The Dispute Resolution Mechanisms Under the Privacy Shield:
What Happens if I Join Privacy Shield and Someone Submits a Complaint? (Part 1 of 2)

The first installment in our month-long series dissecting the new “Privacy Shield” framework for transferring data from the EU to the United States discussed the history and implementation of the Privacy Shield. The second, third and fourth installments provided side-by-side comparisons of the Privacy Shield against the former EU-US Safe Harbor Framework, the current Controller-Processor Model Clauses and the current Controller-Controller Model Clauses (Set 2). The remainder of our series will focus on addressing the top questions that we have received concerning how the Privacy Shield will function in practice.

One of the most common areas of confusion surrounding the Privacy Shield is the way in which people are permitted to raise complaints with participating companies concerning the collection and use of their personal data. It’s easy to understand the source of confusion. The Privacy Shield contains seven different ways to raise complaints, but each method is not open to every person (in EU parlance, every “data subject”) in every situation. For example, some methods are guaranteed only to employees in the context of HR data transfers (e.g., use of an informal panel of European Union Data Protection Authorities to adjudicate claims); other methods require that a data subject first exhaust other methods of resolution (e.g., binding arbitration before a Privacy Shield Panel to be established by the Department of Commerce and the European Commission).

Depending on the personal data at issue, there are various mechanisms by which a participating organization may receive a complaint either from a consumer or an employee. In this fifth installment, we provide a roadmap for the different ways in which a consumer may file a complaint against a certifying organization where non-HR data is involved. Our next installment will provide a similar roadmap for the ways in which an employee might file a complaint against an employer.
Complaint Submission Process Under Privacy Shield For Non-HR Data

**Data Subject**

Internal Complaint Resolution:
- Privacy policy must include a point of contact to receive complaints.
- Organization must have a process to respond to complaints.
- Response must be given within 45 days. (Adequacy Dec. ¶ 44.)
- Response must discuss: - Merits of complaint - Organization response

**Independend Dispute Resolution Body**:
- Free to data subject.
- Chosen by Company (e.g., BBB EU-US Privacy Shield Program, JAMS).
- Able to award damages if warranted by applicable law.
- Described in privacy policy.
- Findings of non-compliance must be public. (Adequacy Dec. ¶ 45.)
- Decision is binding upon company; if company does not comply they can be struck from Privacy Shield program. (Adequacy Dec. ¶ 47.)
- Decision is not binding upon data subject (i.e., they can pursue other complaint mechanisms) or appeal, below, via binding arbitration.

**National DPA of the Data Subject**
- Agency must designate a point of contact to receive complaints.
- If referred from DPA, must provide status within 90 days. (Adequacy Dec. ¶¶ 51, 52.)
- Cooperate with Informal Panel of DPAs:
  - Respond to inquiry.
  - Comply with DPA’s advice.
  - Provide DPA written confirmation of compliance.
  - If organization fails to comply, panel can submit matter to FTC or Department of Commerce. (Adequacy Dec. ¶ 48.)

**Federal Trade Commission**
- Agency must designate a point of contact to receive complaints. (Adequacy Dec. ¶ 51.)
- Data subject may be able to file action in national court or their respective member state if the DPA has taken no action, or insufficient action.
- It is unclear what would constitute insufficient action. (Adequacy Dec. ¶ 50.)

**Complaint is forwarded to Informal Panel of DPAs**
(Adequacy Dec. ¶ 48.)

**Binding Arbitration before Privacy Shield Panel**
- Prerequisites to arbitration:
  1. The data subject has raised his claim with the organization.
  2. The data subject has raised his claim with the independent dispute resolution body.
  3. The data subject has raised his claim with their DPA/Dept. of Commerce.
  4. The claim does not involve HR data.
  5. The independent dispute resolution body was not the panel of DPAs.
  6. The complaint was not previously submitted to binding arbitration.
  7. The complaint was not previously submitted to a court and received a final judgment.
  8. The complaint was not previously settled.
- Panel of 1 or 3 arbitrators selected from ~20 person roster.
- Follows traditional (i.e., JAMS or AAA) arbitration rules.
- Limited to non-monetary equitable relief (no damages, costs, fees or attorneys fees).
- Addresses only individual grievances.
- Decision binds all parties.
- Reviewed in federal district court where the organization has its primary place of business; review standard is the Federal Arbitration Act. (Annex I.)

**About Bryan Cave**
Bryan Cave is a global law firm with more than 1,000 highly skilled lawyers in 27 offices in North America, Europe and Asia. The firm represents publicly held multinational corporations; large and mid-sized privately held companies, emerging companies, nonprofit and community organizations, government entities, and individuals. With a foundation based on enduring client relationships, deep and diverse legal experience, industry-shaping innovation and a collaborative culture, Bryan Cave’s transaction, litigation and regulatory practice serves clients in key business and financial markets.
The Dispute Resolution Mechanisms Under the Privacy Shield:

What Happens if I Join Privacy Shield and an Employee Submits a Complaint? (Part 2 of 2)

The first installment in our month-long series dissecting the new “Privacy Shield” framework for transferring data from the EU to the United States discussed the history and implementation of the Privacy Shield. The second, third and fourth installments provided side-by-side comparisons of the Privacy Shield against the former EU-US Safe Harbor Framework, the current Controller-Processor Model Clauses and the current Controller-Controller Model Clauses (Set 2). The remainder of our series will focus on addressing the top questions we have received concerning how the Privacy Shield will function in practice.

One of the most common areas of confusion surrounding the Privacy Shield is the way in which people are permitted to raise complaints with participating companies concerning the collection and use of their personal data. It’s easy to understand the source of confusion. The Privacy Shield contains seven different ways to raise complaints, but each method is not open to every person (in EU parlance, a “data subject”) in every situation. For example, some methods are guaranteed only to employees in the context of HR data transfers (e.g., use of an informal panel of European Union Data Protection Authorities to adjudicate claims); other methods require that a data subject first exhaust other methods of resolution (e.g., binding arbitration before a Privacy Shield Panel to be established by the Department of Commerce and the European Commission).

Depending on the personal data at issue, there are various mechanisms by which a participating organization may receive a complaint either from a consumer or an employee. In our fifth installment, we provided a roadmap of the different ways in which a consumer may file a complaint against a certifying organization where non-HR data is involved. In this sixth installment, we provide a similar roadmap for the ways in which an employee might file a complaint against an employer.
Complaint Submission Process Under Privacy Shield For HR Data

**Data Subject**

**Internal Complaint Resolution:**
- Privacy policy must include a point of contact to receive complaints.
- Organization must have a process to respond to complaints. Response must be given within 45 days. (Adequacy Dec. ¶ 44.)
- Response must discuss:
  - Merits of complaint
  - Organization response

**National DPA of the Data Subject:**
- Complaint is forwarded to informal panel of DPAs. (Adeq. Dec. ¶ 48.)

**Member State Court:**
- Data subject may be able to file action in national court or their respective member state if the DPA has taken no action, or insufficient action. It is unclear what would constitute insufficient action. (Adequacy Dec. ¶ 50.)

**Cooperate with Informal Panel of DPAs:**
- Respond to inquiry.
- Comply with DPA’s advice.
- Provide DPA written confirmation of compliance.
- If organization fails to comply, panel can submit matter to FTC or Department of Commerce. (Adeq. Dec. ¶ 48.)

**Department of Commerce:**
- Agency must designate a point of contact to receive complaints.
- If referred from DPA, must provide status within 90 days. (Adequacy Dec. ¶¶ 51, 52.)

**Federal Trade Commission:**
- Agency must designate a point of contact to receive complaints. (Adequacy Dec. ¶ 51.)

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