

**State of Israel, Ministry of Justice
Israeli Law, Information and Technology Authority (ILITA)
Legal Department**

**Court of Justice of the European Union Invalidates the Safe Harbor
Arrangement for Transfer of Personal Data from Europe to the United States**

**Pursuant to the European Decision It Is No Longer Permissible to Rely on the
Safe Harbor as a Basis for Transfers of Personal Data from Israel to the U.S**

[The first 1.5 pages of ILITA's statement summarize the history of the Schrems case and holding of the Court of Justice of the European Union in its October 6, 2015, decision]

Implications of the European Decision for the Data Protection Regime in Israel

The Privacy Protection Regulations (Transfer of Data to Databases Outside of Israel), 2001 (the "Regulations") restrict the transfer of data from a database in Israel outside the borders of Israel except where the law of the transferee country ensures a level of data protection that is no lesser than that under Israeli law, or under one of the derogations set forth in Section 2 of the Regulations.

One of the derogations, under Section 2(8)(2) of the Regulations, authorizes the transfer of personal data from Israel to a country to which the European Union permits data transfers:

"2. Notwithstanding Section 1 of the Regulations, a database owner may transfer data or enable the transferring of data from its database in Israel outside the borders of Israel, if one of the following applies:

(...)

(8) the data is transferred to a database in a country ...

(2) which receives data from Member States of the European Community, under the same terms of acceptance."

In light of European Commission Decision 2000/520/EC, which determines that United States organizations committed to the Safe Harbor principles provide an "adequate level of protection" for personal data according to Article 25(2) of the European Data Protection Directive, it was the position of the Israeli Law, Information and Technology Authority (ILITA) that such companies fall under the derogation authorizing data transfers from Israel under Section 2(8)(2) of the Regulations.

However, the recent decision of the Court of Justice of the European Union (CJEU) invalidates the authorization to transfer personal data from Europe to companies committed to the Safe Harbor. **Consequently, at this point, the position of ILITA is that organizations can no longer rely on this derogation from the Regulations as a basis for the transfer of personal data from Israel to organizations in the United States.**

Seeing as the Safe Harbor arrangement is currently invalid under European law, and in the absence of an alternative valid arrangement or another formal decision of the European Union with respect to the transfer of data from European Member States to destinations in the United States, database owners who are interested in transferring personal data from Israel to the United States are therefore required to assess whether they can legitimize the data transfers on one of the other derogations set forth in the Regulations.

ILITA continues to assess the implications of the decision of the CJEU, and will publish information and additional clarifications if necessary.