



DMA Insights: Safe Harbour survey

Executive summary

- Eighty-eight percent of DMA respondents have used Safe Harbour. Nearly three quarters were using Safe Harbour prior to the European Court of Justice ruling.
- Of the DMA members surveyed, 57% have halted data transfers since the ruling. Of these, 85% have not suffered a loss, whereas 15% have.
- Since the ECJ ruling, 40% of those surveyed have said that no alternative arrangements have been established. A separate 40% have set up alternative arrangements; the majority of these (30%) introducing Model contract clauses, with the other 10% implementing Binding corporate rules.
- Of the 40% of respondents who have not set up alternative arrangements, a third of these are not planning on implementing any. Those respondents who have not yet implemented an alternative but plan to do so, 92% will in the next 6 months.
- Almost two-thirds estimated the cost of implementing these alternatives to be under £10,000.

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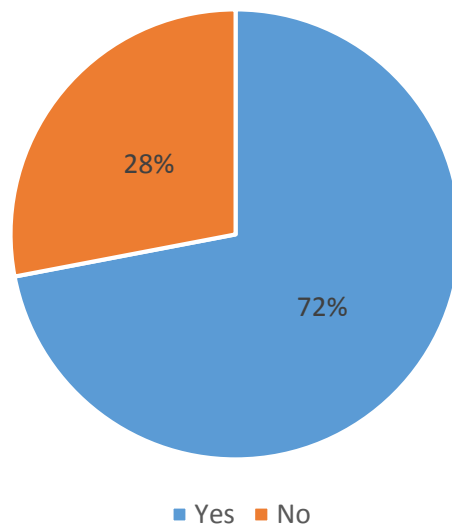
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Safe Harbour usage

Nearly three quarters of the marketers surveyed were using Safe Harbour for their transatlantic data flows prior to the recent ECJ decision.

The number of organisations using Safe Harbour for transatlantic data flows



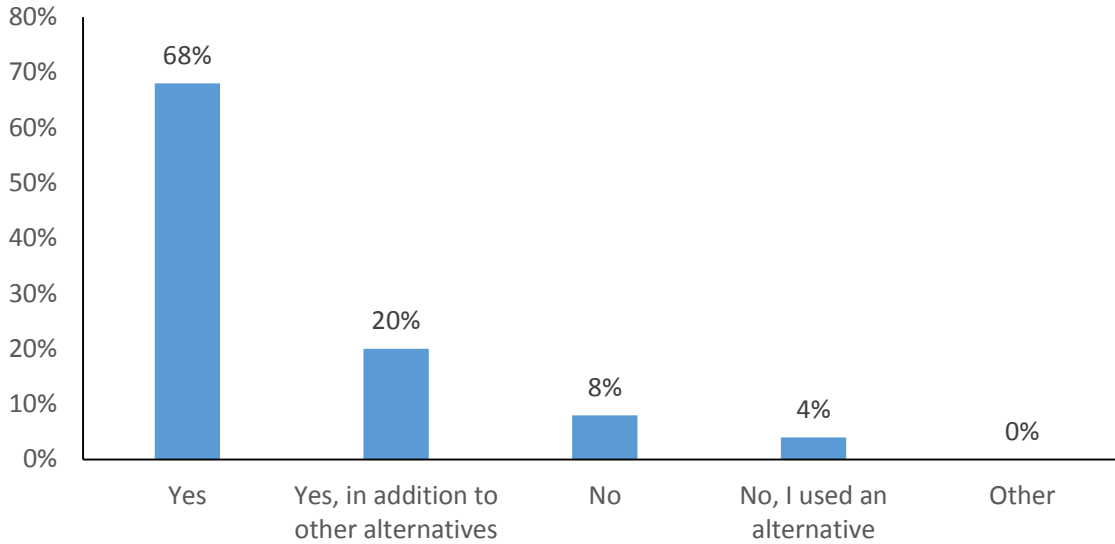
Eighty-eight percent of respondents have previously used Safe Harbour, whether this was in isolation or in addition to other alternatives.

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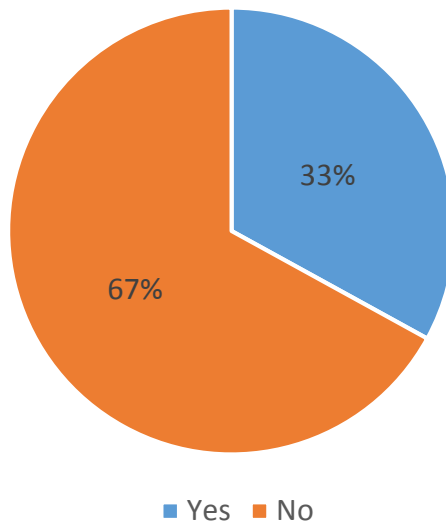
The number of organisations who have previously used Safe Harbour



US organisation usage

Nearly one third of US organisations surveyed were currently registered under the Safe Harbour scheme.

The number of US organisations registered under the Safe Harbour scheme



We then asked UK and European based organisation who regularly transfer personal information to a US based organisation, is that US organisation registered under the Safe Harbour scheme. UK and European

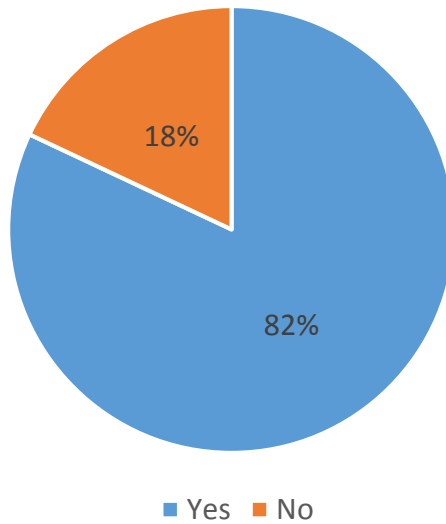
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based organisations suggested that 82% of US organisations were registered under the Safe Harbour Scheme.

The number of organisations who have suffered losses by halting data transfers



Losses due to the ECJ ruling

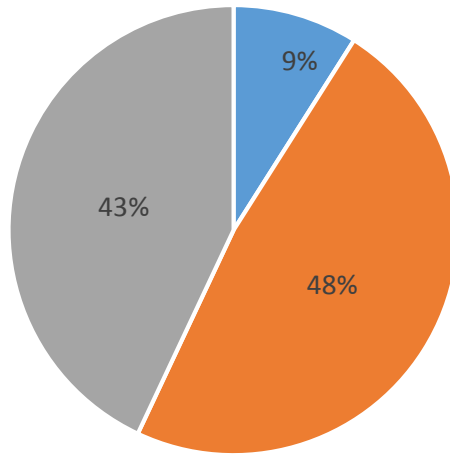
Nine percent of respondents felt that they had suffered losses due to halting data transfers to the US since the recent ECJ ruling. However, this may be due to 43% of respondents not halting data transfers since the ruling. Forty-eight percent of respondents felt they had not suffered any losses despite halting data transfers.

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The number of organisations who are now using alternative arrangements



■ Yes ■ No ■ Have not halted data transfers to the US since the ruling

Implementing alternative arrangements

Of those organisation involved in data transfers to the US, a large proportion (40%) of respondents are not using alternative arrangements instead of Safe Harbour. Of those who are using alternative arrangements, the majority are using Model contract clauses (30%). Ten percent are now using Binding corporate rules.

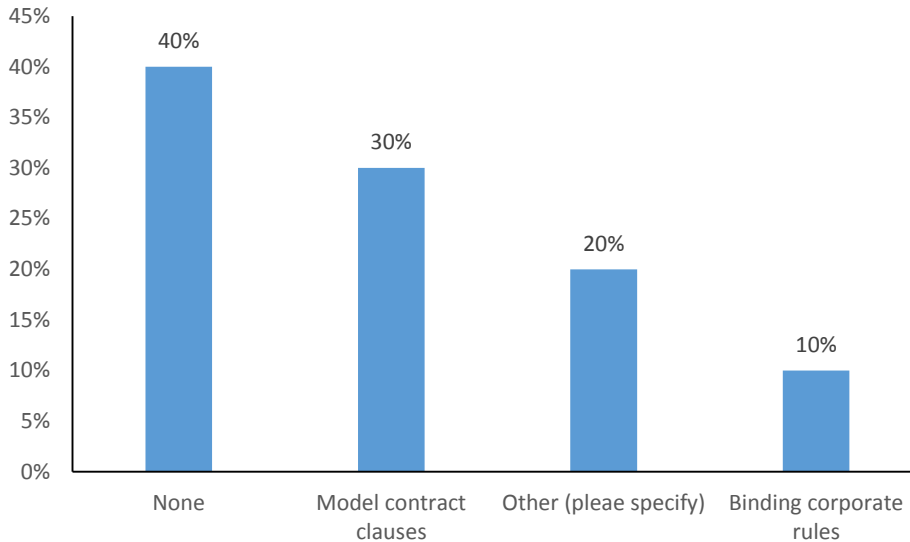
Twenty percent of respondents selected 'other'. Three of these comments were related to stopping or restricting data transfers since the ruling. One comment indicated that they were currently assessing the alternatives.

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The number of organisations currently using alternative arrangements



We asked those who had indicated they were not using alternative arrangements why they were not. Two respondents were not making alternative arrangements due to feeling there were no valid alternatives:

“If safe harbor is valid, none of the other alternatives are valid. This is an issue for the EU/US authorities, not an issue for me”

“Because no alternative is satisfactory”

One person indicated that they were *“waiting to appeal”*

Of those who have not yet introduced any alternative arrangements, half were planning on introducing Model contract clauses. Over a quarter of marketers stated that they were not planning on introducing any alternative arrangements. Nine percent are planning on introducing Binding corporate rules. Two people indicated they were going to wait until the situation is clarified:

“Avoiding US suppliers and those who use them until the situation is clarified”

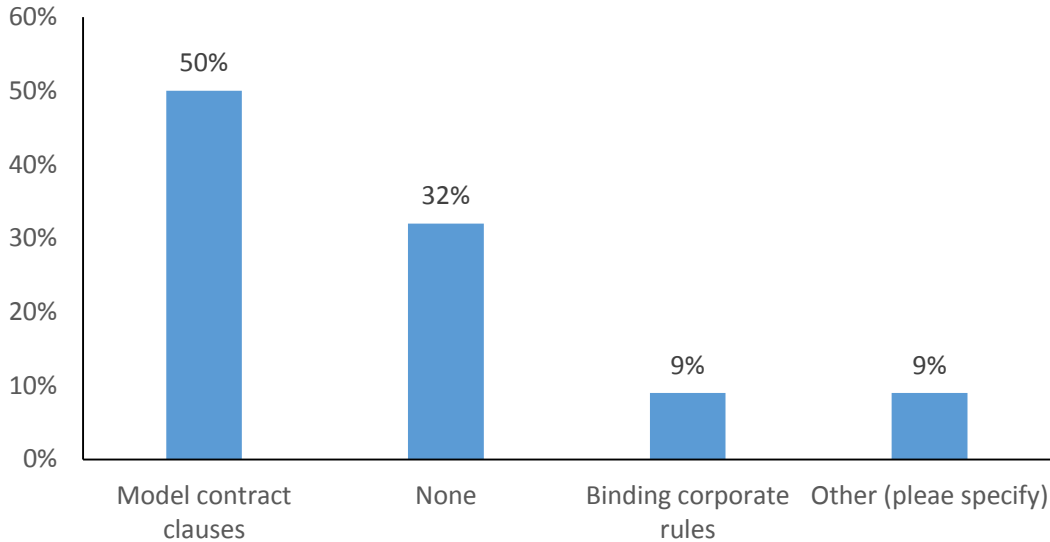
“Whatever new arrangement comes out of the EU?/US discussions.”

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The number of organisations planning on introducing alternative arrangements



Those indicating they were not planning on introducing alternative arrangements were then asked why. Two marketers not using alternative arrangements have not done so due to changing their business practices due to the ruling:

“No longer using US companies.”
“We no longer store data in the US (since 2012)”

One person stated that the alternatives *“aren’t satisfactory”*. One respondent questioned the decision:

“This ruling is not in the public interest and will be over-turned.”

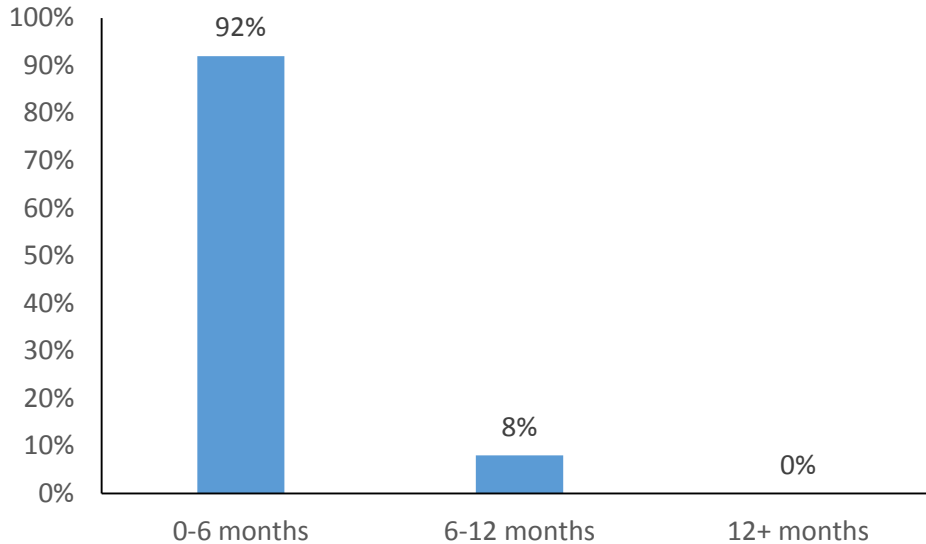
Of those planning to introduce their chosen alternative arrangements, a large majority (92%) plan to do so relatively shortly (within the next 0-6 months). Eight percent plan to do so in the next 6 to 12 months. All respondents plan to do so within the next year.

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When organisations plan on introducing alternative arrangements



The effect of implementing alternative arrangements to businesses

Respondents indicated that implementing these alternative arrangements have required considerable effort and time:

“Just a lot of chasing partners legal departments”

“data now held in more places to stop them being stored in US. Cannot not interrogate data through one interface now, therefore lengthy manual solution needed as interim”

“Very time consuming”

“New contract signatures”

“Have required legal team to spend time putting model contracts in place”

Operationally, implementing these alternative arrangement have required time and resources:

“Yes - reporting is now a time sink”

“Yes in time and resources”

However, the true impact may not be known yet:

“We try to limit the impact but we have not yet fully documented all the required changes”

Three respondents declared that the changes have had no impact:

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“No real operational impact”

Financially, implementing these alternative arrangements have, also, required time and resources:

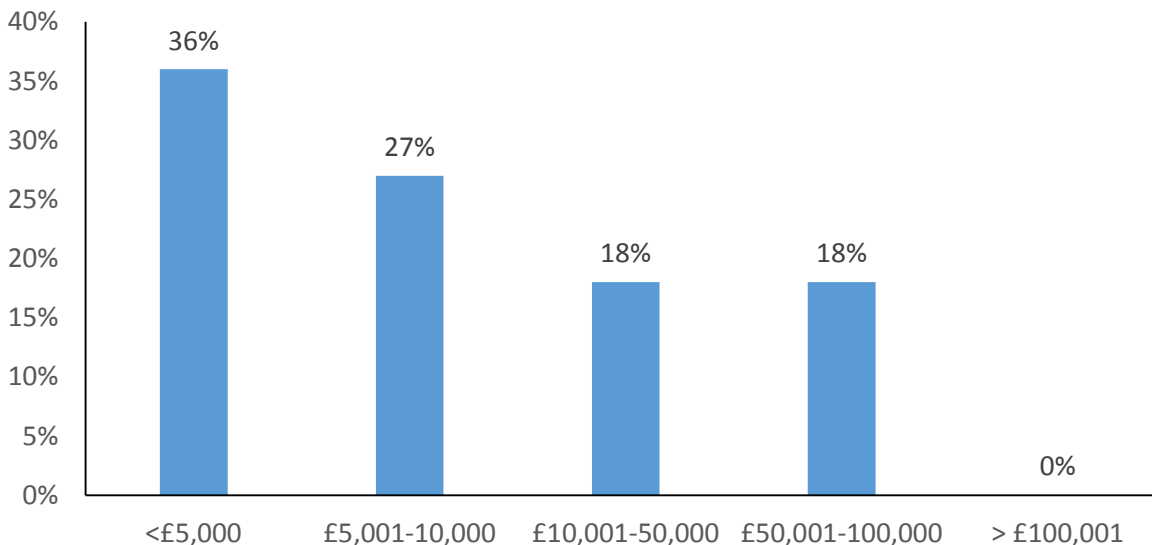
“Lawyers fees + internal time + system adjustment + time spent with our clients explaining our approach”

The extent of these resources is may vary with one person indicating that the changes has affected them *“modestly”*. Three individuals suggested that implanting the alternatives has not affected them financially.

The cost of implementing alternative arrangements to businesses

Over one third of marketers indicated that the estimated cost to their organisation of implementing these alternative arrangements was less than £5,000. Twenty-seven percent of estimated this cost to be between £5,001 and £10,000. Thirty-six percent stated this cost to be greater than £10,001 (18% between £10,001-50,000 and 18% between £50,001-100,000).

The estimated cost to organisations of implementing these alternative arrangements



Whilst one respondent stated that implementing these alternative arrangement had not cost their business, one person commented that they *“May have cost us 2 working days of a staff member. At least £200”*. Importantly, one marketer said it may be too early to estimate as they had *“No idea yet”*.

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