

# U.S. IMPLEMENTATION, OVERSIGHT AND ENFORCEMENT OF THE EU-U.S. AND SWISS-U.S. PRIVACY SHIELD FRAMEWORKS

January 2017 to May 2018

## COMMERCIAL ASPECTS

### 1 ENHANCED CERTIFICATION PROCESS

- ✓ **More Rigorous Company Reviews.** The U.S. Department of Commerce has implemented new checks on the accessibility of corporate privacy policies, expanded guidance regarding the listing of company subsidiaries, improved coordination with independent recourse mechanisms and the arbitral administrator, and released updated, step-by-step guidance on certification submission.
- ✓ **Reduced Opportunities for False Claims.** While organizations are required to inform individuals of their Privacy Shield participation, first-time certifiers must now delay such public representations until the review process is complete.

### 2 ADDITIONAL MONITORING OF COMPANIES

- ✓ **Expanded Compliance Reviews.** Certified organizations are now selected at random for spot checks to verify point(s) of contact are available and certification requirements are met throughout the certification life cycle. Compliance questionnaires are issued when significant issues are identified.
- ✓ **Proactive Checks for False Claims.** The U.S. Department of Commerce has begun conducting regular online reviews for false claims by companies not currently certified under the Privacy Shield program.

### 3 ACTIVE COMPLAINT RESOLUTION

- ✓ **Binding Arbitration Mechanism.** In January 2018, a full slate of arbitrators was confirmed to ensure that EU individuals have recourse to arbitration. The U.S. Department of Commerce is working with the Swiss Administration to put in place the arbitral mechanism for Swiss individuals.

### 4 STRENGTHENED ENFORCEMENT

- ✓ **Privacy Enforcement.** The Federal Trade Commission's [Privacy and Data Security program continues](#), with three Privacy Shield-related false claims actions announced in September 2017.
- ✓ **Filled Vacancies on the Commission.** The President has nominated, and the Senate has approved, five new FTC commissioners, including a new Chairman, filling all vacancies on the Commission.

### 5 EXPANDED OUTREACH AND EDUCATION

- ✓ **High Level Political Commitment.** U.S. officials consistently reaffirm U.S. commitment to the Privacy Shield, recognizing its importance to data protection and to over \$1 trillion annually in transatlantic trade flows.
- ✓ **Educational Outreach.** The U.S. Government has developed user-friendly material for [individuals](#), [businesses](#), and [authorities](#), and additional guidance material is under development. U.S. officials have embarked on roadshows to dozens of cities to educate stakeholders about the Framework.

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## NATIONAL SECURITY ASPECTS

### 1 ROBUST LIMITATIONS AND SAFEGUARDS

- ✓ **Presidential Policy Directive 28.** The Administration has expressly confirmed that PPD-28—which provides protections to all individuals (regardless of nationality) with respect to signals intelligence information—remains in place without amendment.
- ✓ **Intelligence Transparency.** The Intelligence Community (IC) has reaffirmed its commitment to civil liberties, privacy and transparency by updating and reissuing its foundational policy on those topics—Intelligence Community Directive 107. The IC continues to release volumes of information about how it implements national security authorities, and recently launched [www.intelligence.gov](http://www.intelligence.gov) to serve as a new digital front door to the IC.

### 2 INDEPENDENT OVERSIGHT

- ✓ **Privacy and Civil Liberties Oversight Board (PCLOB).** President Trump has nominated three individuals to the PCLOB with the aim of restoring the independent agency to quorum status as it fulfills its mission of ensuring that Federal government efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.

### 3 INDIVIDUAL REDRESS

- ✓ **Ombudsperson Mechanism.** The U.S. Government has created and fully implemented an unprecedented independent review channel for EU and Swiss individuals regarding the transfer of their personal data to the United States pursuant to the Framework or other EU-approved data transfer mechanisms—the Privacy Shield Ombudsperson mechanism. Ambassador Judith G. Garber currently serves as Privacy Shield Ombudsperson. She is among the highest-ranking members of the U.S. diplomatic corps—with over 30 years of experience—and was confirmed to the rank of Career Minister by the U.S. Senate in 2017.

### 4 U.S. LEGAL DEVELOPMENTS

- ✓ **FISA Amendments Reauthorization Act of 2017.** Congress reauthorized FISA Section 702 in January 2018, maintaining all elements on which the European Commission's Privacy Shield adequacy determination was based, and enhancing the advisory and oversight functions of the PCLOB (in addition to other reforms strengthening privacy protection). U.S. Government officials have since informed the European Commission about the material developments in the law relevant to Privacy Shield.