

July 21, 2020

BIWEEKLY ALERT

From Benesch's **Data Privacy Defense & Response Team**

Europe Invalidates U.S. Data Privacy Shield

On July 16, 2020, Europe's Court of Justice issued a much-anticipated judgment on the validity of Decision 2016/1250 on the adequacy of the EU-US Data Protection Shield (the "US/EU Privacy Shield") and Decision 2010/87 on Standard Contractual Clauses ("SCCs").

The Court invalidated the US/EU Privacy Shield finding that "the limitations on the protection of personal data arising from the domestic law of the United States ... are not circumscribed in a way that satisfies requirements that are essentially equivalent to those required under EU law."

This decision has left companies that seek to transfer personally identifiable information about EU persons to the United States (whether as part of their relationships with customers, or with regard to their own employees or business partners in the EU) wondering how they can continue to engage in a business that is dependent upon EU/US data transfers. However, the Court found that the SCCs remain a valid method for effecting such transfers in compliance with EU law. The SCCs are standard sets of contractual terms and conditions between data controllers in the EU and data controllers or processors established outside the EU or European Economic Area ("EEA").

As a result, SCCs remain a valid mechanism for the transfer of personal data from the EEA to controllers and processors established in the US because they "ensure compliance with the level of protection required by EU law." With SCCs as a viable option for businesses, transatlantic data flows can continue. While the use of SCCs is not a perfect solution because they do not align precisely with the permissions granted to a company that satisfied the Privacy Shield (principally in terms of onward transfers of personal data), and while commentators are currently discussing proposed changes to the SCCs to fill some of these gaps, the SCCs remain a viable option for companies seeking to transfer personal data from the EEA to the US in the short term.

Questions regarding this important decision and the impacts that it may have for your business may be addressed to: MICHAEL D. STOVSKY, Partner, Benesch, Friedlander, Coplan and Aronoff LLP at mstovsky@beneschlaw.com.

For more information, please contact one of the following members of Benesch's Data Privacy Defense & Response Team:



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Feeling attacked? Curious about how contact tracing efforts can affect your business? Now is the time to take action. We invite you to participate in a [complimentary 30-minute call with Benesch's data protection specialists](#). Benesch would be happy to provide you with our insight and guidance on these and other data privacy and protection best practices—including litigation avoidance strategies. We look forward to working with you to keep your data safe and secure.