

PRIVACY SHIELD

EUROPEAN BUSINESSES

The Privacy Shield

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Q1. What is the Privacy Shield?

The decision on the adequacy of the EU-U.S. Privacy Shield Framework (“Privacy Shield”) or (“Framework”) was adopted by the European Commission on July 26, 2016. It was designed by the European Commission and the U.S. Department of Commerce to replace the International Safe Harbor Privacy Principles which were declared invalid by the European Court of Justice in 6 October 2015.

The Privacy Shield is a transfer tool of personal data used between EU and US companies.

The Privacy Shield applies to any type of personal data transferred from the EU to the US including commercial, health or human resource related data, as long as the recipient US company has adhered to the Framework.

The adequacy decision and its annexes are available on the website of the European Commission (http://ec.europa.eu/justice/data-protection/international-transfers/eu-us-privacy-shield/index_en.htm).

Q2. What to do before engaging in a commercial relationship with a U.S. based company which is or claims to be Privacy Shield certified?

Before engaging in a commercial relationship with a U.S. based company which is or claims to be Privacy Shield certified, European businesses should first consult the Privacy Shield List, published on the US Department of Commerce’s website (<https://www.privacyshield.gov/welcome>), to verify whether personal data can be safely transferred to that company under the Framework.

The Privacy Shield List can also provide you with information on the type of personal data a company uses and details on the services it offers.

The US Department of Commerce also keeps a list of companies that are no longer members of the Privacy Shield. Unless such companies commit to the U.S. Department of Commerce to continue to apply the Privacy Shield principles, they are not allowed to receive personal data of EU individuals under the Privacy Shield.

In that case, other EU approved transfer mechanisms such as Binding Corporate Rules, Standard Contractual Clauses, should be used for the transfer of personal data of EU individuals to US based businesses.

Q3. What to do when contracting with a Data Processor established in the U.S.?

When a European based company, the data controller, transfers data to a US based data processor, acting on its behalf for processing purposes only (storage, IT maintenance, helpdesk etc.), the two companies are obliged to conclude a contract regardless of:

- (i) whether the data processor is a member of the Privacy Shield or not and of;
- (ii) whether the processing operation is carried out inside or outside the EU.

The conclusion of a contract is required in order to ensure that the data processor:

- acts only on instructions received from the data controller;
- provides appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and understands whether onward transfer is allowed¹ or notifies the data controller if a risk of substantial adverse effect on the guarantees, obligations and level of protection provided by the Privacy Shield is identified to the data transferred due to the envisaged onward transfer; and
- by taking into account the nature of the processing, assists the controller in responding to individuals exercising their right to access their personal data.

Q4. What happens with the registration of US subsidiary companies of European businesses?

For information on the registration of US subsidiary companies of European businesses in the Privacy Shield, please visit the U.S. Department of Commerce corresponding webpage: (<https://www.privacyshield.gov/article?id=U-S-Subsidiaries-of-European-Businesses-Participation-in-Privacy-Shield>).

Registration to the Privacy Shield is available on the U.S. Department of Commerce website (<https://www.privacyshield.gov/welcome>).

A guide to the self-certification process, is also provided thereby: (<https://www.privacyshield.gov/article?id=How-to-Join-Privacy-Shield-part-1>).

In any case, data protection principles applying under the Privacy Shield Framework will have to be complied with by the US self-certified entity.

¹ For more information on onward transfers by US based data processors, please visit the section “*Obligatory Contracts for Onward Transfers*” of the Privacy Shield.