

PERSONAL DATA TRANSFER

EUROPEAN UNION - U.S.A.: UPDATE

After the invalidation of the EU-U.S.A. Privacy Shield by the European Court of Justice, on 13 December 2022 the European Commission launched the process concerning the adoption of the new adequacy decision (“Draft”) with respect to the personal data transfer from European Union to the U.S.A. pursuant to Section 45, paragraph 3, of the European General Data Protection Regulation No. 679 of 2016.

The Draft has been prepared in the light of the general principles agreed by President Von Der Leyen and President Biden in March 2022 (subsequently implemented in the US Executive Order of 7 October 2022 along with the regulations issued by the US Attorney General Merrick Garland).

The key elements of the Draft are:

- (1) US companies undertake to comply with a detailed set of privacy obligations established in the Draft, for instance, the requirement to delete personal data when it is no longer necessary for the purpose for which it was collected, and to ensure continuity of protection when personal data are shared with third parties.
- (2) Independent dispute resolution mechanisms and an arbitration panel free of charge for the EU companies and citizens in case of unlawful proceeding of their personal data, which can be appealed also when other transfer mechanisms (i.e. standard contractual clauses and binding corporate rules) are in force.
- (3) Limitations and safeguards regarding the access to data by US public authorities for criminal law enforcement and national security purposes.

The European Commission carried out the first step of the adoption procedure by submitting the Draft to the European Data Protection Board (EDPB). The second step is to seek approval



from a committee composed of representatives of the EU Member States. In addition, the European Parliament has a right of scrutiny over the Draft. Once this procedure is completed, the European Commission can proceed to adopting the final adequacy decision.

The functioning of the EU-U.S. adequacy decision and of its data privacy framework will be subject to periodic reviews, which will be carried out by the European Commission, together with European data protection authorities, and the competent US authorities.

SILS' legal team is specialized in the assistance of the companies in data protection matters also with respect to the transfer of personal data toward the U.S.A. For further information and queries, please send an e-mail to the partner Mr. Luigi Zumbo (luigi.zumbo@silsitalia.it) and to the senior associate Ms. Federica Dendena (federica.dendena@silsitalia.it).

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