

# How California could benefit from a privacy deal with the EU

By Katy Murphy

01/09/2020 08:21 PM EST

SACRAMENTO — The privacy world was abuzz Thursday after the European Commission's head of international data protection said that, "in principle," California [could reach its own data-transfer agreement](#) with the EU, as POLITICO Europe reported.

California would become the first U.S. state to strike such a deal. It would hinge on whether the European Commission determines that the state's week-old privacy regime, the California Consumer Privacy Act, offers sufficient protections for Europeans' personal data.

The EU has reached such "adequacy decisions" with other countries, including Japan. Europe's groundbreaking data-protection law, GDPR, also allows the data flow deals to be struck with "territories" and specific sectors.

Five things to know about these data-transfer agreements, and why one would be a big deal for California:

— **"In principle, yes,"** were the three key words from Bruno Genclarelli, the European Commission's head of international data protection, about the possibility that California could apply for its own deal with Europe. The answer came during a data transfer discussion at the European Parliament and was prompted by a question from MEP Patrick Breyer, who asked if California could seek its own deal.

— **California would need to apply for this adequacy arrangement,** possibly through Attorney General Xavier Becerra, the official responsible for enforcing CCPA. The state would make its case to the European Commission that its privacy rules would offer strong data protections for data generated within the EU. The process and ensuing negotiations can drag on for months, and even years, said University of California, Berkeley School of Law professor Paul Schwartz, an information privacy expert. Becerra's office, which is still finalizing the law's regulations, would not weigh in Thursday on whether he would pursue it.

— **It would be a win for California's economy.** GDPR places tight restrictions on the transfer of data from Europe, so the flow of information allowed by such an arrangement would likely lead to more data servers in the state, as one example, said Dominique Shelton Leipzig, a privacy and security partner at the international law firm Perkins Coie. What's more, she said, companies operating within state lines would no longer need to apply for special certifications or model contracts to process European data, saving money and effort. The Privacy Shield data processing framework negotiated by European and U.S. officials is increasingly coming under fire, and a separate arrangement in California would give companies an alternative.

— **CCPA could get a EU-friendly makeover this year.** California's Privacy Act is the strongest of its kind in the nation, but it would look a lot more like Europe's privacy law if Alastair Mactaggart has his way. The wealthy privacy advocate, who used California's direct democracy process to push the state legislature to adopt the privacy law in 2018, is back with a second initiative to rewrite it. The proposed initiative would create a separate data protection regulatory authority in California, add restrictions on the use of "sensitive data" and automated decision-making and other elements ripped straight from GDPR. "It's really striking how much of this is like EU law," Schwartz said.

— **A cool \$7.1 trillion** is the value of trans-Atlantic trade and investment underpinned by the data flow agreements with Europe, [according to an estimate](#) cited by the International Trade Administration at the U.S. Department of Commerce. California businesses have grumbled loudly about CCPA and its estimated \$55 billion in initial compliance costs. But that investment could pay off, if they are able to leverage it into a competitive advantage.

*Vincent Manancourt contributed to this report.*