

## The EU - US Privacy Shield



### Data Protection Principles of the EU-US Privacy Shield

The protection principles of the EU-US Privacy Shield include detailed indications and transparency duties (principle of notice), the duty to grant the subjects entitled to data protection the possibility to oppose the onward transfer of their personal data, namely to obtain their agreement before the onward transfer of certain types of personal data (the principle of choice), additional accountability in case of a onward transfer (principle of accountability for onward transfer), the duty to take adequate measures to protect personal data against misuse (principle of security), principles of purpose limitation and data integrity (principle of data integrity and purpose limitation), regulations regarding the disclosure, correction and deletion (principles of access), as well as duties to establish the mechanisms for the efficient implementation of the duties related to data protection, as well as for liability and regress (principle of recourse, enforcement and liability). The general data protection principles will be sup-

plemented with further detailed requirements (supplemental principles) for certain transmissions, as well as for the transmission of certain types of personal data.

### Certification and Control

Similar to the Safe Harbor Treaty, only the companies which are bound to comply with the data protection principles within a self-certification, can take advantage of the suitability decision made by the EU Commission. The self-certification will be renewed on an annual basis. The compliance with these principles according to the EU-US Privacy Shield, should be constantly and officially monitored and tested in the future by the US Ministry of Commerce and it must be enforced by the Federal Trade Commission. For this purpose, the US Ministry of Commerce should search in the future for false information regarding a certification or false information in the Data Protection Statement of the certified companies, as well as the availability thereof, it should take corrective measures and should report any violations to the competent enforcement authorities.

Dear Reader,

After the EU Commission already notified on 02/02/2016 a political agreement regarding the key points of a succession regulation for the transatlantic data exchange in the USA, it submitted the draft version of the legislative package regarding the announced EU - US Privacy Shield and adopted the draft for a decision related to the suitability. The suitability-related decision should be certified, so as the guarantees for the data transfer comply with the data protection standards of the new EU-US Privacy Shield. The regulations of the EU-US Privacy Shield should replace the previous Safe-Harbor Agreement, which was declared to be invalid by the European Court of Justice in its verdict from October 6th, 2015.

Among others, they include the data protection principles that must be observed by companies in the USA, as well as written guarantees of the US Government, to be published in the US Federal Register, meant to implement the agreement, including warranties and limitation for the access to personal data for the US authorities.

Yours,



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The certified companies will be included by the US Ministry of Commerce on list available to anyone. The companies which repeatedly violate the data protection principles will be excluded from this list.

## Improved Legal Protection Possibilities Against the Misuse of Data by the Certified Companies

The regulations of the EU-US Privacy Shield further foresee improved legal protection possibilities for EU citizens against the unauthorized handling of personal data by the certified companies. Thus, the self-certified companies will follow up of the future complaints of the concerned parties within a 45 days period. In addition, they must submit free procedures for the alternative dispute resolutions for the concerned parties and among others, they must notify the possibility to solve the dispute in the data protection statements. Furthermore, the concerned EU citizens can turn to the national authorities concerned with data protection, which will onward the related complaints to the US Ministry of Commerce and together with it, or with the Federal Trade Commission, it must make sure that the complaint is solved. To avoid the extended duration of the procedures, the US Ministry of Commerce, namely the Federal Trade Commission must answer the forwarded complaint within 90 days.

As a last resort, the concerned party has the future possibility to turn to arbitration proceedings with an enforceable ruling.

## Guarantees of the US Government

Within the negotiations regarding the EU-US Privacy Shield, the US Government assured the EU in writing, through the Office of the Director of the National Intelligence Services and others, that the data access of the US authorities are subject to reasons re-

lated to national security, limitations, guarantees and surveillance mechanisms, which should exclude the general access to personal data. The US Foreign Ministry John Kerry promised to set up one of the independent ombudsman offices within the Foreign Ministry, which the EU citizens can turn to regarding legal protection in the area of national security and where they can submit complaints and questions and which should notify such citizens if the relevant law is complied with.

## Annual Verification

The operation manner of the Privacy Shield, as well as the guarantees and promises of the US Government regarding data access for the purpose of prosecution and national security should be verified annually by the European Commission and by the US Ministry of Commerce. The experts of the US Intelligence Services and the European Data Protection Authorities should also be consulted for these verifications. Once a year, the Commission will invite the interest Non-Governmental Organizations and other interested parties to discuss the general developments of the American data protection law and their effects on the EU citizens and will submit a public report based on this annual verification to the European Parliament and Council.

## Determinations of the Commission and Future Steps

In its draft for a decision related to the suitability, the Commission concluded that the legal framework of the EU-US Privacy Shield complies with the requirements formulated by the European Court of Justice in its verdict from October 6th, 2015. The US Government has issued convincing assurances that the strict compliance of the data protection provisions will be observed and that the national security authorities will not monitor the data without discrimination or on a large

scale. The EU Commission considers the recitals of the decision as significant restriction, especially the Presidential Policy Directive 28 (PPD-28) issued by President Obama in January 2014, which allows the use of 'large scale' data collection solely for the six purposes included in the area of national security, such as the fight against terrorism, counterintelligence, the proliferation of weapons of mass destruction, as well as 'international criminal threats'. The possible data collection on a large scale, as well as the possibility of amending the Presidential Policy Directive 28 by the new President after the elections in the USA, are legitimate questions regarding the sustained resilience of the Commission's terminations. Thus, it is expected that considering the position of the committee members of the Member States Representatives, as well as the Article 29 Group, that consultations will follow by the EU Commission during the next stage, before the resolution.

### For further information please contact:

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