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JUSTICE

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Dear Ms Witt,

Thank you for your letter of 21/12/2020 from representatives of global business about developments following the Schrems II judgment of the Court of Justice.

Let me reassure you that the European Commission recognizes the importance of international data flows and is pursuing a number of avenues to ensure that data transfers can continue in compliance with EU law.

In particular, the Commission continues to believe that, in a globalised world, there is a need for a broad toolbox for international data transfers, adapted to different sectors, business models, countries of destinations, etc. The modernisation of the existing standard contractual clauses (SCCs) is therefore a central element of the Commission's response to the Schrems II judgment.

On 12 November 2020, the Commission published the draft new clauses for a four-week public consultation period on the Commission's website.¹ In addition, the Commission engaged directly with stakeholders over the course of the past weeks to obtain their input on the draft clauses. It is now assessing the (many) submissions received. Because the SCCs are so widely used and are particularly useful for smaller businesses by offering them an "off-the-shelf" contractual tool, we believe that they will play an important role in assisting companies with their compliance efforts.

At the same time, the SCCs cannot provide a one-size-fits-all solution and will still have to be used in accordance with the clarifications provided by the Court. While the Commission recognises that

¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12741-Commission-Implementing-Decision-on-standard-contractual-clauses-for-the-transfer-of-personal-data-to-third-countries>.

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this creates challenges for businesses, we believe that the Schrems II judgment also leaves some flexibility, in particular by allowing companies to take into account the specific circumstances of their transfer when assessing whether third country legislation might interfere, in a disproportionate way, with the safeguards ensured under the clauses.

The recent (draft) “Recommendations for supplementary measures” of the European Data Protection Board (EDPB) explains in detail what steps companies have to take to ensure compliance with the Schrems II judgment, including by providing concrete examples of the elements to take into account in this case-by-case assessment and of possible additional safeguards (e.g. encryption) that could be put in place.

The EDPB and national data protection authorities play an important role in providing companies with the necessary support both through their general guidance and by providing assistance in individual cases. The draft Recommendations have also gone through public consultation and triggered input from many stakeholders. While it is for the EDPB to assess this input to see whether to further develop this draft, the Commission will play an active role in the discussions.

To conclude, I would like to recall that the Commission remains committed to work on facilitating data flows on the basis of solid transfer instruments, in full compliance with EU data protection rules and the case law of the Court of Justice.

Yours sincerely,

(e-signed)

Didier REYNDERS