

## Global Data Privacy and Security Team

# Which Companies Decide To Use The US/EU Safe Harbor? At A Glance

The EU Data Protection Directive 95/46/EC (the “Directive”) states that personal data may only be transferred to countries outside the EU when an adequate level of protection is guaranteed. Because the laws of the United States are not considered by the European Union to provide an adequate level of protection, companies that collect or process data from the EU in the United States must decide whether they will adopt a safe-harbor certification, EU model contract, or binding corporate rules “strategy” for coming into compliance.

Although the US-EU Safe Harbor certification process (the “Safe Harbor”) has been available since 2000, initially few companies availed themselves of the process. Indeed more than two years after the framework had been in place less than 150 companies had entered the Safe Harbor. Recently, however, the Safe Harbor process has gained in popularity and now more than 4000 companies have Safe Harbor status.

Companies completing the Safe Harbor process must make several decisions. For example, they must decide whether to have an independent third party verify their compliance with the Safe Harbor framework, whether to retain an arbitration group to adjudicate complaints about their privacy practices, and what data they wish to include within their certification. The following provides background and benchmarking concerning the types of companies that utilize the safe harbor and how they have approached certification:

### 81%

Percentage of companies that decide to “self-assess” whether they are in compliance with the safe harbor.\*

### 54%

Percentage of companies that include Human Resource data within the scope of their certification.\*

### 81%

Percentage of companies that voluntarily subject themselves to the jurisdiction of EU Data Protection Authorities in addition to the jurisdiction of the FTC.\*

### 46%

Almost half of the companies that enter the safe harbor claim to be importing data from all, or almost all, EU member countries.\*

### 7.7%

Percentage of companies that import data from only one EU member country.\*

## Top Industries

Companies that seek Safe Harbor Certification most commonly came from the following industries\*

1. Computer Software / Services
2. Information Services
3. Advertising
4. Consumer Goods

## 4.2 years

The average length of time that a company has maintained safe harbor certification.†

### 2014

More companies became safe harbor certified in 2014 than any other year.†

## TRUSTe

The most popular company for those that have a third party verify their compliance. 17% of companies utilized TRUSTe\*

\* Based upon sample of 1% of companies on US-EU Safe Harbor List. Sample taken in April of 2015. (HROBOU/128163)

† Based upon total US-EU Safe Harbor List provided by the United States Department of Commerce as of April 2015 (available at <https://safeharbor.export.gov/list.aspx>)

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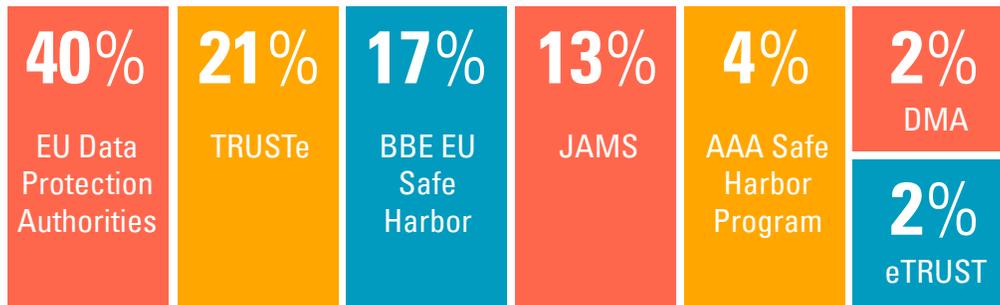
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The following are the most popular mechanisms chosen by companies to adjudicate privacy disputes:\*



Things an organization should consider when entering the Safe Harbor:

✓	Do you want to self-assess compliance with the privacy principles, or retain a third party to independently assess your compliance?
✓	Is there increased risk of liability if you self-assess compliance? If so, to what degree?
✓	How will you comply with the Safe Harbor's requirement that you retain an independent third party to adjudicate disputes with data subjects?
✓	Are there benefits to obtaining a private arbitration association to adjudicate disputes?
✓	If you decide to obtain a private arbitration association, which association should you select?
✓	Should you include human resource data within the scope of your certification?
✓	What are the top legal risks involved in self-certification?
✓	Do you have a process in place to monitor complaints that are submitted directly to the Federal Trade Commission about your privacy practices?