

Is there an EU-US Privacy Shield follow-up agreement in sight?

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Companies that rely on a transfer of personal data to the USA are urgently waiting for a follow-up agreement to the EU-US Privacy Shield. This basis for a legally secure data transfer between the European Union and the USA had been declared incompatible with the GDPR by the Court of Justice of the European Union (CJEU) in the prominent "Schrems II decision".

When transferring personal data to the USA, companies largely base the data transfer on the (new) Standard Contractual Clauses of the European Commission (SCCs) and a Transfer Impact Assessment (TIA) to determine additional safeguards.

However, their use is difficult, because data transfer to the USA (e.g. when using cloud services) in compliance with data protection regulations can hardly be realized, and if so, only at considerable expense in terms of time. This situation is not only a test of patience for bilateral relations between the European Union and the United States, but also for many European companies.

A solution to this issue would therefore be a follow-up agreement to the **EU-US Privacy Shield**. However, this is difficult to achieve because of the remaining access possibilities of US government authorities for control and monitoring purposes (Section 702 of FISA and E.O. 12333 in connection with PPD-28).

Intensive negotiations are currently being conducted between the EU and the US on such an agreement.

According to the news magazine Politico, these negotiations are at an advanced stage. The working title of the follow-up agreement is **US-EU Adequacy Agreement**.

According to Politico, an agreement could be reached in May 2022. This agreement would be a so-called adequacy decision with the consequence that personal data can be transferred between the EU/EEA and the US in a data protection-compliant manner. In this case, it would no longer be necessary to conclude Standard Contractual Clauses (SCCs).

Conclusion:

Whether these negotiations will be successful is yet to be seen.

Until that time, it is still necessary to take measures according to Art. 49 GDPR, such as the conclusion of Standard Contractual Clauses and, if necessary, additional measures.