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Privacy Shield adopted: Better protection for EU – U.S. personal data transfers

On 12 July 2016 the European Commission approved the EU – U.S. Privacy Shield, the new framework aimed at protecting the personal data of EU member state nationals transferred to the U.S., as well as at bringing legal clarity for businesses relying on transatlantic data transfers.

The document reflects the requirements set out by the European Court of Justice in its ruling on 6 October 2015, which declared the old Safe Harbour framework invalid.

The EU – U.S. Privacy Shield framework ensures an adequate level of protection for personal data transferred to the U.S. It consists of Privacy Principles that participating companies must abide by and commitments on how the arrangement will be enforced. The EU – U.S. Privacy Shield is based on the following principles:

1. Strong obligations on companies handling personal data

The participating companies are subject to regular reviews by the U.S. Department of Commerce regarding their compliance with the applicable data protection rules. The new arrangement will be transparent and will contain effective supervision mechanisms to ensure that companies follow the rules to which they have submitted. If companies do not comply, they will face sanctions and removal from the Privacy Shield list.

The new framework also contains tightened conditions for onward transfers to third parties by the companies participating in the scheme. The obligation to provide the "*same level of protection*" includes an obligation for the concerned third party to inform the Privacy Shield company when it is no longer able to ensure the appropriate level of data protection, which will then have to take appropriate measures. Furthermore, the existing 5 years limitation of data retention for American companies has been made more explicit, therefore companies may keep personal data only for as long as this serves the purpose for which the data was collected.

2. Clear safeguards and transparency obligations on U.S. government access

The U.S. has given assurance to the EU that the access of public authorities for law enforcement and national security purposes is subject to clear limitations, safeguards and oversight mechanisms. Also for the first time, everyone in the EU will benefit from redress mechanisms in this area through an Ombudsperson mechanism within the Department of State.

The U.S. has ruled out indiscriminate mass surveillance on personal data transferred to the U.S. under the EU – U.S. Privacy Shield arrangement.

3. Effective protection of individual rights

The Privacy Shield introduces several accessible and affordable dispute resolution mechanisms available to any citizen who considers that their data has been misused:

- Lodging a complaint with the company itself: Companies commit to replying to complaints within 45 days. In addition, any company handling human resources data from individuals has to commit to complying with advice by the competent EU Data Protection Authority (DPA), while other companies may voluntarily make such a commitment.

- Taking their complaint to the DPA of the member state: The DPA will refer the complaint to the Department of Commerce, who will respond within 90 days, or the Federal Trade Commission, if the Department of Commerce is unable to resolve the matter.
- Using Alternative Dispute Resolution, a free of charge tool to which U.S. companies may sign up as one of the redress mechanisms required for participation under the Privacy Shield.

If a case is not resolved by any of the other means, as a last resort there will be an arbitration mechanism. Individuals will be able to have recourse to the Privacy Shield Panel, a dispute resolution mechanism that can take binding decisions against the U.S. self-certified companies. It ensures that every single complaint is being dealt with and that the individual obtains a remedy. Several consumer-friendly features (e.g. no cost, possibility to participate by video-conference, free of charge translation and interpretation) ensure that individuals are not discouraged from making use of the panel.

In practice the adoption of the EU – U.S. Privacy Shield will mainly mean that the American companies will annually self-certify that they meet the requirements, will display their privacy policy on their websites and will reply promptly to any complaints. The Romanian companies which transfer personal data to the U.S. will be entitled to transfer personal data in the U.S. based on the self-certification issued by the American company.

The decision of the European Commission entered into force on 12 July 2016. The U.S. Department of Commerce will start operating the Privacy Shield and the companies will be able to certify their compliancy starting on 1 August 2016.

Should you require any further information, please feel free to contact us:

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