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Another step towards the long-awaited US-EU data protection adequacy decision

On 7 October, the President of the United States signed the [Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities](#), as well as the accompanying Regulations (hereinafter collectively referred to as the “**Executive Order**”).

Since March 2022, the European Commission and the US government have been announcing the arrival of a new privacy framework to encourage international transfers of European citizens’ data while addressing concerns raised by the repealed Privacy Shield.

It is worth remembering that Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 sets out conditions for the way in which companies can transfer personal data of European citizens outside the borders of the European Economic Area. In this regard, the European Commission can adopt “data protection adequacy decisions” with certain countries, if it considers that the country or body has an “adequate level of protection of personal data”. In such cases, European citizens’ data can flow freely between exporting and importing companies without the need for additional security measures such as Standard Contractual Clauses (SCCs) or Binding Corporate Rules (BCRs).

The Executive Order is the latest step towards a future adequacy decision on data protection between the European Commission and the United States. At this point, the European Commission will have to evaluate this Executive Order, propose a draft adequacy decision and initiate its adoption procedure. This, in turn, requires a favourable opinion from the European Data Protection Board and the approval of a committee proposed by representatives of the Member States of the European Union. This is without

forgetting the European Parliament’s power of scrutiny over data protection adequacy decisions.

The future adequacy decision will replace the previous “Privacy Shield” decision which was invalidated by the Court of Justice of the European Union in case C-311/18, the case known as “Schrems II”, in July 2020, for failing to provide adequate protection of the data protection rights of European citizens as a result of the possible widespread disclosure of personal data to US intelligence services or public authorities and as a result of the fact that the ombudsperson that had been established under the Privacy Shield to deal with complaints from European citizens lacked independence and authority to make decisions that were binding on US intelligence services in relation to data protection.

The Executive Order contains significant improvements compared to the Privacy Shield. In this respect, new safeguards are regulated that limit access to European citizens’ data by US intelligence services to what is strictly necessary and proportionate to protect national security. It also creates a Data Protection Review Court as an independent and impartial recourse mechanism to investigate and resolve complaints from data subjects regarding access to their data by US national security authorities. The Executive Order also obliges US intelligence agencies to review their policies and procedures with the aim of implementing the new safeguards.

From the moment it is adopted, international data transfers with the United States will be able to take place freely and with sufficient security guarantees between the European Union and certified US companies, which will be able to use the new framework by committing to a set of privacy obligations.

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