



INFORMATIVE NOTE



TMT

EU-US PRIVACY SHIELD

On 29 February 2016, the European Commission approved a new package of legal texts on transatlantic data flows to be known as the «EU-US Privacy Shield». The aim of this new package is to facilitate the transfer of personal data between the European Union and the USA while, at the same time, ensuring an appropriate level of protection for European citizens when personal data is processed by companies based in the USA.

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This new agreement replaces the previous Safe Harbor agreement, which was declared invalid by the Court of Justice of the European Union (CJEU) in 2015. The CJEU held that the Safe Harbour agreement did offer a sufficient guarantee of protection of the personal data of European citizens in the context of transatlantic transfers.

As a result, the new EU-US Privacy Shield sets out the privacy protection principles that companies will have to respect. It also includes commitments on the part by the US authorities to be published in the Federal Register (the official Journal of the US Government) on the application of the provisions, including the safeguards and limits on access to data by the public authorities. The EU-US Privacy Shield also strengthens cooperation between the US and European authorities in data protection matters.

In particular, in this context, the USA has made a commitment, for the first time, to limit access by the US public authorities to personal data that is transferred to the US from the European Union, and to monitor and to actively monitor such access. The US authorities have also made a commitment not to conduct any mass or indiscriminate surveillance of European citizens, even for internal security purposes.

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As under the Safe Harbor agreement, the EU-US Privacy Shield includes a self-certification mechanism for US companies that engage in transatlantic transfers of personal data. However, due to the establishment of stricter requirements for processing personal data from the European Union and to the greater level of supervision, US companies will have to adopt a more robust and transparent approach to the transfer of data. Furthermore, they will be subject to heavy sanctions if they do not comply with these requirements.

In addition, new mechanisms to react against irregular or unlawful processing of personal data will be available to data subjects. Companies responsible for data processing will be required to resolve complaints filed by data subjects within 45 days of the complaint being made. A free alternative dispute resolution mechanism will also be put in place to deal with disputes arising from transatlantic personal data transfers. The European Union and US authorities will also have to cooperate to investigate and resolve complaints related to the processing of personal data that are not resolved by those companies responsible for the processing.

Any European Union citizen who believes that he may be the target of unlawful surveillance by the US authorities for national security purposes may use the Ombudsperson mechanism created specifically for this purpose, which is an independent authority of the US intelligence services.

Finally, the EU-US Privacy Shield will be reviewed on an annual basis by the EU and US authorities to guarantee that an adequate level of protection of personal data is maintained when this data is transferred between the EU and the US.

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 Portuguese Law Firm of the Year
Who's Who Legal, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

 Top 5 - Game Changers of the last 10 years
Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011