

Microsoft, Others Commit To Privacy Shield Data Transfers

By Allison Grande

Law360, New York (August 15, 2016, 7:28 PM ET) -- Microsoft, Salesforce and more than 30 other companies are among the first to take advantage of the newly instituted Privacy Shield mechanism that will allow them to transfer personal data from the European Union to the U.S., according to data released by the U.S. Department of Commerce on Friday.

While the Commerce Department officially opened up the process for multinationals to certify their compliance to the Privacy Shield on Aug. 1, the list on the Privacy Shield website maintained by the agency's International Trade Administration that was supposed to detail which companies take part in the arrangement and which are no longer active remained blank until Friday, when the agency revealed the identity of the first 36 companies to sign up for the new mechanism.

"The Department is pleased with the initial interest in the Privacy Shield," a Commerce Department spokesman told Law360 Monday, adding that the list will be "updated on a rolling basis" and that the agency is "reviewing nearly 200 additional pending certifications and are expecting hundreds more in the coming weeks."

More than 4,000 multinationals, including Google and Facebook, that had long relied on the popular safe harbor mechanism to transfer data from the EU to the U.S. have been in limbo since October, when the European Court of Justice invalidated the pact due to concerns about the scheme's ability to adequately protect the privacy rights of EU citizens.

While Google and Facebook were not among what the Commerce Department described as "the first tranche" of companies that had certified their compliance with the Privacy Shield mechanism that was developed as a replacement for the safe harbor, big names in the industry such as Microsoft Corp. and Salesforce Inc. did make an appearance on the new list, along with businesses such as AssureSign LLC, Cardinal Intellectual Property, Complete Discovery Source Inc., CORE Transport Technologies Inc., M3 USA, Kaltura

Inc. MediGuide Insurance Services International LLC and Sierra-Cedar Inc.

Each entry includes information about what other entities within the business unit are covered by the certification — for example, 20 of Microsoft's units, including Microsoft Licensing GP and Volometrix Inc., are listed as covered entities on the Privacy Shield site — as well as copies of the company's privacy policy and contact information for consumers who want to lodge a complaint.

The certifications for the most part cover the transfer of personal data, which according to the Commerce Department's site includes information that could be used for purposes such as "product registration and support. providing various business and consumer services. enabling sales and other transactions, conducting data analysis to improve products and services, and/or maintaining marketing relationships."

However, a dozen of the participants, including Microsoft, also gained permission to transfer human resources data outside the EU to servers in the U.S., the Commerce Department revealed.

Under the Privacy Shield pact, which was first revealed in February, stronger obligations will be placed on U.S. companies to protect the personal data of Europeans and more robust monitoring and enforcement will be carried out by Commerce and the Federal Trade Commission, which has agreed to cooperate with European data protection authorities on complaints.

The pact will also allow Europeans to raise their complaints about data misuse through several different channels, including by dealing with a company directly when it comes to commercial uses of their data and by lodging concerns with a newly created privacy ombudsman when their data is being used for national security purposes, and contains written assurances from the U.S. about the limitations that will be in place to prevent unfettered access to transferred data by U.S. law enforcement and intelligence officials.

Since the Privacy Shield gained final approval from EU leaders in July, doubts

have been raised about how widespread the buy-in would be from multinationals. While officials have set up an incentive that allows companies that sign up within the first two months of the pact's existence to take advantage of a transitional grace period that will give them nine months to get their contracts in order, attorneys have predicted that some companies may be turned off by what many view as the inevitability that the deal will soon face a court challenge similar to the one that resulted in the safe harbor's demise.

The EU's data protection regulators gave multinationals a small measure of comfort last month, when they announced that although they still had a number of lingering concerns about how the transferred data will be used for both commercial and national security purposes, they were willing to see how the Privacy Shield worked out in practice and would hold off on filing any formal challenge to the deal at least until after the pact undergoes its first annual review.