

# EU-U.S. Privacy Shield: Second review shows improvements but a permanent Ombudsperson should be nominated by 28 February 2019

This year's report shows that the U.S. continues to ensure an adequate level of protection for personal data transferred under the Privacy Shield from the EU to participating companies in the U.S. The steps taken by the U.S. authorities to implement the recommendations made by the Commission in last year's report have improved the functioning of the framework.

However, the Commission does expect the US authorities to nominate a permanent Ombudsperson by 28 February 2019 to replace the one that is currently acting. The Ombudsperson is an important mechanism that ensures complaints concerning access to personal data by U.S. authorities are addressed.

**Andrus Ansip**, Commission Vice-President for the Digital Single Market, said: *"Today's review shows that the Privacy Shield is generally a success. More than 3,850 companies have been certified, including companies like Google, Microsoft and IBM – along with many SMEs. This provides an operational ground to continuously improve and strengthen the way the Privacy Shield works. We now expect our American partners to nominate the Ombudsperson on a permanent basis, so we can make sure that our EU-US relations in data protection are fully trustworthy."*

Commissioner for Justice, Consumers and Gender Equality, **Věra Jourová**, stated: *"The EU and the U.S. are facing growing common challenges, when it comes to the protection of personal data, as shown by the Facebook / Cambridge Analytica scandal. The Privacy Shield is also a dialogue that in the long term should contribute to convergence of our systems, based on strong horizontal rights and independent, vigorous enforcement. Such convergence would ultimately strengthen the foundation on which the Privacy Shield is based. In the meantime, all elements of the Shield must be working at full speed, including the Ombudsperson."*

Improvements already made include the strengthening by the **Department of Commerce** of the certification process and of its proactive oversight over the framework. As recommended by the Commission's first annual review, the Department of Commerce has set up several mechanisms, such as a system of checks ("spot checks"), which randomly selects companies to verify that they comply with the Privacy Shield principles. 100 companies have been checked: 21 had issues that have now been solved. Additional compliance review procedures also include the analysis of Privacy Shield participants' websites to ensure that links to privacy policies are correct. The Department of Commerce put in place a system to identify false claims which prevents companies from claiming their compliance with the Privacy Shield, when they

have not been certified.

The **Federal Trade Commission** has also demonstrated a more proactive approach to enforcement by monitoring the principles of the Privacy Shield, including by issuing subpoenas to request information from the participating companies.

As regards access to personal data by U.S. public authorities for national security purposes, new members of the Privacy and Civil Liberties Oversight Board (PCLOB) have been appointed which restores the Board's quorum. The Board's report on the implementation of Presidential Policy-Directive No. 28 (PPD-28, which provides for privacy protections for non-Americans) has been made publicly available. It confirms that these privacy protections for non-Americans are implemented across the U.S. intelligence community.

The second review took into account relevant developments in the U.S. legal system in the area of privacy. The Department of Commerce launched a consultation on a federal approach to data privacy to which the Commission contributed and the US Federal Trade Commission is reflecting on its current powers in this area. In the context of the Facebook/Cambridge Analytica scandal, the Commission noted the Federal Trade Commission's confirmation that its investigation of this case is ongoing.

### **Next steps**

The report will be sent to the European Parliament, the Council, the European Data Protection Board and to the U.S. authorities.

The European Commission expects the U.S. government to identify a nominee to fill the Ombudsperson position on a permanent basis by 28 February 2019 at the latest. If this does not take place by that date, the Commission will consider taking appropriate measures, in accordance with the General Data Protection Regulation.

### **Background**

The EU-U.S. Privacy Shield decision was adopted on 12 July 2016 and the Privacy Shield framework became operational on 1 August 2016. It protects the fundamental rights of anyone in the EU whose personal data is transferred to certified companies in the United States for commercial purposes and brings legal clarity for businesses relying on transatlantic data transfers.

The Commission committed to reviewing the arrangement on an annual basis, to assess if it continues to ensure an adequate level of protection for personal data. After the first annual review, which took place in 2017, the Commission made a number of recommendations to further improve the practical functioning of the Privacy Shield.

On 18 October 2018, Commissioner for Justice, Consumers and Gender Equality Věra **Jourová**, launched with the US Secretary of Commerce Wilbur Ross the discussions for the second review the [EU-U.S. Privacy Shield \(statement\)](#). The findings in this report are based on meetings with representatives of all US government departments in charge of running the Privacy Shield, including the Federal Trade Commission, the Office of the Director of National Intelligence

(ODNI), the Department of Justice and the State Department, which took place in Brussels mid-October 2018, a study on automated decision-making commissioned by the Commission as well as on input from a wide range of stakeholders, including feedback from companies and privacy NGOs. Representatives of the EU's independent data protection authorities also participated in the review.

**For More Information**

[Report on the second annual review of the EU-U.S. Privacy Shield](#)

[Staff Working Document](#)

[EU-U.S. Joint Statement from the 2<sup>nd</sup> annual review](#)

[Report on the first annual review of the EU-U.S. Privacy Shield](#)

[EU-US Privacy Shield](#) including Guide for Citizens

[EU-U.S. Privacy Shield: Frequently Asked Questions](#)