



## ▶ THE "ADEQUACY DECISION" REGARDING THE FREE TRANSFER OF DATA BETWEEN EU AND US WAS ACCEPTED BY THE EUROPEAN COMMISSION

### 1. INTRODUCTION

As known, the General Data Protection Regulation ("GDPR") stipulates that the transfer of data to third countries can only take place if the European Data Protection Board accepts that such countries ensure sufficient data security through their domestic legislation or international treaties to which they are parties. The continuation of the article also states that when such adequate protection is not in place, data transfer can only occur if the standard data protection provisions defined by the Commission are met, and a level of protection equivalent to that guaranteed within the EU is provided for the individuals whose personal data is being transferred.

The Safe Harbor Agreement previously made between the EU and the US was invalidated by the Schrems 1 decision, and the Privacy Shield Agreement was invalidated by the Schrems 2 decision of the European Court of Justice.

After the invalidation of these two agreements, a new mechanism called the "Data Privacy Framework" was introduced to enable free data transfers between the EU and the US. The Decision of Adequacy for the EU-US Data Privacy Framework was adopted on July 10 and has come into effect. The European Commission will continuously monitor developments in the US and review the adequacy decision regularly.

## **2. PURPOSE OF THE ADEQUACY DECISION**

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The Adequacy Decision aims to ensure that personal data transferred from the EU to third countries is protected at a level comparable to the GDPR. With this decision, it is understood that the US provides sufficient protection for personal data transferred to US companies participating in the EU-US Data Privacy Framework.

## **3. WHO DOES THE ADEQUACY DECISION COVER?**

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The Adequacy Decision covers data transfers from any public or private organization in the European Economic Area to US companies participating in the EU-US Data Privacy Framework.

## **4. WHAT ARE THE CRITERIA CONSIDERED FOR ADEQUACY?**

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"Adequacy" does not mean that a third country's data protection system is identical to that of the EU, but it is based on a standard of 'essential equivalence.' This involves a comprehensive evaluation of the protection applied to personal data and the available oversight and recourse mechanisms. European data protection authorities have compiled a list of factors to consider for this evaluation. Among them are transparency, accountability, data subject rights, restrictions on future data transfers, special measures for processing sensitive personal data, data accuracy, minimization, and certification, which are criteria that measure adequacy.

In the Adequacy Decision, the European Commission carefully assessed the requirements arising from the EU-US Data Privacy Framework, as well as the limitations and safeguards applied by US public authorities, especially law enforcement and national security purposes, when personal data is transferred to the US.

## **5. WHAT ARE THE NEW RIGHTS PROVIDED TO DATA SUBJECTS?**

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The EU-US Data Privacy Framework offers certain new rights to EU citizens whose personal data may be transferred to participating US companies. Some of these rights include the right to access their data, request correction or deletion of incorrect or unlawfully processed data. Additionally, EU citizens have various remedies available, including independent dispute resolution mechanisms and recourse to an arbitration panel, in case of misuse or processing of their data.

## 6. HOW WILL COMPANIES DEMONSTRATE THEIR ADEQUACY?

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US companies can demonstrate their adherence to the EU-US Data Privacy Framework by documenting their compliance with a detailed set of privacy obligations. These obligations may include principles such as purpose limitation, data minimization, data security, and specific obligations concerning data sharing with third parties. Participating companies can document their compliance through the US Department of Commerce, which will process certification applications and monitor and oversee companies' compliance with certification requirements.

### **RESOURCES:**

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