February 4, 2016

The EU-U.S. Privacy Shield was announced by Commissioner Jourová and Vice-President Ansip as a replacement for the Safe Harbor Framework. The agreement contains three key features:

Strong Obligations on Companies' Handling of EU Citizen Data

- U.S. companies importing personal data from Europe will be required to commit to "robust" obligations on how they process personal data, for example in the area of "onward transfers."
- The Department of Commerce will regularly review companies self-certifying to the *Privacy Shield* to ensure that they publish their commitments, with the Federal Trade Commission (FTC) enforcing them. Noncompliant companies will face sanctions and possible removal from the list.

Clear Safeguards and Transparency Obligations on U.S. Government Agency Access

- The Office of the Director of National Intelligence has provided written assurances that the U.S. government does not conduct indiscriminate mass surveillance of EU citizens' personal data.
- Public authorities with access to EU data for law enforcement and national security purposes will be subject to clear limitations, safeguards, and oversight mechanisms. Exceptions permitting such access may be used only to the extent that they are necessary and proportionate.
- The European Commission and the Commerce Department will hold an annual review of the agreement beginning in 2017, in consultation with U.S. national intelligence experts and European data protections authorities (DPAs), with the European Commission retaining the authority to suspend the agreement if it finds the results of the review unsatisfactory.
- The agreement creates a special ombudsman, to be housed within the State Department, who will be empowered to respond to DPA complaints regarding national security access to data.

New Redress and Complaint Resolution Mechanisms for EU Citizens

- As a matter of first recourse, companies will be obliged to respond to complaints made by EU citizens, or through an alternative dispute mechanism (free of charge), or DPAs can bring cases to the Commerce Department or the FTC.
- DPAs will work with the FTC to ensure that citizen complaints are investigated and resolved. Commerce is responsible for ensuring these complaints are resolved in a reasonable timeframe.
- An agreement includes arbitration as a redress mechanism of "last resort."

What are the Next Steps?

- Commissioner Jourová presented the contours of the agreement to DPAs at the Article 29 Working Party in Brussels on February 3.
- The Commission will then draft an "adequacy decision," which must then be adopted by the College of Commissioners, and approved by the Article 31 Working Group, which represents the Member States. The entire approval process is expected to take at least 6 to 8 weeks.
- The U.S. is responsible for putting in place the new framework, monitoring mechanisms, and ombudsman.

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