

GDPR Legal Alert

12 July 2023



Weinhold Legal

European Commission adopts new rules on the transfer of personal data between the EU and the US

On 10 July 2023, the European Commission adopted [the EU- US adequacy decision](#) pursuant to Article 45 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, "GDPR").

The adequacy decision states that, with respect to personal data transferred under the new framework from the EU to US companies (the "EU-US Data Privacy Framework" or "**EU- US DPF**"), the US provides an adequate level of protection comparable to that of the European Union. Under this new decision, personal data can **flow safely from the EU to US companies participating in the EU-US DPF** without the need for additional data protection safeguards.

The adequacy decision will be subject to regular review by the European Commission. These reviews will be carried out by the European Commission together with representatives of the European Data Protection Authorities and the relevant US authorities. The aim will be to verify that the adequacy decision is still substantially and legally justified. The first review will take place within 1 year of the entry into force of the adequacy decision, after which the frequency of the reviews will be determined by the Commission in close consultation with the Committee established under Article 93(1) of the GDPR.

The adequacy decision entered into force with its adoption by the European Commission on 10 July 2023.

How will the EU-US DPF work?

As was the case with the predecessors of the transatlantic framework, which were, in addition to Privacy Shield, Safe Harbour, the EU-US DPF does not authorise any transfer of personal data from the EU to the US. It will only apply to **transfers of personal data from the EU to US organisations that have certified their compliance with the EU-US DPF set of principles and will thus be included in the so-called DPF list**. The certification will be led and the list will be administered by the US Department of Commerce. U.S. companies or organizations that have been certified under the Privacy Shield in the past (which was struck down by the European Court of Justice in June 2020 in a decision known as Schrems II) will not be automatically re-certified under the new DPF framework and must apply for certification under the EU-US DPF rules.

However, the adequacy decision is positive and welcome news for EU/EEA data controllers or processors in their role as exporters of personal data from the EU to the US. Its adoption will facilitate the transatlantic flow of data even if exporters and importers choose to use other instruments such as standard contractual clauses or binding corporate rules (BCRs). Indeed, the EU-US DPF will facilitate the detailed analysis of the Data Transfer Impact Assessment (DTA) to determine whether the personal data transferred will be afforded an adequate level of protection and security, which the EU-US DPF confirms.

What exactly does the EU-US DPF bring?

According to the [European Commission](#), the EU-US DPF introduces new safeguards that address all the concerns previously expressed by the European Court of Justice in the Schrems I and II decisions, in particular regarding restrictions

GDPR Legal Alert

12 July 2023



Weinhold Legal

on access by US intelligence services to personal data of EU/EEA citizens. The adequacy decision therefore contains a detailed explanation and assessment:

- ▶ conditions, rules and binding safeguards limiting access to personal data by US intelligence services to situations necessary and proportionate to the requirements of safeguarding national security;
- ▶ increased oversight of U.S. intelligence activities to ensure compliance with the restrictions on surveillance activities; and
- ▶ a two-tier independent redress mechanism to investigate and address complaints from EU/EEA data subjects regarding access to their personal data by US intelligence services, including the possibility of subsequent judicial review.

The adequacy decision was also preceded by changes in U.S. law when, on July 3, 2023, all U.S. intelligence agencies adopted updated policies and procedures following [President Biden's Executive Order](#), and on July 10, 2023, the Attorney General, following the issuance of the adequacy decision, designated EU and EEA states as "eligible states" for purposes of implementing the remedy mechanism to address complaints from EU/EEA data subjects.

Further information on the EU-US DPF and on the certification process itself is expected to be posted on the [U.S. Department of Commerce website](#).

Schrems III?

Finally, the EU-US DPF and the procedures under it are also subject to judicial review by the Court of Justice of the European Union. The members of the Austrian NGO NOYB, who are also behind the previous decisions known as

Schrems I (Safe Harbour) and Schrems II (Privacy Shield), have made no secret of the fact that they [are already preparing the basis for the implementation of this review](#). We will continue to monitor whether the new transatlantic framework will stand this test and not be overturned again by the CJEU ruling.

© 2023 Weinhold Legal
All rights reserved.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, s.r.o. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

For further information, please contact the partner / manager you are usually connected to.



Martin Lukáš
Partner
Martin.Lukas@weinholdlegal.com



Tereza Hošková
Managing Attorney
Tereza.Hoskova@weinholdlegal.com



Daša Aradská
Attorney
Dasa.Aradska@weinholdlegal.com