



Travel  
Management by  
**UNIGLOBE**

# Data Privacy in 2017

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# What should Travel Buyers and Travel Management Companies do?

There have been many changes in the rules around EU-US data privacy over the last few years. This paper will layout the current state of play and what you as a travel buyer need to know when dealing with your travel management company.

## Background

The transatlantic flow of data, or data portability, is a form of international trade and is of critical importance for the U.S. and European economies. The United States and the EU remain each other's largest trade and investment partners and each has a different view of the nature of the data.

The United States and the EU negotiated the Safe Harbor Agreement of 2000 to allow U.S. companies and organizations to meet EU data protection requirements and permit the legal transfer of personal data between EU member countries and the United States. In January 2012, the European Commission published a draft General Data Protection Regulation (GDPR), which started several years of vigorous debate, negotiation and lobbying. This includes the provisions for the accord for data portability. Then in 2013, the unauthorized disclosure of U.S. National Security Agency (NSA) surveillance programs in Europe exacerbated European concerns about U.S. data privacy and protection standards. As a result, several U.S.-EU data-sharing accords came under intense scrutiny in Europe.

In late 2015, the European Court of Justice, invalidated the Safe harbor agreement because it found that it failed to meet EU data protection standards.

## Current Situation

There is not a replacement for the Safe Harbor accord in place yet. The accord that is under construction is known as Privacy Shield and was announced in February 2016.

Note however that the U.S. and EU and Swiss officials announced the agreement, “in principle,”. Many but not all, U.S. and EU officials believe that the new accord contains significantly stronger privacy protections as well as safeguards related to U.S. government access to personal data. It is a work in progress.

<https://www.privacyshield.gov/Program-Overview>

Meanwhile, until the new Privacy Shield Agreement is formally concluded and implemented, companies engaged in transatlantic data transfers are obliged to use other means of legitimizing data transfers.

The alternatives available right now are not viewed as a complete alternative to the envisioned Privacy Shield so are interim fixes only.

It is important to realize that both the buyer and seller will have new responsibilities: The Travel Management Company (TMC) will need to know the details of the data, why the data is stored and why they need access to it. That is, the TMC has the responsibility of third parties not misusing the data. As a buyer for a corporation, you will need the traveller’s permission to authorize that their data will be shared with third parties and buyers will need to be able to document the safety of the data with the third party.

## Three alternate and interim mechanisms

### **Option A) Model (Standard) Contract Clauses.**

The European Commission has decided that certain standard contractual clauses offer sufficient data protection. This does require a firm to put in place “data processing agreements” based on the model clauses with any entity with which data is exchanged. Standard contractual clauses (either adopted by the Commission or adopted by a supervisory authority and

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approved by the Commission) will remain an option and the existing sets of approved clauses will remain in force. This can be time consuming and expensive for many companies, especially if they are small to medium enterprises who may not have the resources to getting these agreements in place.

**Option B) Binding Corporate Rules (BCRs).** These are a set of rules, based on European data standards, which a company can implement and have approved by their national data processing authority. Note that these rules only apply for intra-company data transfers and can be a complex and time-consuming process.

**Option C) Consent.** Explicit consent agreements are another option, which may be useful in some business-to-consumer situations. For a business to rely on consent as a valid ground for processing personal data, the consent must have been 'freely' given and not given under compulsion or because of an act of deceit, and constitute a 'specific and informed indication' of a person's wishes for data to be processed.

## So, what do I need to do?

It may depend on which business sector you are in and which country you are exchanging data with.

If you have travellers between the USA and Europe it is most likely that you can ask your TMC which of the interim methods, they are using. Global Solutions for most businesses typically uses Option A: The Standard Contract Clauses.

There may be exceptions and it is worth exploring every option internally and with your travel providers. For example, it appears that many of the European data protection agencies, including the United Kingdom, Estonia, the Netherlands and Sweden are recommending that companies use Option A or B (standard contractual clauses or binding corporate rules) and will not rush to evaluate complaints while the full data accord is not finalized. Other countries, such as France, appear to already be investigating complaints. There is still the possibility that these alternative options mentioned above could be challenged by European Data Processing Agencies, civil liberty groups, or individual citizens.

## The Future

The changes which are to be ushered in by the GDPR in 2018 are substantial and ambitious. New concepts will be introduced such as the 'right to be forgotten', data portability, data breach notification and accountability. Your Global Solutions TMC is aware of these and is able to advise your best course of action.

## About Global Solutions Travel Management by UNIGLOBE Global Solutions

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