



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

June 9, 2023

Didier Reynders
Commissioner for Justice
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

Dear Commissioner Reynders:

The United States Federal Trade Commission (“FTC”) appreciates the opportunity to address its enforcement role in connection with the EU-U.S. Data Privacy Framework (“EU-U.S. DPF”) Principles. The FTC has long committed to protecting consumers and ~~process~~ borders, and we are committed to enforcement of the commercial sector aspects of this framework. The FTC has performed such a role since the year 2000, in connection with the U.S.-EU Safe Harbor Framework, and most recently since 2016, in connection ~~with the EU~~ U.S. Privacy Shield Framework. On July 16, 2020, the Court of Justice of the European Union (“CJEU”) invalidated the European Commission’s adequacy decision underlying the EU-U.S. Privacy Shield Framework, on the basis of issues other ~~than~~ commercial principles that the FTC enforced. The U.S. and the European Commission have since negotiated ~~the~~ U.S. Data Privacy Framework to address that CJEU ruling.

I write to confirm the FTC’s commitment to vigorous enforcement of the ~~EU~~ DPF Principles. Notably, we affirm our commitment in three key areas: (1) referral prioritization and investigations; (2) seeking and monitoring orders; and (3) enforcement cooperation with EU data protection authorities (“DPAs”).

I. Introduction

a. FTC Privacy Enforcement and Policy Work

The FTC has broad civil enforcement authority to promote consumer protection and competition in the commercial sphere. As part of its consumer protection mandate, the FTC enforces a wide range of laws to protect ~~the~~ privacy and security of consumers and their data.

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The primary law enforced by the FTC, the FTC Act, prohibits “unfair” or “deceptive” acts or practices in or affecting commerce.² The FTC also enforces targeted statutes that protect information relating to health, credit, and other financial matters, as well as children’s online

United States, or (2) involve material conduct in the United States. Further, the FTC can use all remedies that are available to protect domestic consumers when protecting foreign consumers.

The FTC also enforces other targeted laws whose protections extend to non-U.S. consumers, such as the Children's Online Privacy Protection Act ("COPPA"). Among other things, COPPA requires that operators of child-directed websites and online services, or general audience sites that knowingly collect personal information from children under the age of 13, provide parental notice and obtain verifiable parental consent before websites and services

In Flo, the FTC alleged that the fertility-tracking app disclosed user health information to third-party data analytics providers after commitments to keep such information private. The FTC complaint specifically notes the company's interactions with EU consumers and that Flo violated EU-U.S. Privacy Shield Principles 1 (Notice), 2 (Choice), 3 (Accountability for Onward Transfer), and 5 (Data Integrity and Purpose Limitation). Among other things, the agency's order requires Flo to notify affected users about the disclosure of their personal information and to instruct any third party that received users' health information to destroy that data. Importantly, FTC orders protect all consumers worldwide who interact with a U.S. business, not just those consumers who have lodged complaints.

Many past U.S. EU Safe Harbor and EU-U.S. Privacy Shield enforcement cases involved organizations that completed an initial self-certification through the Department of Commerce, but failed to maintain their annual self-certification while they continued to present themselves as current participants. Other cases involved false claims of participation by organizations that never completed an initial self-certification through the Department of Commerce. Going forward, we expect to focus our proactive enforcement efforts on the types of substantive violations of the EU-U.S. DPF Principles alleged in cases such as Twitter, CafePress, and Flo. Meanwhile, the Department of Commerce will administer and supervise the self-certification process, maintain the authoritative list of EU-U.S. DPF participants, and address other program participation claim issues.¹² Importantly, organizations claiming EU-U.S. DPF participation may be subject to substantive enforcement of the EU-U.S. DPF Principles even if they fail to make or maintain their self-certification through the Department of Commerce.

II. Referral Prioritization and Investigations

As we did under the U.S. EU Safe Harbor Framework and the EU-U.S. Privacy Shield Framework, the FTC commits to give priority consideration to EU-U.S. DPF Principles referrals from the Department of Commerce and EU Member States. We will also prioritize consideration of referrals for non-compliance with the EU-U.S. DPF Principles from privacy self-regulatory organizations and other independent dispute resolution bodies.

To facilitate referrals under the EU-U.S. DPF from EU Member States, the FTC has created a standardized referral process and has provided guidance to EU Member States on the type of information that would best assist the FTC in its inquiry into a referral. As part of this effort, the FTC has designated an agency point of contact for EU Member State referrals. It is most useful when the referring authority has conducted a preliminary inquiry into the alleged violation and can cooperate with the FTC in an investigation.

Upon receipt of such a referral from the Department of D aenerrc, (e)-1 (l)gE(a)12 Tw T* [(mo)

In addition to prioritizing EU-U.S. DPF Principles referrals from the Department of Commerce, EU Member States, and privacy-regulatory organizations or other independent dispute resolution bodies¹³, the FTC will continue to investigate significant EU-U.S. DPF Principles violations on its own initiative where appropriate, using a range of tools. As part of the FTC's program of investigating privacy and security issues involving commercial organizations, the agency has routinely examined whether the entity at issue was making EU-U.S. Privacy Shield representations. If the entity made such representations and the investigation revealed apparent violations of the EU-U.S. Privacy Shield Principles, the FTC included allegations of EU-U.S. Privacy Shield violations in its enforcement actions. We will continue this proactive approach, now with respect to the EU-U.S. DPF Principles.

III. Seeking and Monitoring Orders

The FTC also affirms its commitment to seek and monitor enforcement orders to ensure compliance with the EU-U.S. DPF Principles. We will require compliance with the EU-U.S. DPF Principles through a variety of appropriate injunctive provisions in future FTC EU-U.S. DPF Principles orders. Violations of the FTC's administrative orders can lead to civil penalties of up to \$50,120 per violation, or \$50,120 per day for a continuing violation¹⁴, which, in the case of practices affecting many consumers, can amount to millions of dollars. Each consent order also has reporting and compliance provisions. The entities under order must retain documents demonstrating their compliance for a specified number of years. The orders must also be disseminated to employees responsible for ensuring order compliance.

The FTC systematically monitors compliance with existing E

confidentiality laws and restrictions. To the extent feasible given the number and type of referrals received, the information provided will include an evaluation of the referred matters, including a description of significant issues raised and any action taken to address law violations within the jurisdiction of the FTC. The FTC will also provide feedback to the referring authority on the types of referrals received in order to increase the effectiveness of efforts to address unlawful conduct. If a referring enforcement authority seeks information on the status of a particular referral for purposes of pursuing its own enforcement proceeding, the FTC will
