

Wednesday 1 March 2023 2: Press releases European Data Protection Board gives opinion on draft EU-U.S. adequacy decision Data Privacy Framework PRESS RELEASE

the Conference of Independent Data Protection Authorities

of the federal and state governments of March 1, 2023 The European Data Protection Board (EDPB) yesterday adopted an opinion on the draft of the European Commission's adequacy decision on the EU-US data protection framework (EU-US Data Privacy Framework). In it, he welcomes major improvements such as the introduction of necessity and proportionality requirements for intelligence data collection in the US and the new redress mechanism for EU data subjects. At the same time, the EDPB expresses concerns and asks for clarifications on several points. These relate in particular to certain rights of data subjects, onward transfers of personal data, the scope of exceptions, temporary bulk data collection and the practical functioning of the redress mechanism. The conference of the independent data protection supervisory authorities of the federal and state governments (DSK) expressly supports the position of the EDSA. dr H. c. Marit Hansen, Chairwoman of the DSK: "The data of many EU citizens is transmitted to the USA. For comprehensive protection of fundamental rights, it is important that the level of protection in these cases is equivalent to the level of data protection guaranteed in the EU. The European Data Protection Board, with the participation of German supervisory authorities, has in the EU-U.S. The level of protection described in the Data Privacy Framework has been carefully checked. I welcome the progress that has been made and hope that the remaining open points that we have identified together will now also be clarified." Background: In December 2022, the European Commission published the draft of a decision on the adequacy of the level of protection of personal data according to the EU -US Data Privacy Framework. The draft decision creates a new data protection framework between the EU and the US, which is intended to replace the previous US adequacy decision (Privacy Shield). The latter was declared invalid by the ECJ in July 2020 in its judgment in the Schrems II case. The European Commission's draft decision follows action taken by the US government in October 2022. This includes in particular the executive order on improving guarantees for US signal espionage activities (Executive Order (EO) 14086). These measures were intended to resolve the two main problems identified in the Schrems II judgment, namely the lack of proportionality and the lack of effective remedies in the US with regard to surveillance measures. The EDPB sees significant improvements in these points through Executive Order (EO) 14086. The EO introduces the concepts of necessity and proportionality with regard to the intelligence collection of data by the USA (Signals Intelligence). In addition, the new redress mechanism creates rights for EU citizens and is subject to review by the

Privacy and Civil Liberties Oversight Board (PCLOB). The EDPB stresses that the practical application of the newly introduced principles of necessity and proportionality must be closely monitored. Further clarity is also needed on temporary bulk collection and the continued storage and dissemination of the data collected in bulk. The EDPB also raises concerns about the lack of prior approval by an independent authority for the collection of bulk data under Executive Order 12333, as well as the lack of systematic independent ex-post review by a court or equivalent independent body. The EDPB opinion is published at: https://edpb.europa.eu/our-work-tools/our-documents/opinion-art-70/opinion-52023-european-commission-draft-implementing_en [Ext.] More information on the data protection conference, the merger of the independent German data protection supervisory authorities of the federal and state governments, is available at: www.datenschutzkonferenz-online.de [External]

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