

Draft**Frequently Asked Questions (FAQs) FAQ 10 - Article 17 contracts**

Q: When data is transferred from the EU to the US only for processing purposes, will a contract be required, regardless of participation by the processor in the safe harbor ?

A: Yes. Data controllers in Europe are always required to enter into a contract when a transfer for mere processing is made, whether the processing operation is carried out inside or outside the EU. The purpose of the contract is to protect the interests of the data controller, i.e. the person or body who determines the purposes and means of processing, who retains full responsibility for the data vis-à-vis the individual(s) concerned. The contract thus specifies the processing to be carried out and any measures necessary to ensure that the data are kept secure.

A U.S. organization participating in the safe harbor and receiving personal information from the EU merely for processing thus does not have to apply the principles to this information, because the controller in the EU remains responsible for it vis-à-vis the individual in accordance with the relevant EU provisions (which may be more stringent than the equivalent safe harbor principles).

~~Participation in the safe harbor nevertheless represents an advantage over non-participation in the safe harbor.~~ Because adequate protection is provided by safe harbor participants, contracts with safe harbor participants for mere processing do not require prior authorization (or such authorization will be granted automatically by the Member States) as would be required for contracts with recipients not **participating in the safe harbor or otherwise not** providing adequate protection.