

U.S. IMPLEMENTATION, OVERSIGHT AND ENFORCEMENT OF THE EU-U.S. AND SWISS-U.S. PRIVACY SHIELD FRAMEWORKS

September 2019

As of September 2019, over 5,000 companies have made legally enforceable commitments to comply with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks. These range from start-ups and emerging companies to multinational, Global 1000, and Fortune 500 enterprises in every industry sector— from manufacturing and services to agriculture and retail. Over 3,500 of these companies (70% of all Privacy Shield participants) are small-to medium-sized enterprises with fewer than 250 employees. More than [200](#) participants are European-headquartered.

In recognition of Privacy Shield's importance to enhancing data protection and facilitating transatlantic commerce that generates \$7.1 trillion in trade and investment between the United States and Europe, the U.S. Government has worked with its European Union and Swiss counterparts to implement and strengthen the Privacy Shield program.

COMMERCIAL ASPECTS

1 ENHANCING CERTIFICATION PROCESS

- ✓ **Rigorous Company Reviews.** The U.S. Department of Commerce (the "Department") undertakes a system of extensive checks before companies may self-certify or re-certify. First-time certifiers are required to delay making representations of their Privacy Shield participation until after the review process is complete to avoid potential false claims.

2 ADDITIONAL MONITORING OF COMPANIES

- ✓ **Compliance Monitoring.** In addition to the annual certification process, the Department conducts random spot checks to verify that participants are meeting their self-certification requirements throughout the certification life cycle. The Department monitors the Privacy Shield list of participating organizations and removes those that no longer meet Privacy Shield requirements.
- ✓ **Checks for False Claims.** The Department conducts quarterly reviews for fraudulent claims of participation in the Privacy Shield program.

3 ACTIVE COMPLAINT RESOLUTION

- ✓ **Binding Arbitration Mechanism.** In concert with the European Commission and the Swiss Administration, the Department appointed a full slate of arbitrators, providing EU and Swiss individuals recourse to binding arbitration.

4 EDUCATION AND EXPANDED OUTREACH

- ✓ **Awareness Raising.** U.S. officials have undertaken roadshows to dozens of U.S. cities to educate stakeholders about Privacy Shield. Senior U.S. Government officials have also conducted outreach across Europe to discuss the functioning of the program.
- ✓ **Guidance.** The U.S. Government developed user-friendly materials regarding the Privacy Shield program for [individuals](#), [businesses](#), and [authorities](#). Stakeholders can access extensive public guidance regarding the potential impact of Brexit, the listing of company subsidiaries, and step-by-step instructions for submitting self-certifications. The U.S. Government has also worked with EU counterparts on public guidance for processors and regarding onward transfers.

5 STRENGTHENED ENFORCEMENT

- ✓ **Privacy Enforcement.** The Federal Trade Commission continues to vigorously pursue companies falsely claiming Privacy Shield participation or failing to comply with the Privacy Shield Principles, with fifteen Privacy Shield-related enforcement actions concluded to date.

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NATIONAL SECURITY ASPECTS

1 ROBUST LIMITATIONS AND SAFEGUARDS

- ✓ **Presidential Policy Directive 28 (PPD-28).** The Administration has expressly confirmed that PPD-28—which provides protections to all individuals with respect to signals intelligence information—remains in place without amendment. PPD-28 put in place unprecedented limits on the retention of non-U.S. person information collected through signals intelligence, restricted dissemination of non-U.S. person information, and put in place new oversight, training, and compliance requirements with regard to protecting the privacy of all people, regardless of nationality. As a formal presidential directive, it has the force of law within the Executive Branch, and compliance is mandatory.
- ✓ **Intelligence Transparency.** The Intelligence Community (IC) reaffirmed its commitment to civil liberties, privacy, and transparency by updating and reissuing its foundational policy on those topics, known as Intelligence Community Directive 107. The IC regularly releases information about how it implements national security authorities, and recently launched www.intelligence.gov to serve as a new "digital front door" to the IC.

2 INDEPENDENT OVERSIGHT

- ✓ **Privacy and Civil Liberties Oversight Board (PCLOB).** The PCLOB is an independent agency within the Executive Branch established in 2007 to ensure that the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. The bipartisan, five-member Board is appointed by the President and confirmed by the Senate. In 2018, the President nominated, and the Senate confirmed, three new members of the PCLOB, which restored the agency to quorum status. In 2019, two additional members were confirmed, bringing the Board to its full complement. In January 2019, the PCLOB issued its strategic plan for 2019-2022, highlighting its participation in consultations related to Privacy Shield. In June 2019, the PCLOB announced the launch of several new oversight projects regarding U.S. Government protections for privacy and civil liberties.

3 INDIVIDUAL REDRESS

- ✓ **Ombudsperson Mechanism.** The U.S. Government established the Privacy Shield Ombudsperson mechanism, an unprecedented independent review channel for EU and Swiss individuals regarding national security access to personal data transferred to the United States pursuant to the Frameworks or other EU-approved data transfer mechanisms. In June 2019, Keith Krach was sworn in as Under Secretary of State for Economic Growth, Energy, and the Environment, a role in which he also serves as the Privacy Shield Ombudsperson. The Under Secretary reports directly to the Secretary of State and is independent from the Intelligence Community. To carry out the Ombudsperson duties, the Under Secretary works closely with other U.S. Government officials, including independent oversight bodies such as inspectors general, as appropriate, to ensure that completed requests are processed and resolved in accordance with applicable laws and policies.

4 U.S. LEGAL DEVELOPMENTS

- ✓ **FISA Amendments Reauthorization Act of 2017.** Congress reauthorized FISA Section 702 in January 2018, maintaining all elements on which the European Commission and Swiss Government's Privacy Shield adequacy determinations were based. In addition to reauthorizing FISA Section 702, the FISA Amendments Reauthorization Act of 2017 expands privacy safeguards under FISA and other U.S. intelligence laws by enhancing the advisory and oversight functions of the PCLOB (in addition to other reforms strengthening privacy protection). The U.S. Government keeps European officials informed about the material developments in the law relevant to Privacy Shield.