

Data Privacy and Cybersecurity

US and EU Announce Agreement for New Trans-Atlantic Data Privacy Framework

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On Friday, March 25, President Biden and European Commission President Ursula von der Leyen [announced](#) a new agreement in principle for trans-Atlantic data flows. Although details about the new Trans-Atlantic Data Privacy Framework have not yet been made public, this represents a significant step forward in resolving nearly two years of uncertainty for companies transferring data from the EU to the US in the wake of the July 2020 *Schrems II* decision invalidating the US-EU Privacy Shield Framework.

President Biden stated on Friday that the new data flow agreement includes “unprecedented protections for data privacy and security” and “underscores our shared commitment to privacy, data protection, and the rule of law.” President von der Leyen said the agreement “will enable predictable and trustworthy data flows between the EU and US, safeguarding privacy and civil liberties.”

The agreement had been rumored after months of negotiations, and caps off a tumultuous period for data flows between the EU and US. The European Court of Justice (CJEU) has previously invalidated two data transfer frameworks between the EU and the US: the Safe Harbor framework in 2015 (*Schrems I*), and its successor, the Privacy Shield Framework in 2020 (*Schrems II*). The result was uncertainty for thousands of companies that exchange data between the EU and US, reflecting over \$1 trillion in cross-border commerce and the \$7.1 trillion EU-US economic relationship.

Chief among the issues under negotiation have been whether the data transfer framework meets the EU's standards for necessity and proportionality, and creates an adequate redress mechanism for EU individuals who believe their personal data has been unlawfully accessed. Privacy advocates have raised specific concerns about the amount of access the US government has to personal data for national security activities. Fact sheets from the [White House](#) and the [European Commission](#) indicate the US has committed to implement new safeguards to ensure that US intelligence authorities' access to such data is necessary to advance national security objectives without disproportionately impacting the protection of individual privacy and civil liberties. The Framework also will create a “new two-tier redress system” with “independent and binding authority,” including an “independent Data Protection Review Court.”

Companies that participate in the Framework “will continue to be required to adhere to the Privacy Shield Principles, including the requirement to self-certify their adherence to the Principles through the US Department of Commerce.”

Next, the terms of the agreement will be translated into legal documents that will be adopted by the European Commission. The White House will include the US commitments in an Executive Order that will then form the basis for a future adequacy decision from the European Commission. The exact timing of these documents remains unclear, and any agreement will almost certainly be challenged in court. Friday's announcement nonetheless represents an important step towards reestablishing certainty and predictability for vital EU-US data flows.

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