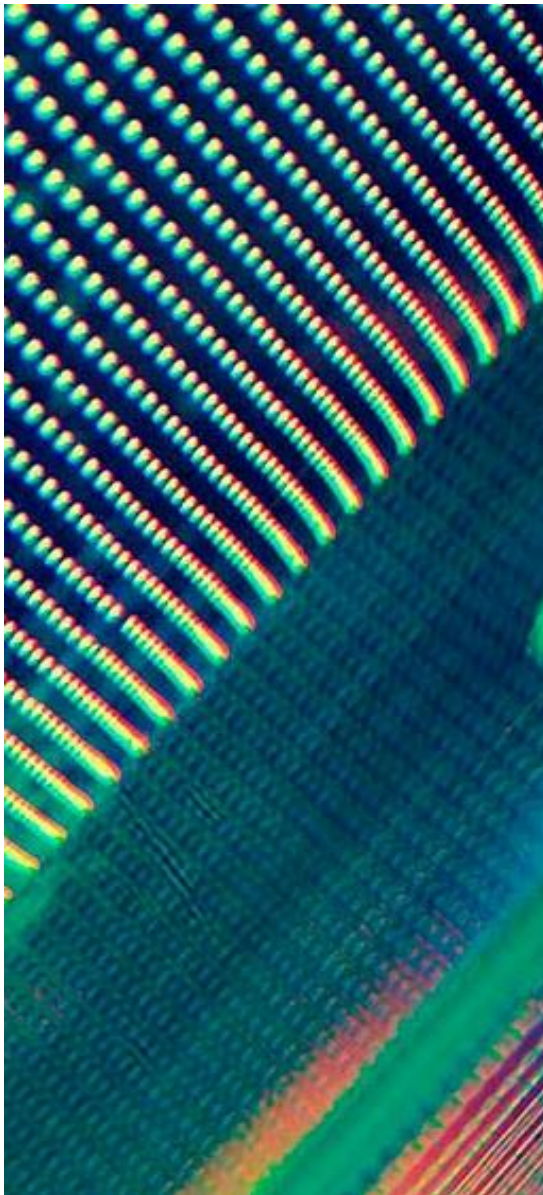

Adequacy decision: EU-US transfers of personal data

The European Commission adopts adequacy decision on the Data Privacy Framework between the European Union (EU) and the United States (US)

Portugal - Legal Update

July 18, 2023



Key aspects

- This adequacy decision concludes that the US ensures an adequate level of protection comparable to the required EU standards for the transfer of personal data of EU residents to US companies participating in the EU-US Data Privacy Framework.
- All European entities wishing to transfer personal data to the US must ensure that they engage service providers that are properly certified and registered with the EU-US Data Privacy Framework.
- Personal data can then be transferred to companies participating in the EU-US Data Privacy Framework without having to apply additional data protection safeguards.



Main features of the EU-US Data Privacy Framework

On July 10, 2023, the European Commission adopted an adequacy decision on the EU-US Data Privacy Framework. It concluded that the US ensures an adequate level of protection for transfers of personal data of EU residents to US companies participating in the EU-US Personal Privacy Framework.

In its adequacy decision, the European Commission assessed the requirements arising from the EU-US Data Privacy Framework, as well as the limitations and safeguards applicable to situations where the personal data of EU residents are transferred to the US and subsequently accessed by its public authorities.

As a result of this adequacy decision, EU entities will now be able to transfer personal data to companies established in the US that are participants in the EU-US Data Privacy Framework without having to apply additional data protection safeguards.

To this end, US companies wishing to obtain certification under the EU-US Data Privacy Framework must commit to a detailed set of privacy obligations that include compliance with the data processing principles specifically laid down in the Privacy Framework, as well as specific obligations relating to data security and the sharing of personal data with third parties. Companies will only be able to process personal data under this EU-US Data Privacy Framework when they are officially registered to do so by the US Department of Commerce (“DoC”).

In particular, applicant companies will have to publicly declare their commitment to complying with all the principles listed in the EU-US Data Privacy Framework and provide a range of information to the DoC, namely the company identification details and its business activity, a description of its policies on data protection and handling complaints and requests from data subjects, the statutory body responsible for assessing the complaints filed, and the independent appeal mechanisms in place.

The EU-US Data Privacy Framework offers data subjects several ways to exercise their right to file a complaint. Specifically, they will be able to do so directly with the:

- Organizations certified and registered under the EU-US Data Privacy Framework;
- Independent statutory bodies appointed by certified companies to investigate and assess the complaint;
- Supervisory authorities of a Member State;
- DoC or the Federal Trade Commission (“FTC”);
- Arbitration panel appointed by the DoC and the European Commission.



Transfer of personal data from the EU to US information services

This adequacy decision follows on from the US Presidential Decree aimed at introducing new binding safeguards to address the questions raised by the Court of Justice of the European Union in Case C-311/18 (“Schrems II”), which invalidated the adequacy decision adopted by the European Commission in 2016 (“EU-US Privacy Shield”). It was also decided that:

- US intelligence agencies will only be able to access personal data of EU residents to the extent strictly necessary and proportionate to protect their national security;
- Oversight of US intelligence activities will be increased to ensure compliance with the restrictions imposed on surveillance activities; and
- A Data Protection Review Court will be set up to investigate and settle any complaints about improper access to personal data by US national security authorities.

In addition, data subjects will be able to file a complaint directly with their national supervisory authority. After the complaint is duly conveyed, it will be subsequently investigated by the Civil Liberties Protection Officer of the Director of National Intelligence of the US intelligence community. Data subjects will also be able to appeal its decision to the aforementioned Data Protection Review Court. This establishes a two-layer redress mechanism.

Final provisions

The EU-US Data Privacy Framework entered into force upon adoption of this adequacy decision on July 10, 2023. In any event, the European Commission will review it on an ongoing basis and, more specifically:

- The first review of the EU-US Data Privacy Framework will take place one year after its entry into force;
- Depending on the outcome of this first review, the European Commission, assisted by the Member States and their supervisory authorities, will decide on the frequency of future reviews, which will take place at least every four years.



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