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First review of the EU-US Data Privacy Framework

Executive summary

We welcome the first periodic review by the European Commission and European data protection authorities (DPAs) to ensure the Data Privacy Framework's (DPF) functioning.

EU-US bilateral trade has reached over €1.6 trillion in 2023,¹ as the US continues to be the EU's largest trading and geopolitical partner. For the digital and digitalising industry in Europe, a strong DPF, additionally to standard contractual clauses (SCCs) and binding corporate rules (BCRs), can stabilise bilateral trade and economic collaboration whilst protecting Europeans' personal data.

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¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1827

Implementing the DPF since July 2023

Today, over twenty DIGITALEUROPE members are certified under the DPF as active participants in the framework. Certified companies and their trading partners can thus benefit from increased trust and reliability for data flows, whilst removing some of the burden for companies to assess third-country laws and practices.

The DPF also improved the efficiency of SCCs, for which some DPAs had required additional transfer impact assessments, at costly legal advice. This is particularly the case when SCCs need to be regularly updated. Additionally, there are currently dozens of sets of SCCs across the globe that have not been mutually recognised.

We welcome the European Data Protection Board's (EDPB) confirmation that transfers based on the adequacy decision do not need to rely on Art. 46 GDPR transfer tools.² Indeed, once one of the Art. 46 GDPR transfer tools is implemented, additional assessments or supplementary measures should not be required. Safeguards put into place by the US government in the area of national security apply to all personal data transfers to companies in the US.

We therefore recommend continued exchanges on data flows with the US, as the EU's largest trade and investment partner holding shared democratic values.³

New safeguards under the framework

The DPF's consistency with the *Schrems II* findings was thoroughly analysed in an independent legal analysis issued by Linklaters in February 2023, commissioned by DIGITALEUROPE and BusinessEurope.⁴ The analysis focused on the choice of an Executive Order as a legal instrument in light of the legality principle, the principles of proportionality and necessity applied to the restriction of the fundamental rights to privacy and personal data protection in the context of signals intelligence activities, and the new redress mechanism available to EU individuals.

Significant steps have been taken by the US to protect individuals' fundamental right to data protection. New safeguards in place under Executive Order 14086, with the Attorney General Regulation establishing a Data Protection Review

² https://www.edpb.europa.eu/system/files/2023-07/edpb_informationnoteadequacydecisionus_en.pdf.

³ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/united-states_en.

⁴ See Linklaters, Independent analysis of the draft EU-US Adequacy decision, commissioned by DIGITALEUROPE and BusinessEurope, available at https://cdn.digitaleurope.org/uploads/2023/02/New-Version-Digital-Europe_Report-on-EC-draft-Adequacy-Decision-for-the-US.pdf.

Court, aim to respond to concerns raised by the Court of Justice of the European Union in the *Schrems II* case.

With the DPF's implementation – and now that the e-Evidence Regulation has been adopted – we encourage progress in negotiations of the EU-US Cloud Act agreement. The Cloud Act's remit is limited to electronic evidence in the context of criminal investigations, which most often will be personal data. In this context, it is estimated that over half of all investigations in the EU include a request for data stored abroad, in large part addressed to the US.⁵

The DPF, alongside other mechanisms such as SCCs and BCRs, gives companies sufficient balance to rely on steady data flows. The DPF may also have a positive influence on developing agreements with other third countries.

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⁵ See pp. 14-15, DIGITALEUROPE, *Data transfers in the data strategy: Understanding myth and reality*, available at https://cdn.digitaleurope.org/uploads/2022/06/DIGITALEUROPE_Data-transfers-in-the-data-strategy_Understanding-myth-and-reality.pdf.

About DIGITALEUROPE

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract, and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies. Our membership represents over 45,000 businesses that operate and invest in Europe. It includes 108 corporations that are global leaders in their field of activity, as well as 41 national trade associations from across Europe.