



AN ENHANCED PRIVACY SHIELD: HOW IT WOULD BENEFIT THE EU AND THE US

An enhanced Privacy Shield that can serve as a reliable transatlantic data transfer mechanism is critically important to strengthening an EU-US digital ecosystem that fosters growth, innovation, and high standards of data responsibility.¹ An enhanced Privacy Shield that addresses the concerns raised in the Schrems II case can support economic opportunity, scientific and technological exchange, and the privacy and rights of EU and US citizens alike.

When it was operational for EU-US data transfers, the Privacy Shield program was a concrete symbol of successful transatlantic regulatory cooperation, producing significant dividends for both the economy and privacy protections. The central beneficiaries of the program have been millions of EU and US citizens, whose personal information was protected as thousands of companies adopted the privacy controls required by the program, which are paired with government commitments on their access to data. Other beneficiaries included the thousands of participating companies (70 percent of them small- and medium-sized enterprises (SMEs)), as well as thousands of businesses that partnered with participating companies, which were assured the necessary privacy protections had been adopted.²

The EU and the US should effectuate an enhanced Privacy Shield agreement, reinvigorating a crucial channel for responsible transatlantic data transfers.

The loss of Privacy Shield as a data transfer mechanism undermined these benefits—removing a pillar of transatlantic privacy protection and making it more difficult for companies in all industry sectors to transfer data across borders to provide the products and services their customers and users sought.

An enhanced Privacy Shield will help sustain and generate new economic opportunities for both EU and US citizens. It is estimated that 75 percent of the value of data transfers accrues to industries like agriculture, logistics, and manufacturing.³ With transatlantic trade valued at more than \$1 trillion, the economic implications of strengthening responsible cross-border data transfers are significant.⁴

Privacy Shield by the Numbers (Prior to 2021)

More than **5,000** companies participated in the program⁵

Up to **70 percent** annual growth in participation

70 percent of participating companies were SMEs⁶

More than **40** different sectors represented⁷

60 percent of companies that transferred data from the EU relied on Privacy Shield⁸

When it was operational, the Privacy Shield not only caused thousands of companies to improve their privacy protections, but also facilitated innovation and economic growth. An enhanced Privacy Shield will materially benefit organizations, workers, and citizens across all sectors of our two economies.

An enhanced Privacy Shield also promises significant non-economic benefits, as summarized below:

- **Transatlantic Privacy Protection.** When it was operational, [Privacy Shield required participants to adopt high-standard personal data protection measures and implement other internal controls to improve privacy protections for EU and US citizens alike.](#)⁹ Privacy Shield commitments were [audited and enforced](#) by governmental authorities.¹⁰ However, the picture has changed following the July 2020 invalidation of the Privacy Shield. [More than 1,500 companies have dropped out of the Privacy Shield as of September 2021—representing an attrition rate of 30 percent](#) since June 2019.¹¹ For some companies, particularly small businesses, putting other transfer mechanisms in place can be too costly, which may result in fewer services being offered and jobs created. An enhanced Privacy Shield should resume an active role raising levels of privacy protection for citizens on both sides of the Atlantic, for companies in all industry sectors.
- **Transatlantic Regulatory Compliance.** Companies operating in the EU and the US are better able to meet health, trade, consumer protection, and other regulatory requirements when they can reliably transfer data across borders to fulfill those requirements. As regulators have explained in other contexts, restricting data transfers or requiring localization “[can increase... operational risks, hinder risk management and compliance, and inhibit... regulatory and supervisory access to information.](#)”¹² In part because an enhanced Privacy Shield can help moot legal uncertainty in the application of other transatlantic data transfer mechanisms, it can contribute to the fulfillment of critical regulatory compliance priorities.
- **Transatlantic Innovation.** An enhanced Privacy Shield as a reliable data transfer mechanism will also foster [transatlantic innovation and scientific progress](#) in sectors ranging from advanced manufacturing to [biopharmaceutical R&D.](#)¹³ Without the ability to rely on Privacy Shield to transfer data, EU and US laboratories and other research organizations have lost a channel for transatlantic technical and scientific collaboration. An enhanced Privacy Shield should help to protect the ability of innovators to access shared scientific and technical research results, engage in cross-border R&D and laboratory work, and secure intellectual property rights and regulatory product approvals for new products and services in the EU and the US.¹⁴

Privacy Shield Participants Are Found in Every Sector of the Economy, Including:



Aerospace



Agriculture



Automotive



Energy



Cloud/Enterprise Software



Finance



Healthcare



Supply Chain/Logistics



Telecommunications

- **Transatlantic Cybersecurity.** EU and US governmental authorities and enterprises face increasing cybersecurity challenges—a situation that is made more complex without an enhanced Privacy Shield as a reliable data transfer mechanism. Transatlantic data transfers are critical to enabling the cybersecurity tools necessary to protect EU and US networks from cyberthreats. These transfers allow for cybersecurity tools to [monitor traffic patterns across international borders, identify anomalies, and divert potential threats in ways that depend on global access to real-time data](#).¹⁵ An enhanced Privacy Shield would contribute to stronger cybersecurity by enabling transatlantic data analytics and an assertive cyber-defense posture [coordinated across the cloud and national boundaries](#).¹⁶
- **COVID-19 Recovery Efforts.** At a time when in-person travel remains constrained, transatlantic data transfers have become essential to EU and US efforts to sustain jobs, health, and education across a diverse range of industry sectors. For example, data transfers are critical for [remote work, remote health, supply chain management](#), and [innovation](#)-related technologies that depend on transatlantic access to cloud computing resources.¹⁷ An enhanced Privacy Shield will support high standards of personal data protection, while facilitating access to these technologies to support COVID-19 recovery—access that has been impaired due to continuing uncertainty regarding the operation and legal standards associated with other data transfer mechanisms.

For all of the foregoing reasons, the Global Data Alliance [renews its call](#) for EU and US authorities to redouble their efforts to bring into effect an enhanced Privacy Shield agreement.¹⁸

Prior to 2021, the Privacy Shield Program Helped Improve Data Privacy Across An Increasing Number of Companies¹⁹

	Privacy Shield Participants	Change in Participants	Percentage Change
Sept. 2017	2,177		
Sept. 2018	3,703	↑ +1,526	↑ +70%
June 2019	5,348	↑ +1,645	↑ +44%
Sept. 2021	3,768	↓ -1,580	↓ -30%

An enhanced Privacy Shield is critically important to strengthening an EU-US digital ecosystem that fosters growth, innovation, and high standards of data responsibility.

ENDNOTES

- ¹ BSA, *The Future of Transatlantic Data Flows* (2021), https://www.bsa.org/files/policy-filings/bsa_transatlanticdataflows.pdf.
- ² Software.org, *Privacy Shield: What It Is and Why You Should Care* (2019), <https://software.org/wp-content/uploads/softwareorgPrivacyShield101.pdf>; PrivacyShield.gov, *FAQ for European Businesses—How to Verify an Organization's Privacy Shield Commitments*, <https://www.privacyshield.gov/European-Businesses>; PrivacyShield.gov, *FAQ—The EU-U.S. and Swiss-U.S. Privacy Shield Frameworks*, <https://www.privacyshield.gov/servlet/servlet.FileDownload?file=015t0000000QJdg>.
- ³ Global Data Alliance, *Cross-Border Data Transfer Facts and Figures* (2020), <https://globaldataalliance.org/downloads/gdafactsandfigures.pdf>.
- ⁴ USTR, *United States European Union Trade Overview* (2021), <https://ustr.gov/countries-regions/europe-middle-east/europe/european-union>.
- ⁵ BSA, *The Future of Transatlantic Data Flows* (2021), https://www.bsa.org/files/policy-filings/bsa_transatlanticdataflows.pdf.
- ⁶ BSA, *The Future of Transatlantic Data Flows* (2021), https://www.bsa.org/files/policy-filings/bsa_transatlanticdataflows.pdf.
- ⁷ ITIF, *'Schrems II': What Invalidating the EU-U.S. Privacy Shield Means for Transatlantic Trade and Innovation* (2020), <https://itif.org/sites/default/files/2020-privacy-shield.pdf>.
- ⁸ BSA, *The Future of Transatlantic Data Flows* (2021), https://www.bsa.org/files/policy-filings/bsa_transatlanticdataflows.pdf.
- ⁹ PrivacyShield.gov, *EU-US Privacy Shield Framework Principles Issued by the US Department of Commerce*, <https://www.privacyshield.gov/servlet/servlet.FileDownload?file=015t00000004qAg>.
- ¹⁰ PrivacyShield.gov, *Enforcement of Privacy Shield*, <https://www.privacyshield.gov/article?id=Enforcement-of-Privacy-Shield>.
- ¹¹ Privacy Shield Framework, Participant List, <https://www.privacyshield.gov/list>; Drew Medway and Jeremy Greenberg, *New FPF Study: More Than 250 European Companies Are Participating in Key EU-US Data Transfer Mechanism* (July 14, 2020), <https://fpf.org/blog/new-fpf-study-more-than-250-european-companies-are-participating-in-key-eu-us-data-transfer-mechanism/>; Jeremy Greenberg, *New FPF Study Documents More Than 150 European Companies Participating in the EU-US Data Transfer Mechanism* (December 20, 2018), <https://fpf.org/2018/12/20/new-fpf-study-documents-more-than-150-european-companies-participating-in-the-eu-us-data-transfer-mechanism/>.
- ¹² See e.g., United States-Singapore Joint Statement on Financial Services Data Connectivity (2020), <https://www.mas.gov.sg/news/media-releases/2020/united-states-singapore-joint-statement-on-financial-services-data-connectivity>.
- ¹³ See Global Data Alliance, *Cross-Border Data Transfers & Biopharmaceutical R&D* (2021), <https://globaldataalliance.org/downloads/09092021cbdtbiopharma.pdf>; Global Data Alliance, *Cross-Border Data Transfers & Innovation* (2021), <https://globaldataalliance.org/downloads/04012021cbdtinnovation.pdf>.
- ¹⁴ See Global Data Alliance, *Cross-Border Data Transfers & Innovation* (2021), <https://globaldataalliance.org/downloads/04012021cbdtinnovation.pdf>.
- ¹⁵ Global Data Alliance, *Cross-Border Data Transfers & Data Localization* (2020), <https://www.globaldataalliance.org/downloads/02112020GDACrossborderdata.pdf>.
- ¹⁶ BSA | The Software Alliance, *Moving to the Cloud—A Primer on Cloud Computing* (2018), https://www.bsa.org/files/reports/2018BSA_MovingtotheCloud.pdf.
- ¹⁷ See BSA | The Software Alliance, *Moving to the Cloud—A Primer on Cloud Computing* (2018), https://www.bsa.org/files/reports/2018BSA_MovingtotheCloud.pdf; Global Data Alliance, *Cross-Border Data Transfers & Remote Work* (2020), <https://globaldataalliance.org/downloads/10052020cbdtremotework.pdf>; Global Data Alliance, *Cross-Border Data Transfers & Remote Health Services* (2020), <https://globaldataalliance.org/downloads/09152020cbdtremotehealth.pdf>; Global Data Alliance, *Cross-Border Data Transfers & Supply Chain Management* (2021), <https://globaldataalliance.org/downloads/03182021gdaprimersupplychain.pdf>.
- ¹⁸ Global Data Alliance, *Letter to Presidents Biden and von der Leyen on Privacy Shield* (2021), <https://www.globaldataalliance.org/downloads/06092021gda-presprivshield.pdf>.
- ¹⁹ Privacy Shield Framework, Participant List, <https://www.privacyshield.gov/list>; Drew Medway and Jeremy Greenberg, *New FPF Study: More Than 250 European Companies Are Participating in Key EU-US Data Transfer Mechanism* (July 14, 2020), <https://fpf.org/blog/new-fpf-study-more-than-250-european-companies-are-participating-in-key-eu-us-data-transfer-mechanism/>; Jeremy Greenberg, *New FPF Study Documents More Than 150 European Companies Participating in the EU-US Data Transfer Mechanism* (December 20, 2018), <https://fpf.org/2018/12/20/new-fpf-study-documents-more-than-150-european-companies-participating-in-the-eu-us-data-transfer-mechanism/>.

The **Global Data Alliance** is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. BSA | The Software Alliance administers the Global Data Alliance.