

Privacy and Information Governance

Shielded: U.S. and EU Reach Political Agreement on New Framework for Transatlantic Data Flows

By [Mary Ellen Callahan](#), [Nancy Libin](#) and [Sabrina Guenther](#)

European Commissioner for Justice Vera Jourová and EU Commission Vice President Andrus Ansip announced today that the College of Commissioners has approved a political agreement with the United States on a new framework for transatlantic data flows. This new agreement, the EU-U.S. Privacy Shield (the “Privacy Shield”), would replace the long-standing U.S.-EU Safe Harbor Agreement, which had been in place since 2000 and was recently [held to be invalid](#) by the European Court of Justice in a decision on October 6, 2015.

The text of the Privacy Shield has not yet been released. The European Commission, however, briefly summarized some of the elements of the Privacy Shield during its announcement earlier today:

New obligations on U.S. companies that handle Europeans’ personal data:

- U.S. companies must comply with the data processing obligations outlined in the Privacy Shield and make public commitments to do so. (We will have more information about these obligations and how they differ from obligations imposed by the Safe Harbor Agreement after the text of the Privacy Shield is released.)
- U.S. companies that handle personal data related to European employees must commit to comply with decisions regarding such data by European Data Protection Authorities (“DPAs”).

New enforcement mechanisms:

- The U.S. Department of Commerce will monitor companies’ compliance with their public commitments, and the Federal Trade Commission will enforce U.S. companies’ public commitments to abide by the data protection obligations in the new framework.

New commitments regarding U.S. government access to data:

- The U.S. government has given the EU written assurances that there will be limitations, safeguards, and oversight mechanisms associated with U.S. government access to personal data transferred to the U.S. under the Privacy Shield. For instance, U.S. law enforcement and national security agencies will be able to access personal data only if the data is necessary and proportionate to the government’s purpose.

Annual joint reviews:

- The European Commission and the U.S. Department of Commerce will conduct joint annual reviews of the U.S. government’s compliance with the Privacy Shield. The review will cover national security agencies’ access to personal data and may involve members of the U.S. Intelligence Community and DPAs.

New redress mechanisms:

- European citizens who believe that their personal data has not been handled according to the Privacy Shield will have several options with respect to redress. They will be able to (1) file a complaint with the relevant company, which must respond within a certain period of time; (2) file a complaint with a DPA, which will refer the matter to the U.S. Department of Commerce and the Federal Trade Commission for disposition; or (3) file complaints regarding access to their personal data by the U.S. Intelligence Community with a new Ombudsman, which the U.S. government will establish for this purpose in the U.S. Department of State.

In her press conference earlier today, Commissioner Jourová estimated that the Privacy Shield would be in force in approximately three months. In order to bring the Privacy Shield into force in the EU, Commissioner Jourová

and European Commission Vice President Andrus Ansip must prepare a draft “adequacy decision,” which the College of Commissioners can adopt after obtaining the advice of the Article 29 Working Party and consulting with representatives of the Member States. This is an executive agreement in the U.S., which means the U.S. Department of Commerce can bind the U.S. government without the need for congressional action.

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