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USCIB Reaffirms Support for the EU-U.S. Privacy Shield Framework

On the occasion of the first joint review of the EU-U.S. Privacy Shield Framework, the U.S. Council for International Business (USCIB) reaffirms support for the Framework and underscores its importance in ensuring continued robust and reliable transatlantic data flows, which have proved vital for healthy U.S.-EU commercial relations.

In just one year, nearly 2500 U.S. business entities have self-certified with the Department Commerce and publicly committed to comply with the Framework requirements – with many of them already in the process of re-certifying. This impressive “track record” substantiates our view that many U.S. companies see the potential of the Framework to provide greater legal certainty and consumer confidence in data transfers. In the longer term, this will promote commercial activities and investments yielding increased economic and societal benefits on both sides of the Atlantic.

We would like to highlight three important points for consideration in the Annual Review: (1) the Framework, indeed, is realizing stronger personal data protections; (2) the Framework is serving as an effective mechanism for certification by Small and Medium Enterprises (SMEs); and (3) the longevity of the Framework remains important.

The Framework is Realizing Stronger Personal Data Protections -- [USCIB](#) members, composed of multinational companies from every sector of the U.S. economy and with operations in the EU and other regions of world, participated in the survey requested by the Directorate-General for Justice and Consumers of the European Commission aimed at securing information on their experiences implementing the Framework. These cross-sectoral responses contributed to survey results which indicated that the Framework is accomplishing its intended goal of creating stronger, more effective means for transferring and safeguarding personal data from the EU to the United States. Supporting that conclusion are the following findings:

- Many of the respondents, who participated in the Safe Harbor Framework, indicated that they had to institute new or updated policies and procedures governing the transfer of personal data to verify compliance with stricter Privacy Shield obligations.
- In terms of relations with third parties, some survey respondents noted their need to make substantial changes to or completely re-write contracts with third-party vendors – and in some cases felt compelled to change contractual partners or operations to meet Privacy Shield obligations.
- One of the bright survey results was that respondents have received very few complaints from EU citizens. Of the complaints received, the survey indicated that all were handled in a timely and efficient manner with satisfactory results.
- Other evidence of the effectiveness of the Shield Framework is that while respondents noted their reliance on various independent dispute settlement mechanisms, the majority indicated that there has not been a need to utilize such dispute settlement mechanisms.

The Framework is a Mechanism for SME Participation – Although USCIB’s membership is not composed primarily of SMEs, the supply chains of USCIB member companies may include SMEs. In addition, they may retain SMEs to provide specific services. Thus, we regard as significant the fact

that the overwhelming majority of the 2475 companies certified under Privacy Shield represent companies with fewer than 500 employees. This indicates that the Framework was designed in a manner that clearly spells out the compliance requirements so that a company of any size – which may lack extensive resources or legal personnel -- may pursue certification and engage in transatlantic commerce. Moreover, with SMEs increasingly serving as agents of innovation, their ability to secure Shield certification holds promise and benefits for current and future U.S.-EU business ventures.

Longevity Remains Important – We note that the survey responses suggested that some companies remain concerned about the longevity of the Privacy Shield Framework. Perhaps influenced by reports of potential legal challenges to the Framework and other data transfer mechanisms, these respondents apparently have been reluctant to incur the costs associated with implementing new procedures, contractual relationships, and policies to become Shield-certified.

USCIB members strongly encourage U.S. and European Commission officials undertaking the 2017 annual review to assuage potential concerns about the validity and strength of this important data transfer Framework. Data flows between the United States and the EU have led to various innovative business models and forms of trade and investment that have contributed to economic growth and sustainable development on both sides of the Atlantic. An over-hang of possible legal uncertainty risks hampering the growth and efficiency of business activities that are central to national productivity and, ultimately, social welfare.

As we note above, nearly 2500 Shield-certified U.S. companies have demonstrated their commitment to providing EU citizens with improved safeguards for the transfer of their personal data. We anticipate that this number will continue to grow, spurred by a positive outcome to the 2017 Privacy Shield annual review and attendant assurances of its soundness.

USCIB remains committed to helping ensure the continued success of the Framework. We would welcome the opportunity to support outreach efforts aimed at improving understanding of the benefits of securing certification under the Privacy Shield Framework.