



21 December 2020

Global Business Community Statement on Safeguarding International Data Flows

Dear European Commissioner Reynders

Dear European Data Protection Board Chairwoman Dr. Jelinek,

As representatives of the global business community, we are observing the ongoing developments in the EU on international data flows with concern. International data flows are an integral pillar of global trade, and any disruption to their free flow constitutes a major challenge to every economic sector. The recent developments following the Schrems II judgment in the European Union are creating deep uncertainty throughout the world, as the wide geographic variety of co-signatories to this statement demonstrates. In addition, the repercussions of an unduly restrictive approach to data flows will also hit hard more traditional European industries, as the recent BusinessEurope-led coalition statement underlines.

We underline the importance of providing certainty for all businesses and their data transfers to third countries. Any disruption must be avoided in order to minimise negative economic consequences, particularly in the wake of the global COVID-19 crisis and the economic recovery phase that we will enter in 2021. Crucially, our organisations believe that this can be achieved while respecting European data protection law, if a pragmatic and flexible approach prevails.

The 16 July ruling of the Court of Justice of the European Union in the so-called “Schrems II” case (C-311/18) invalidated the EU-U.S. Privacy Shield agreement as a mechanism to transfer data between the EU and the U.S. We have since seen the publication of the European Commission’s [updated Standard Contractual Clauses \(SCCs\) for transferring personal data to third countries](#) as well as the [European Data Protection Board’s \(EDPB\) recommendations for supplementary measures](#). While we appreciate the efforts made to restore legal certainty through additional guidance on interpretation of EU privacy law, many questions remain unanswered and some key conflicts unaddressed.

We strongly urge decision-makers to address concerns raised by many industries with the EDPB draft recommendations. The draft recommendations are overly prescriptive and could pose serious obstacles to transfers of personal data outside the EU. Our associations recommend instead that the EDPB Recommendations provide an opportunity to equip companies with a practical “toolbox” of measures

that would help them comply with the parameters set by the Court without going beyond them, and align with the GDPR's risk-based approach while allowing for practical ways to allow data transfers in a way that is compliant with EU law.

The underlying issue relates to the rules under which third countries' authorities can access European data for law enforcement or national security purposes. Addressing issues of essential equivalence requires an approach that cannot entirely revolve around imposing additional prescriptive measures on companies, who are grappling with difficult conflicts of laws, and instead must take account of the interests of a diverse set of impacted stakeholders in the privacy, national security and economic arenas. The EDPB should not exacerbate this problematic trend by making equivalence assessments increasingly difficult and potentially unworkable for companies.

A sustainable solution for international data transfers from the EU is urgently needed. We therefore ask the EDPB to take the consultation feedback into account and revise its draft recommendations accordingly so as to better enable the development of a workable framework that equally protects citizens' personal data and supports free international data flows.

We thank you for your attention, and we stand ready to support your efforts.

Sincerely,

Abelia – The business Association of Norwegian knowledge- and technology based enterprises

ACT | The App Association

Alliance for Automotive Innovation

Allied for Startups

American Chamber of Commerce to the European Union (AmCham EU)

American Chamber of Commerce Ireland (AmCham Ireland)

Australia Services Roundtable (ASR)

Biotechnology Innovation Organization (BIO)

Coalition of Service Industries (CSI)

Computer and Communications Industry Association (CCIA)

Confederation of Industry of the Czech Republic

Danish Entrepreneurs

Developers Alliance

Ecommerce Europe

European Research Federation (efamro)

European Services Forum (ESF)

Electronic Transactions Association (ETA)

EU Travel Tech

European Publishers Council (EPC)

Federation of European Direct and Interactive Marketing (FEDMA)

IAB Europe

Information Technology Industry Council (ITI)

Internet Association (IA)

IT&Telekomföretagen

Software & Information Industry Association (SIIA)

TechNet

TechUK
United States Council for International Business (USCIB)
US Chamber of Commerce
World Federation of Advertisers (WFA)

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