

Global Industry Statement in Support of a New Trans-Atlantic Data Privacy Framework

The undersigned associations welcome the recent EU-US announcement of a new Trans-Atlantic Data Privacy Framework to strengthen data protection, support responsible data transfers, and enable continued transatlantic commerce. We urge the swift finalisation of a Framework that, as stated by European Commission President Ursula von der Leyen, “enables predictable and trustworthy data flows between the EU and US, safeguarding privacy and civil liberties.”

Implementation of a new Trans-Atlantic Data Privacy Framework is critical to a constructive transatlantic relationship. As set out in the Annex to this letter, ongoing uncertainty relating to data transfers has significant economic repercussions for EU enterprises, exports, jobs, innovation, and SMEs, and undermines the ability to promote high data protection standards.

EU enterprises in all sectors and of all sizes rely on their ability to transfer data responsibly around the world, even more so today as many have moved their businesses online amid the COVID-19 pandemic. Companies transfer personal data to send business emails, process payroll and global workforce data, work with suppliers, and serve customers around the world.

However, the central beneficiaries of a new Framework will be EU and US citizens, who will benefit from strengthened personal data protections as new participant companies adopt the privacy controls required by the program, and as new governmental commitments on access to data are implemented.

We again congratulate and urge the European Union and the United States to swiftly bring the new Trans-Atlantic Data Privacy Framework into force.

SUPPORTERS INCLUDE



Allied for Startups



AMETIC: The Voice of the Digital Industry in Spain



APPLiA



Confederation of Danish Industry



CONFEDERATION OF INDUSTRY OF THE CZECH REPUBLIC

Confederation of Industry of the Czech Republic



Danish Chamber of Commerce



eco – Association of the Internet Industry



Ecommerce Europe



EuroCommerce



EuropaBio



European Federation of Pharmaceutical Industries and Associations



European Games Developer Federation



European Publishers Council



European Services Forum



Federation of European Data and Marketing



Federation of Hellenic ICT Enterprises



Global Data Alliance



Global Data and Marketing Alliance



INFOBALT



Insurance Europe



Interactive Software Federation of Europe



Internet Service Providers Association



Japanese Business Council in Europe



MedTech Europe



NLdigital



SwissBio



TechUK



The Advertising Association



The Danish ICT Industry Association



ZVEI e.V. – German Electro and Digital Industry Association



Annex: Strengthening Data Protection Through a New Trans-Atlantic Data Privacy Framework

Improving the legal framework for transatlantic data transfers, including through a new Trans-Atlantic Data Privacy Framework, is critical to strengthening data protection and security, supporting the responsible movement of data across borders, and enabling continued transatlantic commerce.

THIS REPORT COVERS THE FOLLOWING TOPICS:

- 2 Importance of EU-US Data Transfers
- 2 Impact on EU Economic Growth, Employment, and Exports
- 3 Impact on EU Enterprise Operations
- 4 Impact on EU Innovation and Technology Leadership
- 5 Impact on EU Small- and Medium-Sized Enterprises
- 6 Impact on Transatlantic Data Protection Standards

Importance of EU-US Data Transfers

A new Trans-Atlantic Data Privacy Framework can help revive and strengthen the EU-US data ecosystem. The European Union's largest data partner is the United States.¹ According to Bitkom, Germany's Digital Association, "[t]he most important basis for EU-US data exchange was removed with the removal of the Privacy Shield by the so-called *Schrems II* ruling of the ECJ." Roughly 50% of companies surveyed by Bitkom in 2021 used the Privacy Shield to transfer personal data to the United States.²

According to the Council of the European Union, more EU goods are exported to the United States than to any other country, with €556 billion in EU-made goods exported in the United States in 2020. The EU-US trading relationship supports 8 million jobs and accounts for 42% of world trade.³ EU-US cross-border trade in digital services—such as telecoms and business services—has grown by 100% since 2006, twice as fast as EU-US trade in goods.⁴ Losing even a fraction of this economic opportunity translates into a significant impact for EU enterprises, workers, consumers, and citizens.

Impact on EU Economic Growth, Employment, and Exports

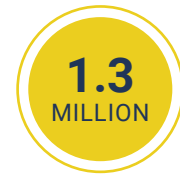
DIGITAL EUROPE ESTIMATES THAT, "IF DATA TRANSFER MECHANISMS ARE LARGELY MADE UNUSABLE," THE EU STANDS TO LOSE:



In cumulative economic growth by 2030



In annual exports, including €61 billion in manufacturing exports and nearly one quarter of all EU media and cultural exports



European jobs⁵

THESE LOSSES WILL BE BORNE HEAVILY IN:



Germany

€32
BILLION

in annual lost exports



France

€15
BILLION

in annual lost exports



Ireland

€12
BILLION

in annual lost exports



Italy

€10
BILLION

in annual lost exports



The Netherlands

€7
BILLION

in annual lost exports⁶

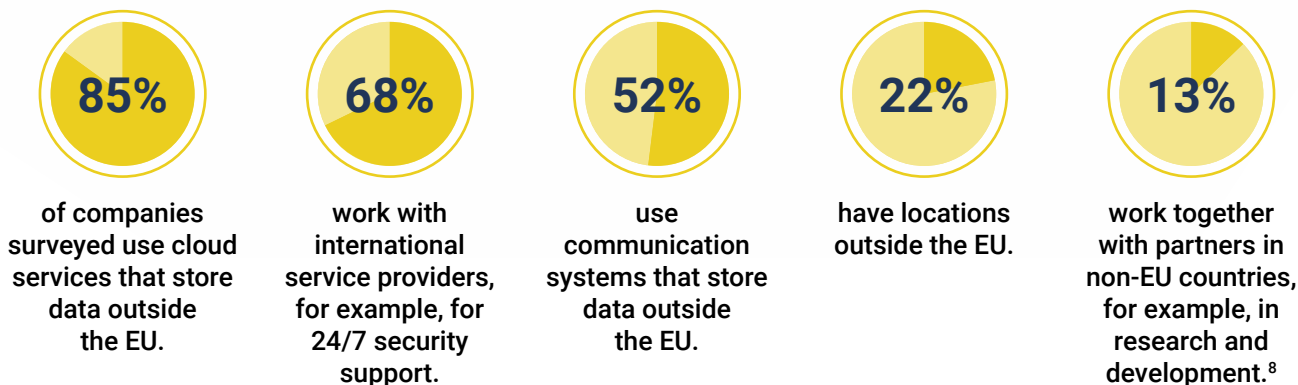


Another 2021 study estimates that interruption of EU-US data transfers would cause EU-wide losses of up to **€420 billion** in EU GDP (up to 3% of GDP).⁷

Impact on EU Enterprise Operations

Continuing uncertainty around transatlantic data transfers creates operational challenges for many EU enterprises.

A 2021 SURVEY OF OVER 250 COMPANIES FOUND THAT...



The survey found that, “[s]hould it no longer be possible to process personal data outside the EU, this would have severe effects on German companies and the economy as a whole.”

COMPANIES DESCRIBED THESE EFFECTS AS FOLLOWS:

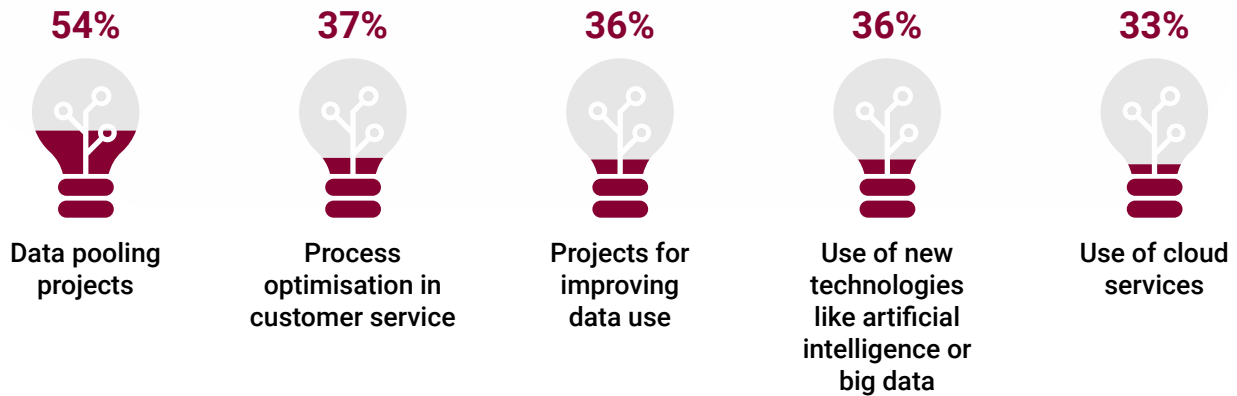


None of the companies surveyed expect the end to transferring personal data to have no impact on its business operations.⁹

Impact on EU Innovation and Technology Leadership

Ongoing uncertainty around data transfers impairs data transfers impairs EU innovation. 86% of respondents in one 2021 survey noted that “at least one innovation project has failed due to uncertainties in dealing with the GDPR.”¹⁰

COMPANIES NOTED THAT THE FOLLOWING TYPES OF INNOVATION PROJECTS HAD FAILED:



Continued uncertainty around transatlantic data transfers also affects cross-border health research. As explained by MedTech Europe, the European Federation of Pharmaceutical Industries and Associations (EFPIA), and other associations,

The continued ability to transfer patient-related data between the United States and Europe is critical to the research and development of new medical products, monitoring the safety and effectiveness of existing marketed products, and providing support services for medical technologies currently in use. These important and necessary data flows go in both directions, and patient care will inevitably—and needlessly—suffer if restrictions on transatlantic data transfers are imposed without due consideration of the facts and circumstances of each type of data transfer.¹¹

Examples of affected health innovation projects:

- More than 5,000 collaborative projects involving the US National Institutes of Health and EEA countries that were ongoing in 2018.
- EU data transfers to: (1) The International Genomics of Alzheimer’s Project; (2) The National Cancer Institute Cohort Consortium; and (3) The Psychiatric Genomics Consortium.

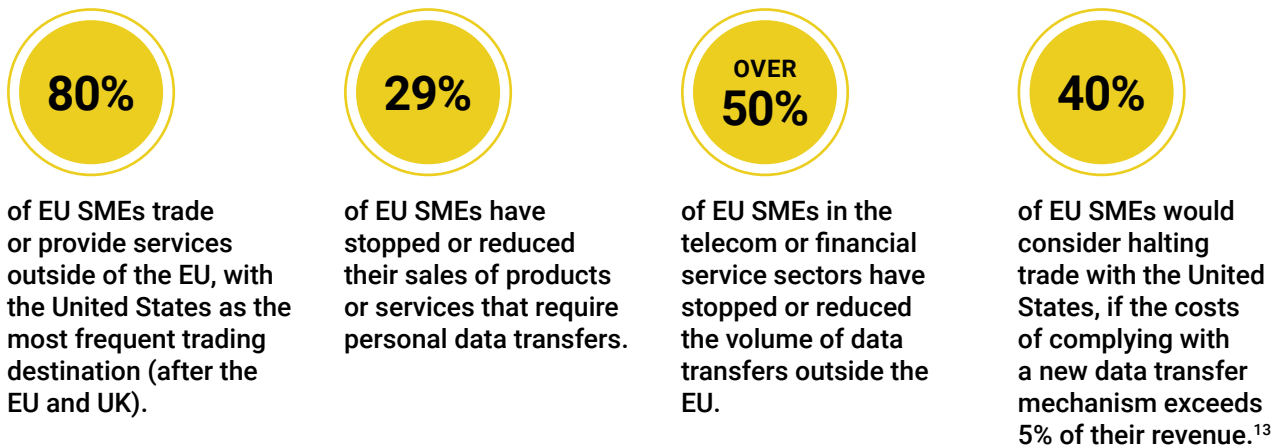
Impact on EU Small- and Medium-Sized Enterprises

EU Small- and Medium-sized Enterprises (SMEs) suffer disproportionately due to continuing uncertainty around the Privacy Shield and transatlantic data transfers.

THE EU'S SMEs ACCOUNT FOR...



A 2021 SURVEY OF 2,535 SMES BASED IN FRANCE, GERMANY, ITALY, POLAND, AND THE NETHERLANDS AND OPERATING ACROSS 15 SECTORS FOUND THAT, AMONG THOSE SURVEYED:



A NEW TRANS-ATLANTIC DATA PRIVACY FRAMEWORK CAN BE PARTICULARLY VALUABLE TO SMES:

↓
65–70% of Privacy Shield participants were SMEs.¹⁴

↓
Over 70% of Privacy Shield participants operated in data-reliant sectors, such as business and professional services, IT services, and the like.¹⁵

Impact on Transatlantic Data Protection Standards

Implementing a new Trans-Atlantic Data Privacy Framework can contribute to high standards of data protection.¹⁶ When it was operational, Privacy Shield required participants to adopt high-standard personal data protection measures, submit to arbitration, and implement other internal controls to improve privacy protections for EU and US citizens alike.¹⁷ Privacy Shield commitments were audited and enforced by governmental authorities,¹⁸ and subject to annual governmental reviews.¹⁹

However, the picture changed following the July 2020 invalidation of the Privacy Shield. Participation has fallen below 2018 levels, as nearly 2,000 companies dropped out of the Privacy Shield program between July 2020 and February 2022, an attrition rate of 35%.²⁰ 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.

IN ITS 2021 DATA GOVERNANCE REPORT, THE INTERNATIONAL ASSOCIATION OF PRIVACY PROFESSIONALS (IAPP) REPORTS THAT:



Nearly 6 in 10 privacy pros said complying with cross-border data transfer laws is their most difficult task.²¹



The [Schrems II] ruling impacted most businesses, as more than 7 in 10 privacy pros work at a firm that transfers data from the EU to a third country.²²

A new Trans-Atlantic Data Privacy Framework can help raise levels of data protection for citizens on both sides of the Atlantic.

PRIVACY SHIELD PARTICIPATION WAS ROBUST PRIOR TO MID-2020:

More than 5,000
companies participated in the program²³

Up to 70%
annual growth in participation

More than 40
different sectors represented²⁴

60% of companies that transferred data from the EU relied on Privacy Shield²⁵

PRIVACY SHIELD PARTICIPANTS WERE FOUND IN EVERY SECTOR OF THE ECONOMY, INCLUDING:



HISTORICALLY, THE PRIVACY SHIELD PROGRAM HELPED IMPROVE DATA PROTECTION ACROSS AN INCREASING NUMBER OF COMPANIES²⁶

	Privacy Shield Participants	Change in Participants	Percentage Change
Sept. 2017	2,177		
Sept. 2018	3,703	▲ +1,526	▲ +70%
July 2020	5,374	▲ +1,670	▲ +45%
Feb. 2022	3,455	▼ -1,919	▼ -35%

Endnotes

- ¹ Digital Europe, *Data Flows & The Digital Decade* (2021), at: https://www.digitaleurope.org/wp/wp-content/uploads/2021/06/DIGITALEUROPE_Data-flows-and-the-Digital-Decade.pdf ("Digital Europe, Data Flows & the Digital Decade")
- ² Bitkom, *Data protection as a permanent task for businesses: GDPR and international data transfer* (Sept. 2021), at: <https://www.bitkom.org/sites/main/files/2021-09/bitkom-charts-pk-datenschutz-15-09-2021.pdf> ("Bitkom, GDPR and international data transfers")
- ³ Council of the European Union, *Infographic: EU-US Trade* (2022), at: <https://www.consilium.europa.eu/en/infographics/eu-us-trade/>
- ⁴ ECIPE and Kearney Global Business Policy Council, *The economic costs of restricting the cross-border flow of data* (2021), at: <https://www.kearney.com/documents/3677458/161343923/The+economic+costs+of+restricting+the+cross-border+flow+of+data.pdf/82370205-fa6b-b135-3f2b-b406c-4d6159e?t=1625036783000> ("ECIPE, Economic Costs of Data Flow Restrictions").
- ⁵ Digital Europe, *Data Flows & The Digital Decade*.
- ⁶ Digital Europe, *Data Flows & The Digital Decade*.
- ⁷ ECIPE, *Economic Costs of Data Flow Restrictions*.
- ⁸ Bitkom, *GDPR and international data transfers*.
- ⁹ Bitkom, *GDPR and international data transfers*.
- ¹⁰ Bitkom, *GDPR and international data transfers*.
- ¹¹ EFPIA (the European Federation of Pharmaceutical Industries and Associations), IPMPC (the International Pharmaceutical & Medical Device Privacy Consortium), MedTech Europe, and AdvaMed, *Innovation Without Borders: The Importance of Transatlantic Data Flows to Healthcare Innovation and Delivery*, Discussion Paper (2020); See also, All European Academies (ALLEA), European Academics Science Advisory Council (EASAC), Federation of European Academies of Medicine (FEAM), *International Sharing of Personal Health Data for Research* (2021), at https://allea.org/wp-content/uploads/2021/03/International-Health-Data-Transfer_2021_web.pdf.
- ¹² ECIPE, *Economic Costs of Data Flow Restrictions*.
- ¹³ ECIPE, *Economic Costs of Data Flow Restrictions*.
- ¹⁴ EU Council Cybersecurity Exchange, *EU-U.S. Privacy Shield Regarded Invalid by ECJ*, CISO Mag (July 2020) at: <https://ciso-mag.eccouncil.org/eu-us-privacy-shield/>; Swiss Federal Data Protection and Information Commissioner, *Report on the second Swiss-US Privacy Shield review* (2019), <https://www.edoeb.admin.ch/dam/edoeb/en/dokumente/2020/PS%20Bericht%202019%20EN.pdf.download.pdf/PS%20Bericht%202019%20EN.pdf>.
- ¹⁵ ECIPE, *Economic Costs of Data Flow Restrictions*.
- ¹⁶ See generally, Global Data Alliance, *An Enhanced Privacy Shield—How it Would Benefit the EU and the US* (2021), at: <https://global-dataalliance.org/wp-content/uploads/2021/09/09232021gdapri-vacyshield.pdf>.
- ¹⁷ PrivacyShield.gov, *EU-US Privacy Shield Framework Principles Issued by the US Department of Commerce*, <https://www.privacyshield.gov/servlet/servlet.FileDownload?file=015t00000004qAg>.
- ¹⁸ PrivacyShield.gov, *Enforcement of Privacy Shield*, <https://www.privacyshield.gov/article?id=Enforcement-of-Privacy-Shield>.
- ¹⁹ European Commission, *Report to the European Parliament and the Council on the Third Annual Review of the Functioning of the EU-US Privacy Shield*, COM(2019)495final (23 October 2019), at: https://ec.europa.eu/info/sites/default/files/report_on_the_third_annual_review_of_the_eu_us_privacy_shield_2019.pdf; European Commission, *Report to the European Parliament and the Council on the Second Annual Review of the Functioning of the EU-US Privacy Shield*, COM(2018)860final (19 December 2018), at: https://ec.europa.eu/info/sites/default/files/report_on_the_second_annual_review_of_the_eu-us_privacy_shield_2018.pdf; European Commission, *Report to the European Parliament and the Council on the First Annual Review of the Functioning of the EU-US Privacy Shield*, COM(2017) 611final (18 October 2017) https://ec.europa.eu/info/sites/default/files/report_on_the_first_annual_review_of_the_eu-us_privacy_shield_2017.pdf.
- ²⁰ 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* (14 July 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* (20 December 2018), <https://fpf.org/2018/12/20/new-fpf-study-documents-more-than-150-european-companies-participating-in-the-eu-us-data-transfer-mechanism/>.
- ²¹ IAPP/EY, *Annual Data Governance Report* (2021), at: https://iapp.org/media/pdf/resource_center/IAPP_EY_Annual_Privacy_Governance_Report_2021.pdf. ("IAPP/EY, 2021 Data Governance Report").
- ²² IAPP/EY, *2021 Data Governance Report*.
- ²³ Drew Medway and Jeremy Greenberg, *New FPF Study: More Than 250 European Companies Are Participating in Key EU-US Data Transfer Mechanism* (14 July 2020), <https://fpf.org/blog/new-fpf-study-more-than-250-european-companies-are-participating-in-key-eu-us-data-transfer-mechanism/>.
- ²⁴ Privacy Shield Framework, *Participant List*, at: <https://www.privacyshield.gov/list>.
- ²⁵ IAPP-EY, *Annual Governance Report* (2019), available at: <https://iapp.org/resources/article/iapp-ey-annual-governance-report-2019>.
- ²⁶ See citations in footnote 20.