

Successor arrangement to the Privacy Shield

Scene setter

On 25 March, the EU and US announced an 'agreement in principle' on a new TransAtlantic Data Privacy Framework. Like the previous Privacy Shield, this new framework will take the form of a Commission adequacy decision based on which personal data could flow freely from the EU to participating companies in the US. The two sides will now need to translate this agreement in principle into legal texts. In particular, the U.S. commitments will be included in an Executive Order that will form the basis of the Commission's assessment in its future adequacy decision.

For a US company as Microsoft, the Privacy Shield successor arrangement is of high importance and will, therefore, likely be raised in the discussion.

You may therefore want to:

- Recall that an agreement was reached on the key elements of a new framework, but that the details still need to be finalised and translated into legal texts.*

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- Stress that further discussions on these drafts may be needed, to make sure that they fully reflect what we have agreed on.*
- Explain that the Commission will only be able to propose a draft adequacy decision when the text of these legal instruments will have been agreed.*
- Mention that, taking into account the different procedural steps (opinion of the EDPB, green light from the Member States in comitology), a final adequacy decision could at the earliest be adopted by early next year.*

Main messages

- On 25 March, President von der Leyen and President Biden announced an agreement in principle for a new transatlantic data transfer framework to replace the Privacy Shield.
- This is certainly an important step, but the work continues.
- We now need to **finalise the details and translate them into legal texts.**
- As a first step, the US commitments have to be included in a new Executive Order to be adopted by the US President and implementing regulations.

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- I cannot exclude that this might involve some further discussions on the details of these legal texts. Our **objective is to make sure that we have a solid foundation for a future adequacy decision.**
- Because that will be the next step: once we will have agreed on the text of these legal instruments, the Commission will be able to propose a draft adequacy decision on that basis.
- To adopt the final decision, we will need to go through a multi-step process that involves an opinion from the European Data Protection Board, a vote of our Member States and scrutiny by the European Parliament.
- Because of the work that remains to be done and the different procedural steps we need to go through, it is **difficult to give a precise timeline at this stage.**
- Based on our experience with previous adequacy decisions, it takes around six months between the launch of the adoption procedure and the adoption of the final decision. It is therefore becoming improbable that we could adopt the adequacy decision still this year. The first quarter of next year is more likely
- Finally, it is important to mention that the **safeguards we have negotiated** on US public authorities' access to data **will apply to all transatlantic transfers**, not only the ones based on the future adequacy decision. This should notably facilitate the use of transfers mechanisms – on which European companies extensively rely – such as the **Standard Contractual Clauses (SCCs) and Binding Corporate Rules (BCRs).**

Privacy developments in the US

- We are closely following the developments in the area of privacy in the US, including the adoption of comprehensive state privacy laws and the ongoing debate on the bipartisan proposal for a comprehensive federal privacy law.
- We strongly believe that it is in everyone's interest, including of the business community, that what happens in the US is convergent with what we are seeing in the rest of the world: there is now a clear global trend towards privacy laws with similar features, based on core principles, individual rights and independent enforcement.

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