



October 2020



Transfer of personal data from Israel to the US: new guidelines

Reading Time: 3 minutes

Background

On September 29, 2012, the Israel Privacy Protection Authority (the “Authority”) issued a statement regarding the transfer of personal data from Israel to the United States. The statement is a result of the July 2020 ruling of the European Court of Justice (CJEU) in the Schrems II case, in which the court invalidated the Privacy Shield arrangement - a mechanism formed between the EU and the US, which until then was a common legal basis for transferring personal data from the EU to the US. This client update summarizes key points of the Authority's position and the practical implications that result therefrom.

The Authority's Position

In its statement, the Authority noted that personal data may not be transferred from Israel to the US based on Regulation 2(8)(2) of the Privacy Protection Regulations (Transfer of Information to Databases Abroad), 5761-2001 (the “**Regulations**”). Regulation 2 includes a list of alternative conditions for the transfer of personal data from Israel to other countries, including the alternative regulated in Regulation 2(8)(2) - the transfer of personal data to a country that receives personal data from member states of the European Community under the same terms of acceptance.

Over the years, the Authority has interpreted Regulation 2(8)(2) as permitting the transfer of personal data to countries declared by the EU Commission as providing an adequate level of protection for personal data. However, pursuant to the invalidation of Privacy Shield, there is currently no general arrangement that facilitates the transfer of personal data from the EU to the US, and therefore such an arrangement cannot be relied upon as a basis for transferring personal data from Israel to the US.

Practical Implications

The main implication of the Authority's position is that one of the alternatives of Regulation 2, other than Regulation 2(8)(2), must apply to any transfer of personal data from Israel to the US.

Common alternatives under Regulation 2 include: (a) consent of the data subject to the transfer; (b) an agreement under which the transferee undertakes to comply, mutatis mutandis, with the conditions applicable to the management and use of databases in Israel; and (c) transferring of personal data to a corporation controlled by the transferor, which has guaranteed the protection of privacy following the transfer.

What's Next?

According to the Authority, the Authority is considering a reform to the Regulations in light of the technological, political and economic changes that have taken place since their enactment nearly twenty years ago. Such a reform may change the conditions for the transfer of personal data from Israel to the US and to other countries.

Recent reports also suggest that the EU and the US government are discussing potential alternatives for transferring personal data from the EU to the US in light of the invalidation of Privacy Shield. Such an alternative mechanism could potentially also facilitate the transfer of personal data from Israel to the US, based on Regulation 2(8)(2).

Recommendations

To the extent that you transfer personal data from Israel to the US or store personal data originating from Israel in the US, you should consider the legal basis on which you rely for such activities. To the extent that you rely on Privacy Shield for such transfer, you must ensure an alternative legal basis, such as a data transfer agreement in accordance with Regulation 2(4).

Additionally, to the extent that you process personal data that is subject to the provisions of the European General Data Protection Regulation (GDPR), you should also conduct a comprehensive examination of the arrangements on which you currently rely for the transfer of personal data to the US and other non-EU countries, in light of the Schrems II ruling.

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