

Union Directive on Data Protection (“Directive”). Enacted in 1995, the Directive sets forth European Union (“EU”) requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission (“EC”) has made a determination that the recipient jurisdiction’s laws ensure the protection of such personal data. This determination is referred to commonly as meeting the EU’s “adequacy” standard.

6. To satisfy the EU adequacy standard for certain commercial transfers, the U.S. Department of Commerce (“Commerce”) and the EC negotiated the U.S.-EU Safe Harbor Framework, which went into effect in 2000. The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer personal data lawfully from the EU. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to Commerce that it complies with seven principles and related requirements that have been deemed to meet the EU’s adequacy standard.
7. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of Transportation, are eligible to join the U.S.-EU Safe Harbor Framework. A company under the FTC’s jurisdiction that claims it has self-certified to the Safe Harbor principles, but failed to self-certify to Commerce, may be subject to an enforcement action based on the FTC’s deception authority under Section 5 of the FTC Act.
8. The U.S.-Swiss Safe Harbor Framework is identical to the U.S.-EU Safe Harbor Framework and is consistent with the requirements of the Swiss Federal Act on Data Protection.
9. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the U.S.-EU Safe Harbor Framework. The listing of companies indicates whether their self-certification is “current” or “not current” and a date when recertification is due. Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor Frameworks.

Violations of Section 5 of the FTC Act

10. In June 2001, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor Frameworks.
11. In June 2012, respondent did not renew its self-certification to the Safe Harbor Frameworks, and Commerce subsequently updated respondent’s status to “not current” on its public website.
12. From at least June 2001 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.level3.com website, including but not limited to, the following statements:

Transfers of personally identifiable information made by Level 3 are made in compliance with the Safe Harbor principles to which Level 3 has self-certified its adherence to as can be viewed on the [Safe Harbor](http://export.gov/safeharbor/) web site at <http://export.gov/safeharbor/>.

13. Through the means described in Paragraph 12, respondent represented, expressly or by implication, that it was a “current” participant in the U.S.-EU Safe Harbor and U.S.-Swiss Safe Harbor Frameworks.
14. In truth and in fact, from June 2012 until November 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework or the U.S.-Swiss Safe Harbor Framework. Therefore, the representation set forth in Paragraph 13 is false and misleading.
15. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ___ day of ____ 2014, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: