

Overview	Legal Change	Action required
<p>EU-US Data Protection Framework (DPF) Adequacy Decision</p>	<p>The European Commission announced the adoption of their anticipated DPF framework on July 10th.</p> <p>This framework sets out that:</p> <ul style="list-style-type: none"> - The Commission has assessed that the DPF offers protection for personal data transferred to US organisations essentially equivalent to the EU GDPR. - Data exporters subject to EU GDPR will not have to rely on alternate mechanisms such as Standard Contractual Clauses (SCCs) or complete Transfer Impact Assessments (TIAs) or Transfer Risk Assessments (TRAs). <p>In addition, US Commerce Secretary Raimondo confirmed that the US had fully implemented Executive Order (EO) 14086 which underpins the DPF. The EO has been extended to apply to EU/EEA as ‘qualifying states’ eligible for redress mechanisms and the US intelligence community is adopting policies pursuant to the EO.</p> <p>The decision is immediately operational. The DPF website (Department of Commerce Data Privacy Framework website) is operational from July 17th.</p> <p>The decision will be subject to periodic review by the European Commission, and EU and US Data Protection Authorities. The first review is scheduled for 2024.</p>	<p>EU organisations can send data to the US once their US counterparts have self-certified compliance with the DPF through the Department of Commerce.</p> <p>Once this is done, personal data can be freely and safely transferred from EU to US jurisdictions without legal challenge or the need to complete an SCC, or TIA/TRA.</p> <p>Currently, only US organisations under the jurisdiction of the Federal Trade Commission or Department of Transportation are eligible to use the DPF.</p> <p>US companies using the previous Privacy Shield and Safe Harbour frameworks to receive EU data will have to re-certify to ensure compliance with new DPF principles, within three months.</p> <p>Should EU-domiciled organisations continue to transfer data to US companies using SCCs, such as when the latter are ineligible to use DPF, they will find it easier to demonstrate ‘essential equivalence’ when completing TIAs. SCCs will remain a fallback option should a challenge to the DPF succeed.</p> <p>A redress system will investigate and resolve complaints of European citizens on access to data by US intelligence authorities. Complaints can be submitted directly to the US company, which must have a complaints process freely available, or to the EU Data Protection Authorities. If necessary, appeals can be sent to the newly established Data Protection Review Court.</p>
<p>UK Position</p>	<p>On June 8th, the US and UK signed an agreement in principle for a ‘UK extension to the Data Privacy Framework’ or ‘Data Bridge’. US organisations cannot begin to rely on the UK extension until the UK has completed an adequacy assessment. The US must also extend the data protections of EO 14086 to the UK as a ‘qualifying state’.</p>	<p>Await completion of adequacy assessment and EO certification. It is likely that this will be in place by the end of the year.</p> <p>In the meantime, protections for personal data included in the EO and DPF are a useful source of reference for TIA/TRA diligence.</p>



Max Schrems – None or Your Business (NOYB)	NOYB have already announced an intention to file a challenge to the DPF, which they regard as not having addressed the fundamental issue of surveillance of non-US nationals under section 702 of the US Foreign Intelligence Surveillance Act, as set out in the Schrems II judgement.	This challenge will begin as soon as exporters begin using the DPF. The challenge is likely to take some years to come before the European Court of Justice.
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This is a high level general update only. Legal advice should be obtained on specific circumstances.

