



EUROPEAN COMMISSION

*Brussels, 13.3.2015
C(2015) 1642 final*

Dear Chairman,

The Commission would like to thank the House of Lords for its Opinion concerning the Communication from the Commission to the European Parliament and the Council on Rebuilding Trust in EU-U.S. Data Flows {COM(2013) 846 final} and the Communication from the Commission to the European Parliament and the Council on the Functioning of the Safe Harbour from the Perspective of EU Citizens and Companies Established in the EU {COM(2013) 847 final}.

The Commission is pleased to note that the House of Lords' Opinion reflects the Commission's position on the need to strengthen the Safe Harbour scheme in order to enable the continued transfer of personal data between the European Union and the United States. In pursuing this objective, the Commission services are fully engaged with the U.S. authorities to find effective solutions to implement the 13 recommendations set out in the above-mentioned Communication on the Safe Harbour. Thus far, the overall spirit of the Commission's discussions with the U.S., notably with the Department of Commerce and the Federal Trade Commission, has been constructive and progress on a number of points has been made. As discussions are still ongoing, it is not possible to enter into detail on certain issues, but the Commission is keeping the United Kingdom and all EU Member States informed of the state of play.

Regarding the specific points the House of Lords has addressed to the Commission on the four areas of reform identified in the Safe Harbour Communication, namely transparency, redress, enforcement and access by U.S. authorities, the Commission would like to make the following comments:

The Commission agrees that increasing public awareness about the scope and operation of the Safe Harbour scheme as well as the redress mechanisms available to individuals would help to rebuild the public's trust with regard to the use of their personal data under the Safe Harbour. The Commission is open to exploring ways to enhance the role of the European data protection authorities in this process of outreach to EU citizens. It believes that national

*Lord BOSWELL
Chairman of the European Union Select Committee
House of Lords
Palace of Westminster
UK – LONDON SW1A 0PW*

data protection authorities are well placed to inform EU citizens about their rights under the Safe Harbour as well as the redress mechanisms available to them. The Commission looks forward to engaging with these authorities, including the UK Information Commissioner's Office, in this process. Similarly, in implementing the recommendations on transparency, the U.S. Department of Commerce is working on practical measures to make information regarding the Safe Harbour more readily accessible and transparent including for EU citizens.

The Commission furthermore agrees with the House of Lords' view that the guidance and explanations offered to companies by the U.S. Department of Commerce needs to be simplified and streamlined. Additionally, companies that are benefitting from the Safe Harbour arrangement also need to be aware of and informed of their obligations to fully respect the Safe Harbour Privacy Principles and to comply with the administrative and procedural requirements concerning their Safe Harbour certification. The Commission is working with the U.S. Department of Commerce to find practical solutions on all these issues.

With respect to the query of the House of Lords as to whether the U.S. Department of Commerce has met the March 2014 target stipulated in the Commission's Communication requiring U.S. companies to add Safe Harbour notices to their privacy policies, the Commission has raised this point with the United States bearing in mind that this is directly linked to the implementation of the first two of the Commission's 13 recommendations and so is an ongoing process. From the Commission's own examination of a sample of companies it finds that more and more companies are providing such links.

As far as redress mechanisms are concerned, the Commission confirms that bringing an end to the fees charged by alternative dispute resolution providers is an important and achievable objective.

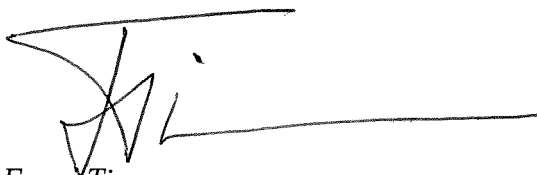
The Commission has taken note of the suggestion of the House of Lords to consider whether it should be possible for all disputes over Safe Harbour to be brought to the EU Data Protection Panel in future. Under the current EU data protection rules, individuals can already complain directly to their national data protection authority. Protection of personal data is a fundamental right of EU citizens and there are no legal restrictions preventing individuals to exercise this right. The question that may arise, however, concerns the enforceability of any findings by EU data protection authorities, bearing in mind that the U.S. Federal Trade Commission remains the primary enforcer of U.S. companies that are certified under the Safe Harbour framework. The issue is therefore how to ensure that U.S. companies comply with the findings of data protection authorities. Under the current system, the U.S. Federal Trade Commission has committed to take on a priority basis referrals from European data protection authorities, a system that will continue. Furthermore, improving the channels of communication between the EU data protection authorities and the U.S. Department of Commerce and Federal Trade Commission should considerably facilitate the referrals of EU complainants.

At the same time, the Commission fully shares the House of Lords' assessment that effective enforcement must not solely be driven by complaints and that a certain number of ex officio checks should be carried out on a regular and pro-active basis. The Commission believes that periodic and joint reviews and regular reporting on the state of play of the Safe Harbour would be an effective and efficient way to safeguard against risks of 'slippage' of Safe Harbour compliance. Strengthening the oversight mechanism of the Safe Harbour scheme is thus a priority for the Commission, and it is committed to finding acceptable solutions in which regular and joint reviews and evaluations on the functioning of the Safe Harbour can take place with our U.S. counterparts.

Regarding the Commission's recommendation on access by U.S. authorities, the Commission appreciates that the House of Lords finds it reasonable that the Commission has taken the approach to apply the principles of necessity, proportionality and targeting when data is collected for national security purposes. The objective is to ensure that the exemption formulated in the Safe Harbour remains as it should be – an exception. In this context, the Commission values the openness of the House of Lords to engage in a dialogue with the European Institutions on these matters.

The Commission hopes that these clarifications address the concerns raised by the House of Lords and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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*Frans Timmermans
First Vice-President*

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*Věra Jourová
Member of the Commission*