On 25 March 2022, the Commission and the United States of America (USA) reached an agreement in principle on the main elements of a new data transfer arrangement, which will form the basis for a Commission adequacy decision to replace the previous Privacy Shield.

The agreement in principle needs now to be translated into legal texts. This includes the adoption of a new Executive Order by the USA President as well as implementing regulations. On that basis, the Commission will be able to propose a draft adequacy decision and launch the applicable adoption procedure. This involves obtaining an opinion of the European Data Protection Board and a positive vote from Member States’ representatives in the framework of a comitology procedure. The European Parliament has a right of scrutiny over such decisions. Once the procedure is completed, the Commission will be able to adopt the final decision.

The new arrangement has been negotiated with a view to address the requirements set by the Court of Justice of the European Union (CJEU) and provide adequate protection for the rights of Europeans, as well as legal certainty and stability for businesses. While it will take the form of an adequacy decision adopted by the Commission, the safeguards concerning USA public authorities’ access to data will apply to any transatlantic transfer of data, regardless of the type of instrument used. This includes the standard contractual clauses, which were at issue in the Schrems II judgment\(^1\) of the CJEU to which the Honourable Member refers.

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