

11 May 2016

Subject: European Union and the United States privacy shield - a sustainable decision on data flows for a prosperous digital economy

The International Chamber of Commerce (ICC), and its over six million companies, chambers of commerce and business associations in more than 130 countries, would like to recognise the efforts of the European Commission and United States (US) in negotiating the privacy shield. This new transfer adequacy decision marks a significant step in modernising and improving the previous safe harbour mechanism and is vital to affirm legal certainty and support the prosperous digital economy.

Ahead of the Article 31 committee meetings taking place this month, ICC encourages European Union (EU) member states to focus their effort on securing legal certainty and endorse the proposed EU-US privacy shield to ensure that a strong and thriving digital economy continues to contribute economic growth and competitiveness within the EU and across the globe.

Data transfers are an essential part of our interconnected world. Data flows between the US and the EU have led to an array of business models and forms of international trade and investment that boost gross domestic product (GDP) and make a significant contribution to economic growth and sustainable development. McKinsey reports that every year global data flows contribute between \$250 and \$450 billion to world GDP. It is therefore vital that the dual goals of data flows are realized: to allow data transfers and thus continue to build the digital economy; and to safeguard an adequate level of data protection, when personal data is being transferred between the EU and US.

Since the decision of the European Court of Justice (ECJ) to invalidate the EU's adequacy finding related to the EU-US safe harbour agreement, the basis for transfers of personal data from the EU to US has been subject to legal uncertainty for companies from all sectors and sizes, including small and medium enterprises. Over 5,000 companies were certified under the safe harbour agreement, and the lack of legal certainty in transfers spread across all transfer mechanisms, including

established model contracts and EU binding corporate rules. ICC therefore appreciates the Article 29 Working Party's clarification that alternative transfer mechanisms (established model contracts and EU binding corporate rules) will remain valid during the current evaluation period.

ICC takes note of the areas for improvement raised, including those flagged by the Article 29 Working Party, and recognizes the need for continued cooperation between the US and EU to clarify outstanding factors that will facilitate the adoption of the adequacy finding. The annual review mechanism will help make sure the framework works in practice and leads to a legally sustainable solution.

Business takes compliance with legal instruments very seriously and is deeply committed to abiding by the legal requirements that ensure a high level of data protection when transferring data across borders. ICC believes that restoring legal certainty as soon as possible is crucial and in this context urges the Article 31 committee to take the necessary steps to endorse the European Commission adequacy decision and resolve this pressing matter for international trade.