

US vendors in use: what are the effects on privacy protection?

SURF Vendor Compliance carries out DPIAs (data protection impact assessments). This involves analysing the privacy risks to data subjects (users) under the AVG. In many cases, these vendors are US-based or owned by US owners.

EU US Data Privacy Framework

The transfer of personal data to Cloud/SaaS/PaaS suppliers with a (main) office in the United States is currently subject to an adequate level of personal data protection. If US suppliers participate in the EU US Data Privacy Framework, they can adequately protect personal data according to the European Commission's adequacy decision. That decision also applies if US government organisations and services demand access to data stored in Europe. Because there is currently sufficient adequate protection, no additional DTIAs (Data Transfer Impact Assessment) are needed.

Potential risks from geopolitical developments

Given geopolitical developments in the US, withdrawal of the adequacy decision is not inconceivable. If this is the case, the aforementioned Data Privacy Framework can no longer be invoked. If that happens, we will have to use other legal mechanisms for transfers. It is therefore good to prepare for this already. Therefore, always enter into Standard Contractual Clauses (SCCs). In addition to SCCs, a DTIA should then also be carried out. This also applies to further transfers to countries other than the US for which the right safeguards do not exist.

Moreover, personal data encryption should be used wherever possible, with a key that is exclusively proprietary. We cannot then rely on encryption by the supplier.

We must also take into account the risk that (personal) data may suddenly become unavailable due to US policy measures that may force the US supplier to stop providing the services on the agreed legal and financial terms. This is particularly important for critical processes for which it is unacceptable for these services to be unavailable.

SURF strategy

SURF puts public values at the heart of the services we provide and procure. In doing so, we follow SURF's values guide, which stands for autonomy, humanity and justice. The SURF Cloud Sourcing Strategy further explains how we make careful choices for items we procure on the basis of these values.

One of the sections in the SURF Cloud Sourcing Strategy is about following a multivendor strategy. That is, SURF negotiates agreements with multiple suppliers to avoid dependence on a single party.

In determining the priorities for concluding agreements and carrying out DPIAs, the focus in practice is now on European suppliers. In addition, SURF remains in constant dialogue with all suppliers to ensure that the sector can continue to use digital education services safely and responsibly.