

July 15, 2016

The Privacy Shield: New Requirements for Lawful Trans-Atlantic Data Transfers

On July 12, 2016, the United States and European Union member states formally adopted the Trans-Atlantic Privacy Shield, a data transfer mechanism aimed to provide strict and clear consumer privacy protections. This Privacy Shield replaces the 15-year-old Safe Harbor mechanism, which the EU Court of Justice invalidated in October, that multinational companies formerly relied on to ensure lawful cross-border data transfers. Notably, in an effort to address growing concerns over indiscriminate data handling and substandard enforcement under the Safe Harbor, the Privacy Shield places more robust requirements and limitations on U.S. companies with regard to redress, auditing, record keeping, disclosure requests, and general mass data collection and transfers of European citizens' private information.

At a high level, the Privacy Shield imposes more robust data security requirements and obligations on companies in the United States to protect the personal data of EU residents and requires closer monitoring and enforcement by the U.S. Department of Commerce and Federal Trade Commission, including increased cooperation with the European data protection authorities.

The Privacy Shield also requires regular reviews of participating companies by the Department of Commerce to confirm their continued compliance with the applicable data protection rules, and includes more dispute resolution mechanisms for EU citizens including the creation of a new ombudsperson who functions independently from U.S. intelligence services.

The certification process under the Privacy Shield should begin early next month. For the many companies that utilized the protections of the Safe Harbor, promptly certifying compliance with the requirements of the Privacy Shield should be of high priority. To that end, companies should immediately evaluate the Privacy Shield's additional requirements and limitations and begin modifying current privacy policies accordingly to confirm compliance and ensure a smooth transition.

For more detailed information on the Privacy Shield and/or assistance in the certification process, we encourage you to contact your legal counsel for a tailored review of your current privacy policies.

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This document is intended to provide you with general information regarding new requirements for trans-Atlantic data transfers. The contents of this document are not intended to provide specific

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