



EU Court of Justice Invalidates EU-US Privacy Shield

The European Union’s General Data Protection Regulation (the “GDPR”) permits the transfer of personal data from the European Union (the “EU”) to a third country only if adequate protections for that data are ensured. The EU-US Privacy Shield, a self-certification process intended to ensure adequate protection, was established in 2016 to provide US businesses with a legal basis for transferring personal data from Europe to this country.

On July 16, 2020, the Court of Justice of the European Union (“CJEU”) announced its decision to invalidate the EU-US Privacy Shield, effective immediately.

Without the EU-US Privacy Shield, US companies have three remaining options for transferring personal data out of the EU: 1) binding corporate rules (“BCRs”) for transfers made within the same corporate group, 2) standard contractual clauses (“SCCs”) for transfers made to non-EU data controllers or processors, and 3) one of the narrow exceptions in Article 49 of the GDPR.

None of these three alternatives may be feasible for many US companies. BCRs must be approved by the data protection authorities in each EU member state. This is a time-consuming process and the requirements of most data protection authorities make the outcomes uncertain. US companies that do not have a contractual partner in the EU to sign SCCs are ineligible for that option. And most US companies will not qualify for the narrow Article 49 exceptions. A fourth option would be for a company to alter its data transfer and storage practices so that personal data originating in the EU remains in the EU.

The CJEU’s invalidation of the EU-US Privacy Shield will leave many companies without a practical legal basis for transferring personal data from the EU to the US. We expect the European Commission and the European data protection supervisory authorities to publish further guidance. In the meantime, companies currently relying on the EU-US Privacy Shield should consider the viability of the remaining alternatives.