

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

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SURF Vendor Compliance carries out Data Protection Impact Assessments (DPIAs). This involves analysing the privacy risks for data subjects (users) on the basis of the General Data Protection Regulation (GDPR). In many cases, these vendors are American or owned by American owners.

EU-US Data Privacy Framework

The transfer of personal data to Cloud/SaaS/PaaS vendors with a (main) office in the United States (US) is currently subject to an adequate level of personal data protection. If US vendors participate in the EU US Data Privacy Framework (DPF), they can adequately protect personal data in accordance with the European Commission's adequacy decision. This decision also applies if US government organisations and services require access to data stored in Europe. As there is currently sufficient adequate protection, no additional Data Transfer Impact Assessments (DTIA) are required.

Potential risks from geopolitical developments

Given the geopolitical developments in the US, withdrawal of the adequacy decision is not inconceivable. The DPF has been called into question in the judgment of the General Court of the Court of Justice of the European Union of 3 September 2025. The reason for the judgment is the request by Philippe Latombe of 6 September 2023 to annul the adequacy decision. In his request, Latombe questioned the independence of the appeal body (Data Protection Review Board) as well as the lawfulness of the large-scale collection of personal data by US intelligence services. Although the Court rejected this request, and the adequacy decision is therefore still valid at this time, Latombe has appealed the decision. In addition to this, the independent US oversight body (Privacy and Civil Liberties Oversight Board) designated by the European Commission currently does not have the three members needed for a quorum. Finally, the US Supreme Court has issued a decision about the Federal Trade Commission (FTC), which is the independent supervisory authority for DPF organisations. According to this decision, the protections that allow FTC members to operate independently are unconstitutional. If the adequacy decision remains in force, the described developments mean that EO 14086, on which the adequacy decision is largely based, may no longer offer the necessary protections the US needs to reach an equivalent level of data protection to the EU. Furthermore, it may have been secretly rescinded without altering the public record.

Consequences

If the adequacy decision is withdrawn, it will no longer be possible to rely on the DPF. If that happens, we will have to use other legal mechanisms for data transfers. It is therefore

advisable to prepare for this now. Therefore, always enter into Standard Contractual Clauses (SCCs). In addition to SCCs, a DTIA must also be performed. This also applies to further transfers to countries other than the US for which the appropriate safeguards do not exist.

Furthermore, where possible, personal data must be encrypted using a key that is exclusively under our own control. We cannot rely on encryption by the vendor.

We must also take into account the risk that (personal) data may suddenly become unavailable as a result of US policy measures that may force the US vendor to cease providing services under the agreed legal and financial conditions. This is particularly important for critical processes where it is unacceptable for these services to be unavailable.

SURF strategy

SURF places public values at the heart of the services we provide and purchase. In doing so, we follow the SURF values guide, which stands for autonomy, humanity and justice. The SURF Cloud Sourcing Strategy further explains how we use these values to make careful choices about the things we purchase.

One of the components of the SURF Cloud Sourcing Strategy involves pursuing a multi-vendor strategy. This means that SURF negotiates agreements with multiple vendors in order to avoid dependence on a single party.

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