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Schrems II: Privacy Unshielded

More than 5,300 companies in the United States using the [EU-US Privacy Shield Framework](#) for the transfer of personal data from the European Union to the U.S., in compliance with the requirements of the [General Data Protection Regulation \(GDPR\)](#), woke up to find out that the [Court of Justice of the European Union \(CJEU\)](#) invalidated the Privacy Shield.^[1] Since the court's decision in [Schrems II](#) is 64 pages long, here is a summary of what you need to know for now:

What did the court say?

[Privacy Shield](#) is invalid.

- U.S. surveillance programs are not proportional as required by EU law.
- EU data subjects do not have adequate remedies to ensure compliance with provisions of EU law, particularly in relation to national surveillance programs.
- The authorities of the EU Member States are not empowered to take effective action in relation to the allegedly unlawful processing of personal data.

[Standard Contractual Clauses](#) are valid, with caveats.

- Standard Contractual Clauses (SCCs) provide contractual guarantees and protection for data subjects in third countries.
- Companies must verify, on a case-by-case basis, whether the recipient country ensures an adequate level of protection under SCC.
- "Adequate protection" requires that the level of protection in the recipient country is comparable to the level of protection guaranteed within the EU.
- If adequate protection cannot be established, companies must provide additional safeguards:
 - Companies must provide additional safeguards.
 - Supervising authority is required in the recipient country.
 - Data already transferred must be deleted.

There is no applicable exception to the scope of GDPR under [Article 2](#) for these types of transfers.

- The [General Data Protection](#) personal data for commercial regardless of whether that d of the third country for surve

What should I do?

Unless your company is in one of the countries with an adequacy decision,^[2] or the U.S. and EU decide to renegotiate a new version of Privacy Shield that gives EU data subjects stronger privacy rights under U.S. surveillance laws, here are your options:

Do you use Privacy Shield for transfers from the EU to the U.S.?

- As soon as possible, find an a GDPR-protected data to the [code of conduct](#), or [derogati](#)
- If you have negotiated Article that require the parties to ex invalid, begin the process of

Do you use SCC for transfers from the EU to the U.S. (or any other country without an adequate level of protection)?

- Although the SCCs may be a regulators, for now they rema
- Review the data importer's t Appendix to the SCC and co specified to strengthen secu

The decision has had the unfortunate effect of leaving thousands of companies who rely exclusively on Privacy Shield for transfers of data into the U.S. in legal limbo. The U.S. has said that it will work with European regulators to limit the negative consequences of the decision. However, given the current state of U.S. data surveillance laws, which permit government access to data in certain circumstances, it is unclear how the U.S. and the EU can move forward to establish rules to which both sides can agree.

For questions and assistance regarding this topic, please feel free to contact any member of our [Privacy and Data Security Team](#).

^[1] Privacy Shield enabled U.S. based organizations to voluntarily self-certify and register with the Department of Commerce that they are making the public commitment to comply with the

framework's requirements. This commitment is enforceable under U.S. law. Participating organizations are further required re-certify on an annual basis.

[2] The European Commission has recognized Andorra, Argentina, Canada (commercial organizations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Switzerland, and Uruguay as providing adequate protection.

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