Compliance Activities and Casework Conducted by the BBB EU Privacy Shield Program from August 1, 2016 through July 31, 2017

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EXECUTIVE SUMMARY

The period covered by this report, August 1, 2016 through July 31, 2017, marked the first year of BBB EU Privacy Shield (BBB EUPS) operations. Created by the Council of Better Business Bureaus (CBBB) as a new Independent Recourse Mechanism supporting the Privacy Shield Frameworks, BBB EUPS has built upon the extensive experience of its predecessor BBB EU Safe Harbor program to continue providing trusted assistance to both businesses and consumers in cross border privacy matters.

The first year of program operations was marked by:

- Launch of the new program website July 12, 2016, following the approval of the Privacy Shield Framework in Brussels
- Enhancements to the program’s scope and coverage
- Providing self-certification guidance and compliance services to hundreds of companies self-certifying to the EU-U.S. Privacy Shield
- Helping numerous companies complete the transition to the Swiss-U.S. Privacy Shield

YEAR IN REVIEW

Participation. BBB EUPS enrolled over 450 participants by the end of the early enrollment period on September 30, 2016. The program currently has almost 700 participants.

Outreach. BBB EUPS has published detailed online guidance, fact sheets and other materials for program applicants and the business community; and has presented about Privacy Shield in a variety of settings, including webinars, a podcast, and regulatory and legal conferences and meetings.

Compliance Activities. BBB EUPS provides all program applicants with privacy policy guidance and self-certification assistance. The program also monitors online privacy policies and self-certifications for changes that may affect ongoing compliance.

Complaint Handling. The program received 53 complaints from individuals in 20 EU countries and Switzerland using the BBB EUPS online complaint form. Almost all complaints were determined to be ineligible because they concerned companies not enrolled in BBB EUPS, or not enrolled in Privacy Shield; or they were unrelated to privacy. One complaint is still under review for eligibility.
ABOUT THE PRIVACY SHIELD FRAMEWORKS

The European Data Privacy Directive prohibits transfers of personal data from the European Union to destinations, including the United States, that do not meet the European “adequacy” standard for privacy protection. U.S. companies therefore must use an “adequate” data transfer mechanism to receive and process personal data from Europe.

On July 12, 2016, the U.S. Department of Commerce and the European Commission announced the approval of the EU-U.S. Privacy Shield Framework as a valid legal mechanism for companies on both sides of the Atlantic to comply with EU data protection requirements when transferring personal data from the EU to the United States. The EU-U.S. Privacy Shield Framework replaced the U.S.-EU Safe Harbor, which was invalidated by a decision of the European Court of Justice in October 2015. The U.S. Department of Commerce began accepting self-certifications to the EU-U.S. Privacy Shield Framework on August 1, 2016.

On January 12, 2017, the Swiss Government approved the Swiss-U.S. Privacy Shield Framework as a valid legal mechanism for companies in the U.S. and Switzerland to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States. The U.S. Department of Commerce began accepting self-certifications to the Swiss-U.S. Privacy Shield Framework on April 12, 2017.

While retaining many elements of the Safe Harbor Frameworks, the Privacy Shield Frameworks include enhanced consumer privacy protections for EU and Swiss individuals, promote greater transparency around data collection, use, and sharing, and help U.S. companies demonstrate that their privacy practices meet EU and Swiss data protection requirements.¹

Companies participating in either Privacy Shield Framework must submit a self-certification application to the Department of Commerce, stating their adherence to the Privacy Shield Principles for personal data they receive from the EU or Switzerland. Participating companies are required to maintain a current self-certification on the official Privacy Shield List maintained by the Department of Commerce. They must also verify on an annual basis that their public attestations regarding their Privacy Shield privacy practices are accurate, through self-assessment or outside compliance reviews; and must provide an independent dispute resolution option, also called an Independent Recourse Mechanism, to handle privacy complaints from EU and Swiss individuals whose personal data they process.

¹ The Commission Decision on the adequacy of the protection provided by the EU-U.S. Privacy Shield applies to the 28 EU members, and also to Iceland, Liechtenstein and Norway. Thus, references in this report to the European Union (EU) should be read as including Iceland, Liechtenstein and Norway.
ABOUT BBB EU PRIVACY SHIELD

On July 12, 2016, immediately following the formal adoption of the Privacy Shield Framework for EU-U.S. data transfers, the Council of Better Business Bureaus (CBBB) launched BBB EU Privacy Shield as an Independent Recourse Mechanism to support the new Framework. In the first two months following the Privacy Shield launch, the program assisted hundreds of companies in navigating Privacy Shield requirements and preparing for self-certification. More than 450 companies were accepted as BBB EU Privacy Shield participants by September 30. The program has expanded steadily since then, and expects to be providing services to more than 700 participating companies and their customers by the end of 2017.

BBB EU Privacy Shield succeeds CBBB’s long-established BBB Online/BBB EU Safe Harbor program, one of the founding independent recourse mechanisms supporting the U.S.-EU and U.S.-Swiss Safe Harbor Frameworks. That program operated from 2000 through 2016, at its peak in 2015 providing independent dispute resolution services for more than 800 participating companies. During the negotiation of the Privacy Shield Framework to replace Safe Harbor in early 2016, CBBB rebuilt and expanded its dispute resolution program to offer additional services and information U.S. companies need to help them comply with the stricter data protection and compliance requirements of Privacy Shield.²

This annual report summarizes the ongoing compliance activities and casework of CBBB’s BBB EU Privacy Shield program spanning August 1, 2016 through July 31, 2017.

² BBB EU Privacy Shield does not offer third-party verification. Program participants conduct verification in-house through self-assessment or with assistance from outside counsel or consultants.
BBB EU PRIVACY SHIELD CORE REQUIREMENTS

Each applicant to join BBB EU Privacy Shield provides the program with a copy of the consumer-facing Privacy Shield privacy notice (policy) to be posted on its public website. BBB EUPS staff reviews the privacy policy for basic compliance with Notice Principle requirements, and notably, for the inclusion of a live hyperlink to the BBB EU Privacy Shield consumer information web page and online complaint form.

Participation Agreement

Each BBB EU Privacy Shield participant must agree:

• To post the privacy policy approved by BBB EUPS on all relevant company websites immediately before submitting the self-certification application to the Department of Commerce.
• To notify BBB EUPS of all changes to the posted policy, including any changes required by the Department of Commerce during the self-certification process.
• To apply for self-certification with the Department of Commerce within 30 days of acceptance into the BBB EUPS program, and to maintain a current self-certification for the duration of its participation in BBB EUPS.
• To cooperate with BBB EUPS staff to respond to privacy complaints in accordance with the BBB EUPS Procedure Rules.
• In cases sent to a Data Privacy Review before an independent Data Privacy Panelist, to accept the Panelist’s final decision.
• To implement any corrective action agreed to as part of a settlement, or mandated by a Panelist’s decision.

These requirements are incorporated in a Participation Agreement that is renewable annually following a BBB EUPS staff review of the company’s online Privacy Shield privacy policy and self-certification listing to ensure that the company remains in compliance with all program requirements.

Review of Privacy Policies/Practices

BBB EU Privacy Shield staff examines applicants’ online privacy policies and any referenced terms and conditions for clarity, completeness, and for the inclusion of all elements required by the Privacy Shield Notice Principle. Applicant companies can access detailed resources about the Privacy Shield Principles and the self-certification process on the program website. (https://www.bbb.org/EU-privacy-shield/privacy-policy-requirements). We provide additional privacy policy guidance and tips during the application process, including the following:

• Ensure the privacy policy is clearly written and is readily accessible on the company’s public website.
• Ensure that the applicant company clearly identifies the corporate entity or entities processing EU or Swiss personal data pursuant to Privacy Shield. If a brand name or d/b/a is used on the company’s public website(s), the company’s legal name should also appear in the policy, in its self-certification, and also in the BBB EU Privacy Shield Participation Agreement. This information can facilitate a consumer’s search for the appropriate company on the official Commerce Department Privacy Shield List and in the BBB EU Privacy Shield complaints system.
• Where multiple entities and web domains are to be covered by a master corporate privacy policy, ensure that each covered website includes the correct policy and the active hyperlink to the BBB EU Privacy Shield consumer pages and complaint system.
BBB EU Privacy Shield’s self-regulatory dispute resolution procedures are designed to ensure that the privacy concerns of individual complainants in the EU and Switzerland are addressed speedily and fairly, and to promote privacy accountability among U.S. companies participating in the program.

BBB EU Privacy Shield provides a secure, accessible online mechanism for handling privacy complaints by European individuals against participating U.S. businesses.

The service is provided free of charge to individuals, who can readily access the BBB EUPS online complaint form through a live hyperlink each participating company must include in the privacy policy posted on its public website.

The dedicated link first takes the site visitor to BBB EU Privacy Shield’s consumer-facing web page (https://www.bbb.org/EU-privacy-shield/for-eu-consumers) which describes the program’s role as an IRM and how our complaint process works; and includes a prominent “File a Complaint” button to access the complaint form. The For EU and Swiss Consumers page also provides a mailing address for complainants who prefer to communicate with the program by postal mail.

The BBB EUPS complaint form can also be accessed through the BBB Online Complaints System, which in turn can be reached through the main “File a Complaint” button located at the foot of the BBB national website home page and on pages throughout the website. (https://www.bbb.org/)

Complaint Handling Rules and Procedures

Eligibility

As provided in the program’s Procedure Rules⁵, BBB EUPS staff first reviews each incoming complaint to determine its eligibility for resolution under the program. This process may entail seeking additional information from the complainant regarding such issues as country of residence, additional identifying information, or clarifying the exact nature of the complaint. Language translation services may be used as needed to facilitate the complaint handling process.

⁵ Available at: https://www.bbb.org/EU-privacy-shield/rules-and-policies/
**Conciliation**
When a complaint is found eligible, staff will open a case and will work with the complainant and the participating business to facilitate a resolution of the complaint. In the BBB EU Safe Harbor program, it was our experience that most complainants followed this conciliation approach and reached a settlement of the issue with the participating company.

**Data Privacy Review**
If conciliation efforts are unsuccessful, either the complainant or the participating company may request a Data Privacy Review, which will take the form of a hearing and decision based on the Case Record, including the positions of each of the parties regarding the complaint, submitted by BBB EUPS staff to an independent panelist on the program’s Data Privacy Board. The panelist has discretion to seek additional written information from the parties or to convene a telephone hearing if necessary, before issuing a final decision.

Participating companies that fail to comply with BBB EUPS Data Privacy Review procedures, including failing to take agreed upon action following conciliation, or failing to implement mandated corrective action following the final decision of the independent Data Privacy Board panelist, may be referred to the appropriate federal government agency – generally the Federal Trade Commission — and the referral will be reported to the Department of Commerce. In such a case, the program is required to publish in the Annual Procedure Report the name of the participating company and the fact of the referral, along with a summary report of the facts of the case and the Procedure’s action in the matter.

**Compliance Verification and Additional Redress Options**
BBB EU Privacy Shield verifies the company’s compliance with both conciliated settlements and mandated corrective action. This includes seeking confirmation from the complainant that the matter has been resolved to his or her satisfaction. The case is then closed. However, the complainant is not bound by the outcome of the BBB EU Privacy Shield dispute resolution procedure and may pursue all additional redress options available under Privacy Shield, up to and including the binding arbitration procedures described in Annex 1.

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4 See Part 4 of the Procedure Rules: https://www.bbb.org/EU-privacy-shield/rules-and-policies/
5 See Section 8.8 of the Procure Rules: https://www.bbb.org/EU-privacy-shield/rules-and-policies/
Companies enrolling in BBB EU Privacy Shield during the first year of the new program ranged from large multinational corporations to small and mid-sized businesses across multiple industry sectors. Applicants seeking self-certification assistance from BBB EU Privacy Shield were closely engaged in adapting their public and internal privacy policies and practices to meet new transparency and compliance obligations.

**Early Enrollment Period**

The Privacy Shield early enrollment period provided an incentive (a grace period for full implementation of third-party contract requirements) for companies to self-certify with the Department of Commerce within the first two months that the Department accepted applications: August 1 through September 30, 2016. During this initial enrollment period, BBB EU Privacy Shield staff fielded several hundred compliance inquiries from interested companies, including many organizations previously self-certified to the Safe Harbor.

Most companies contacting the program sought guidance on the proper interpretation of the new Notice, Choice, and Accountability for Onward Transfer Principles. BBB EU Privacy Shield staff worked closely with the Commerce Department to provide accurate information on acceptable privacy policy language and content for a variety of business models and contexts, as well as guidance on choice mechanisms and on contract obligations for onward transfers to third-party processors. This information was provided to the business community on our program website, in a webinar and podcast, and in expanded written guidance and one-to-one consultations provided to program applicants.

CBBB transitioned over 350 former BBB EU Safe Harbor companies, and accepted around 100 new applicants, into the new BBB EU Privacy Shield program during the initial enrollment period. Since then, the program has grown to include almost 700 participating companies.

**Swiss-U.S. Privacy Shield**

Another major transition occurred with the approval of the Swiss-U.S. Privacy Shield on January 12, 2017. Between January and April, 2017, when self-certification became available for the new framework, program staff worked with several hundred BBB EU Privacy Shield participants to remove outdated references to U.S.-Swiss Safe Harbor from their online privacy policies, and helped a number of companies prepare for self-certification to Swiss-U.S. Privacy Shield. By August 1, 2017, over 300 BBB EU Privacy Shield companies had self-certified to the Swiss-U.S. Privacy Shield Framework.
2017 BBB EU PRIVACY SHIELD CASEWORK

The BBB Online Complaints System (OCS) routinely handles over 800,000 consumer complaints of various types against U.S. companies each year, including privacy–related matters, from consumers in the U.S. and worldwide.

BBB EU Privacy Shield complaints referenced in this report include only those complaints submitted to the program through the dedicated Privacy Shield online complaint form located at https://www.auto.bbb.org.eu-privacy-shield-complaint-form/.

BBB EU Privacy Shield Complaints Analysis

During the review period, BBB EU PRIVACY SHIELD received a total of 180 complaints. Following an eligibility review of each complaint by BBB EUPS staff, 179 complaints were determined to be outside the scope of the program. One complaint is still under review for eligibility.

Complaints were found ineligible for three reasons:
(1) the complainant was not an EU or Swiss individual;
(2) the complaint did not concern a BBB EU Privacy Shield participating business; and/or
(3) the complaint was unrelated to privacy.

Of the 180 complaints reviewed, 99 were submitted by U.S. residents, while 28 were received from individuals in other non-European countries. 53 complaints were submitted by individuals in the EU and Switzerland.

BBB EU Privacy Shield Complaints Received by Geographic Region

<table>
<thead>
<tr>
<th>Category</th>
<th>Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints submitted by U.S. residents (Ineligible Individuals)</td>
<td>99</td>
</tr>
<tr>
<td>Complaints received from individuals in the EU and Switzerland (Eligible Individuals)</td>
<td>53</td>
</tr>
<tr>
<td>Complaints received from individuals in other non-European countries (Ineligible Individuals)</td>
<td>28</td>
</tr>
</tbody>
</table>

Breakdown of EU and Swiss Complaints Received by Country of Residence

<table>
<thead>
<tr>
<th>Country</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>1</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1</td>
</tr>
<tr>
<td>Croatia</td>
<td>1</td>
</tr>
<tr>
<td>Czech Republic</td>
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</tr>
<tr>
<td>France</td>
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</tr>
<tr>
<td>Germany</td>
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<tr>
<td>Hungary</td>
<td>1</td>
</tr>
<tr>
<td>Ireland</td>
<td>1</td>
</tr>
<tr>
<td>Italy</td>
<td>2</td>
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<tr>
<td>Lithuania</td>
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<tr>
<td>Norway</td>
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<td>Netherlands</td>
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<tr>
<td>Poland</td>
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<tr>
<td>Romania</td>
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<td>Slovenia</td>
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<td>Spain</td>
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<td>Sweden</td>
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<tr>
<td>Switzerland</td>
<td>1</td>
</tr>
<tr>
<td>UK</td>
<td>26</td>
</tr>
</tbody>
</table>

EU and Swiss Complaints

The 53 European complaints originated in 19 EU countries and Switzerland. All but three of the complaints were directed against companies not currently participating in the BBB EU Privacy Shield program. Of the three complaints against BBB EU Privacy Shield participants, two were unrelated to privacy. The remaining complaint was received at the end of the reporting period and is still under review for eligibility, pending our request for additional information from the complainant.
In cases where an ineligible complaint concerned a U.S. business, BBB EUPS staff directed the complainant to the Better Business Bureau Online Complaint System as a possible alternative avenue for complaint resolution.

Where an ineligible privacy complaint concerned a business in the EU or Switzerland, BBB EUPS staff directed the complainant to the national DPA in the country where the business was located.

Most European complaints received were directed against companies not enrolled in BBB EUPS and not self-certified to Privacy Shield. This may reflect both limited Privacy Shield participation and emerging public awareness in the early months of the new Framework. However the total number of complaints during the first reporting period demonstrates that European individuals can readily access BBB EUPS services, and that they are prepared to engage with a U.S.-based recourse mechanism to handle privacy complaints against U.S. companies.
ABOUT BBB EU PRIVACY SHIELD

BBB EU Privacy Shield was created by the Council of Better Business Bureaus in 2016 as a successor program to BBB EU Safe Harbor (formerly BBB Online), which was one of the original independent recourse mechanisms created to support the U.S.-EU and U.S.-Swiss Safe Harbor Frameworks. The new program provides compliance assistance for U.S. companies preparing for Privacy Shield self-certification, and offers an independent third-party dispute resolution mechanism to European Union (EU) and Swiss individuals with privacy complaints against participating companies alleging violations of the Privacy Shield Principles. The objectives of this self-regulatory program are to ensure that privacy concerns of individual complainants are addressed expeditiously and fairly, and to promote privacy accountability among companies participating in the program. Launched July 12, 2016, the program has provided services to several hundred businesses of all sizes and types in its first year of operation. Businesses seeking information about BBB EU Privacy Shield participation, and individuals with questions about privacy dispute resolution should visit bbb.org/EU-privacy-shield.

ABOUT BBB

For more than 100 years, Better Business Bureau has been helping people find businesses, brands and charities they can trust. In 2016, people turned to BBB more than 167 million times for BBB Business Profiles on more than 5.2 million businesses and Charity Reports on 11,000 charities; and the BBB system handled more than 860,000 complaints across North America, free to consumers at bbb.org. The Council of Better Business Bureaus, located in Arlington, Virginia, is the umbrella organization for the local, independent BBBs in the United States, Canada and Mexico. It is also home to national self-regulation programs addressing important business issues including online privacy and data protection, industry-specific consumer dispute resolution, and advertising truth and accuracy.