



INTERNATIONAL
TRADE
ADMINISTRATION

The Privacy Shield

Krysten Jenci
Director, Office of Digital
Services Industries
U.S. International Trade
Administration

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The Privacy Shield

1. Implementation & New Developments

- Number & type of participants
- ITA administration, oversight, and outreach
- The arbitration panel
- The Ombudsperson mechanism
- The Swiss-U.S. Privacy Shield

2. Industry Compliance

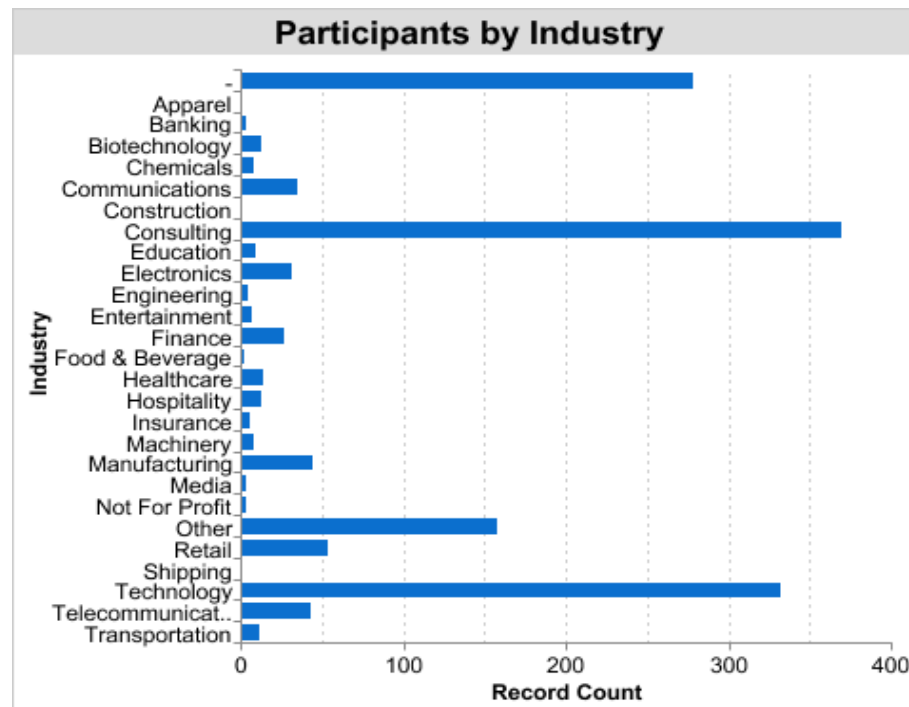
- The self-certification process
- Industry FAQs and stumbling blocks
- Forthcoming compliance questionnaires

3. Looking Forward & More Broadly

- Alignment with the GDPR
- How it meets the standard of the European Court of Justice
- EU-APEC Interoperability
- Annual Review & Calendar of Events

Number and Type of Participants

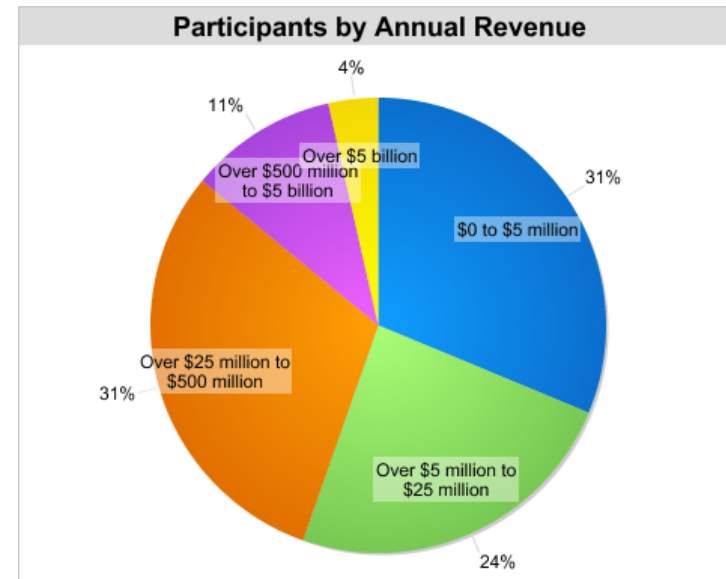
- Over 1,550 organizations certified in first 6 months
- Companies of all sizes and sectors participating



* Data as of Jan 2017

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Department of Commerce views**

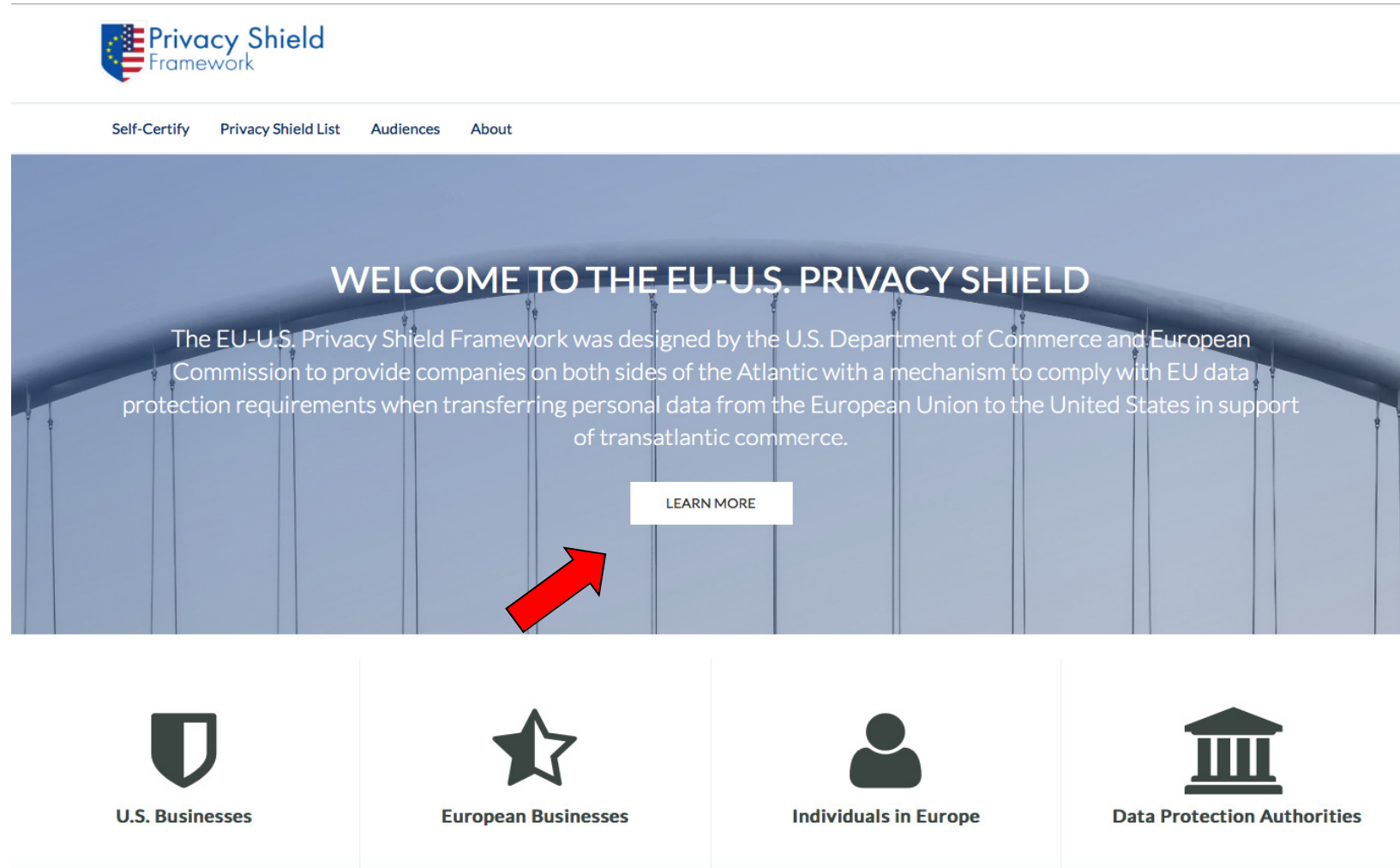
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ITA Administration, Oversight & Outreach

New Website and Available Resources



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ITA Administration, Oversight & Outreach

ITA Administration: What's new that matters to you?

- Verification of self-certification requirements
- Monitoring compliance
- Facilitating resolution of complaints referred by EU DPAs
- Increased outreach to companies
- Enhanced cooperation with EU DPAs

Broader Implementation & New Developments

➤ **Arbitral Panel**

- ITA published request for arbitral administrator and fund manager January 17 with applications due February 17
- ITA will work with European Commission to develop a list of 20 potential arbitrators and arbitral procedures

➤ **Ombudsperson Mechanism**

- Operated by the State Department
- Handles requests related to national security access to data transmitted from the EU/Switzerland to the U.S.
- Information at: www.state.gov/e/privacyshield/ombud/

➤ **The Swiss-U.S. Privacy Shield Framework**

- Finalized January 12, 2017
- ITA accepting self-certifications April 12, 2017
- Swiss-specific FAQs at: www.privacyshield.gov/Swiss-US-Privacy-Shield-FAQs

Industry Compliance Efforts

What are companies focusing on to come into compliance?

➤ **New Privacy Protections**

- Notice requirements: Privacy policy must inform individuals about all 13 elements for certification to be finalized
- Accountability for onward transfer: No prescribed language; require same level of protection via contract; model contracts suffice, but not necessary
- Purpose limitation and data retention: Have a plan!
- Withdrawal from Safe Harbor: Remove references to Safe Harbor from privacy policies to avoid potential false claim

➤ **Enhanced Complaint Resolution**

- Response time to EU individuals: 45 days, requires accessible designated company contact
- Free dispute resolution: Register with IRMs and/or pay DPA fee prior to self-certification

Note: Companies should review the Framework in its entirety. These slides are only meant to highlight certain aspects.

Industry Compliance Efforts

- **FAQs and Resources**
 - How to explain the possibility of binding arbitration
 - How to address subsidiaries
 - How to develop a compliant privacy policy
 - How does the Swiss-U.S. Privacy Shield differ
 - And more at: www.privacyshield.gov/Program-Overview
- **Compliance Questionnaires**
 - Four forthcoming questionnaires:
 1. Failure to recertify
 2. Withdrawal
 3. Annual questionnaire for organizations that retain data upon withdrawal
 4. Compliance review

Looking Forward

How was the Framework designed to remain durable?

➤ **The GDPR**

- Privacy Shield was designed with an eye to the GDPR, addressing substantive and procedural elements
- GDPR grandfathers Privacy Shield adequacy determination

➤ **European Court of Justice**

- Worked closely with the European Commission to ensure Framework can withstand a court challenge
- USG stands behind Privacy Shield and is prepared to explain safeguards and limitations before the Court

➤ **Annual Review**

- Planning for September 2017
- Focus on implementation

& More Broadly

Are there similar arrangements for data transfers outside the EU?

➤ **The APEC Cross-Border Privacy Rules**

- Offer a flexible principles-based approach while insuring accountability
- A multilateral approach: endorsed by 21 member economies; 4 are currently members and more are expected to join soon

➤ **Interoperability with EU**

- EU “Exchanging and Protecting Personal Data in a Globalised World” report recognizes the importance of working on interoperability between CBPR and the GDPR

➤ **For More Information**

- Visit cbprs.org
- Contact Michael Rose (michael.rose@trade.gov) or Andrew Flavin (andrew.flavin@trade.gov)

Calendar of Events

March 15-16	<i>IAPP Europe Data Protection Intensive (London): Privacy Shield Panel & free one-on-one consultations</i>
April 5	<i>Webinar: What the Future Holds for EU-U.S. Privacy Shield</i>
April 19-20	<i>IAPP Global Privacy Summit (Washington, DC): Privacy Shield and APEC CBPR panels & free one-on-one consultations</i>
May 8-9	<i>PLI Institute on Privacy and Data Security Law (San Francisco)</i>
May 15-16	<i>Europe Data Protection Days (Berlin): Privacy Shield keynote and data flows panel</i>
May 30-31	<i>PLI Institute on Privacy and Data Security Law (New York)</i>
June 12--13	<i>PLI Institute on Privacy and Data Security Law (Chicago)</i>
September	<i>Privacy Shield Annual Review</i>
October 25-29	<i>International Conference of Data Protection and Privacy Commissioners (Hong Kong)</i>