



BLACKFOOT NEWSFLASH

8 POINT GUIDE FOR DATA TRANSFERS AFTER SCHREMS

The US is no longer a Safe Harbour for data. This ruling was made recently by the Court of Justice of the European Union following the referral of an Irish case where Mr Schrems had objected to Facebook transferring his data to the US.

The US and EU are negotiating a revision to Safe Harbour. In the meantime this guide will help you to comply with the ruling.

1. RE-EVALUATE YOUR DATA SECURITY PROCESSES

Review your appropriate technical and organisational measures to protect personal data. No doubt these measures include controls over availability, access and transmission of data. Do you have an accreditation such as ISO 27001?

2. KEEP DATA IN THE EEA

Consider keeping personal data in the European Economic Area (EEA) where feasible. Be aware of possible attempts by the US government to get access to data in the EEA via your US holding company or subsidiary, as in the ongoing US vs. Microsoft case.

3. APPOINT A DATA PROTECTION OFFICER

Ensure you have one person with overall responsibility for compliance with data protection legislation.

4. TRAIN YOUR STAFF

Undertake data protection training on a regular (at least annual) basis for all staff who are likely to handle personal data.

5. DEVISE A DATA PROTECTION POLICY

Ensure you have a data protection policy in place and undertake regular (at least annual) audits for compliance with it.

6. SECURE CONTRACTUAL SAFEGUARDS

Ensure all your contracts contain robust data protection clauses or have a separate data processing agreement. These should incorporate the EU model clauses. Put this in place with new customers and suppliers, and ensure all your existing commercial relationships are covered too. Beware of 'as is' services and exclusions for loss arising from the deletion, destruction, damage, loss or failure to store any of your content or other data.

7. DEMONSTRATE COMPLIANCE

Remember, some data regulators are currently questioning whether model clauses are sufficient. Ensure your customers and suppliers can demonstrate they can comply. Again, do they have an accreditation themselves?

8. ADOPT BINDING CORPORATE RULES

For data transfers internally in multi-national corporations, either put in place robust data processing agreements between the various entities or consider adopting binding corporate rules. These are fairly detailed provisions setting out how you will manage internal data transfers and they have to be approved by a data regulator, such as the UK Information Commissioner.

For more information

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