its independence*". [1] [\[Link\]](#) The Ombudsman Association further specifies that, as regards independence, an " *Ombudsman must be visibly and demonstrably independent from those whom the Ombudsman has the power to investigate*". [2] [\[Link\]](#)

I appreciate that details of the full agreement have yet to be published, but it would be useful at this stage if you might outline, or reflect on, how these criteria might be reconciled with the fact



that the office foreseen in the 'EU-US Privacy Shield' would be part of a government department that supervises government agencies.

European citizens, through their experience of member state Ombudsmen and of the office of European Ombudsman, have legitimate expectations of the credentials as to the impartiality and independence of such an office and I would be concerned if anything were done that might undermine those expectations and confidence generally in the Ombudsman as an instrument of democratic accountability.

Yours sincerely,

Emily O'Reilly

cc: Mr. Claude Moraes, Chair of LIBE Committee, European Parliament

[1] [Link] By-Laws of the International Ombudsman Institute. Adopted in Wellington, New Zealand on 13 November 2012. <http://www.theioi.org/the-i-o-i> [Link].

[2] [Link] Schedule 1 to the Rules of the Ombudsman Association: Criteria for the Recognition of Ombudsman Offices. <http://www.ombudsmanassociation.org/docs/BIOA-Rules-New-May2011-Schedule-1.pdf> [Link].