

***Culhane Meadows PLLC Client Advisory:
EU-U.S. Privacy Shield Invalidated by European Court of Justice;
EU SCC Affected Too***

By [Linda V. Priebe](#)
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Many professionals involved in international data privacy compliance woke up on July 16th to important news. In the Schrems II case the European Court of Justice (ECJ) invalidated the EU-U.S. Privacy Shield making it no longer an adequate compliance mechanism for permissible transfers of EU personal data, including employee data, to (or access from) the U.S. The decision eliminates one of the most common legal mechanisms used by companies in the U.S. to receive and access EU personal data and requires prompt action by companies.

The EU-U.S. Privacy Shield is an EU data protection compliance mechanism negotiated between the EU Commission and the U.S. Department of Commerce (DoC) to facilitate personal data flows from the EU to the U.S. The EU-U.S. negotiations created a program administered by the U.S. DoC where participating U.S. companies could earn certification from the DoC allowing them to transfer EU personal data to (and access EU personal data from) the U.S. The EU-US Privacy Shield (and before that the U.S.-EU Safe Harbor) were needed is because under the EU General Data Protection Regulation (GDPR) (and pre-existing European law), requires an approved legal basis to transfer personal data regarding persons located in the EU and/or European Economic Area (EEA) to, or to access EU/EEA personal data from, the U.S. Previously the European Commission had determined that U.S. privacy laws do not adequately protect the privacy of persons in the EU/EEA especially from surveillance by U.S. national security authorities.

Use of EU Standard Contract Clauses is also affected by the ECJ Decision

Based on the legal posture of the Schrems II case, and the results of periodic reviews of the Department of Commerce Privacy Shield Certification Program by the European Commission, many observers in the U.S. did not expect the ECJ to address Privacy Shield in its decision. And if eliminating Privacy Shield isn't bad enough, the ECJ's decision also sharply limits the availability of the EU's long-standing alternative to Privacy Shield certification, the EU Standard Contract Clauses (SCC). Without Privacy Shield in existence to provide legal adequacy under EU law for transfers of personal data to the U.S., the ECJ decision requires companies including SCC in their contracts to be assured that the data protection laws of the destination country (i.e. the U.S.) provide EU equivalent protection and redress to EU/EEA persons to whom the data being transferred to, or accessed from, the U.S. relates. The consequences of not doing

so can be major. Under the GDPR, fines for failure to use EU recognized legal compliance mechanisms for transfers of EU personal data to (or access from) the U.S. can be as high as 4% of a company's total global gross revenue.

CM Clients who are certified under the EU-U.S. Privacy Shield should:

1. Contact their Culhane Meadows attorney for guidance specific to their EU-U.S. transfers and access of EU/EEA personal data including employee personal data;
2. Review their EU/EEA data flows and access from the U.S., assess the impacts of the Schrems II decision, work with their CM attorney to develop short and long-term response plans, involve leadership in decision making, and document their compliance actions.
3. Review their public and other statements regarding their EU-U.S. Privacy Shield certification such as in their privacy policy and in other notices on and through their websites and/or online portals including employee and job applicant policies and notices.
4. Identify their customer, service provider, and other contracts that include EU data protection provisions which require or rely on EU-U.S. Privacy Shield certification and/or EU SCC for EU-U.S. data transfers and/or access.
5. With the help of their CM attorney, review and update their public and other statements regarding their EU-U.S. Privacy Shield certification including their privacy policy and other notices including employee policies and notices.
6. Also, with the help of their CM attorney, review and update their customer, service provider, and other contracts that include EU data protection provisions which require and/or rely on EU-U.S. Privacy Shield certification.

Stay tuned for news of further EU-U.S. Privacy Shield and other EU and U.S. data privacy/protection developments from Culhane Meadows.

For guidance on specific to your EU-U.S. transfers in light of the EU's ruling to invalidate the EU-U.S. Privacy Shield, Culhane Meadows is ready to ensure that you are legally compliant with all of your [Privacy, Data and CyberSecurity](#) needs. For more information, please contact Linda Priebe at lpriebe@cm.law.

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