

Privacy Shield Moves Forward, Company Certifications to Begin August 1

The European Commission formally adopted the EU-U.S. Privacy Shield on Tuesday, ending months of legal uncertainty with a new framework for governing transatlantic data transfers. According to the Commission, Privacy Shield shifts from being a system based on self-regulation to “an oversight system that is more responsive as well as proactive” via stronger efforts by the Department of Commerce, the Federal Trade Commission, and European Data Protection Authorities. The U.S. Department of Commerce is now encouraging companies to review the framework, and it will begin accepting certifications beginning on August 1.

In addition to an array of new safeguards placed on U.S. mass surveillance on personal data transferred to the U.S., the final text of the Privacy Shield also imposes stronger data protection obligations on companies that are receiving personal data from the European Union. Specific features include:

- First, the Department of Commerce is now responsible for conducting regular reviews of participating companies and ensuring that companies follow the rules.
- Second, there are now tightened conditions for onward transfers to third parties by companies participating in the framework. Third parties are obliged to provide the “same level of protection” as a Privacy Shield member and must inform that company if it can no longer ensure an appropriate level of data protection.
- Third, the principle of data retention has been made more explicit – companies may only keep personal data as long as it serves the purpose the data was collected for.
- Further, any EU data subject may complain if they feel their rights have been violated, which means any individual whose data originates from the EU and not just Europeans may exercise rights under the Privacy Shield.

The Department of Commerce’s Privacy Shield Team will begin conducting industry briefings to provide information about the certification process, and it released a “[Guide to Self-Certification](#)”

(https://www.commerce.gov/sites/commerce.gov/files/media/files/2016/how_to_join_privacy_shield_sc_cmts.pdf) to help companies as they prepare to certify.

As with Safe Harbor, the decision to join the Privacy Shield remains entirely voluntary, but once a company publicly commits to the framework through self-certification, that commitment will be legally enforceable. The Department encourages companies to consider the following steps to meet the requirements for self-certification:

1. Confirm your organization’s eligibility to participate in Privacy Shield: as with Safe Harbor, only companies that are subject to the

- jurisdiction of the Federal Trade Commission or Department of Commerce may participate.
2. Develop a Privacy Shield-complaint privacy policy statement: a company's public privacy policy must satisfy the Privacy Shield's principles before a company may self-certify. Further, a privacy policy must make specific reference to compliance with Privacy Shield, identify an independent recourse mechanism, and provide that the privacy policy is made publicly available.
 3. Identify your organization's independent recourse mechanism: Privacy Shield companies must provide a mechanism to investigate unresolved complaints at no cost to EU data subjects. This mechanism must be in place prior to self-certification, and companies may either use a private sector dispute resolution program or agree to cooperate and comply with EU Data Protection Authorities.
 4. Ensure your organization's verification mechanism is in place: Companies must put in place procedures – either via self-assessment or through third-party assessment programs – to verify compliance with Privacy Shield.
 5. Designate a contact within your organization regarding Privacy Shield: Companies must also provide a point of contact for handling questions, complaints, access requests, and other issues arising under the Privacy Shield and EU data protection law. Importantly, companies must respond to individuals within 45 days of receiving a complaint or request.

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EC's press release:

- http://europa.eu/rapid/press-release_IP-16-2461_en.htm

The EC's adequacy decision is here:

- http://ec.europa.eu/justice/data-protection/files/privacy-shield-adequacy-decision_en.pdf

The updated Privacy Shield annex documents are here:

- http://ec.europa.eu/justice/data-protection/files/annexes_eu-us_privacy_shield_en.pdf