



**COUNCIL OF  
THE EUROPEAN UNION**

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**LIMITE**

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DRS 161  
DAPIX 107  
FREMP 120  
USA 45  
COMIX 489  
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**TRANSLATION PROVIDED BY THE GERMAN DELEGATION**

**NOTE**

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from: German delegation  
to: Working Group on Information Exchange and Data Protection (DAPIX)

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No. prev. doc.: 11013/13 DATAPROTECT 78 JAI 496 MI 546 DRS 119 DAPIX 88  
FREMP 85 COMIX 380 CODEC 1475

No. Cion prop.: 5853/12 DATAPROTECT 9 JAI 44 MI 58 DRS 9 DAPIX 12 FREMP 7  
COMIX 61 CODEC 219

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Subject: Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)  
Evaluation of the Commission Decision of 26 July 2000 pursuant to Directive 95/46 of the European Parliament and of the Council on the adequate protection of personal data provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the US Department of Commerce

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1. In the context of current discussions of transatlantic data exchange, the German delegation refers to the Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions (FAQ).

2. The German delegation reiterates their desire, expressed at the Informal JHA Council in Vilnius on 19 July 2013, for the Commission to present its announced evaluation of Safe Harbor as soon as possible.
3. With this in mind, the German delegation emphasizes the goal of anchoring comprehensive safeguards to protect Union citizens' personal data transferred to those third countries whose overall level of data protection has not been recognized with an adequacy decision by the Commission as being equivalent to that of the European Union. The General Data Protection Regulation should provide a legal framework for such safeguards. The German delegation thus welcomes the inclusion of provisions on binding corporate rules (Art. 43 of the proposed Regulation) as well as standard protection clauses and/or authorized contractual clauses (Art. 42 of the proposed Regulation).
4. The "Safe Harbor" model is not yet explicitly provided for as a safeguard in Chapter V of the General Data Protection Regulation, as it constitutes neither an adequacy decision as referred to in Art. 41 (1) and (2) of the proposed Regulation nor safeguards as referred to in Art. 42 and 43 of the proposed Regulation, even though recitals 79, 80, 83 and 89 imply that additional kinds of safeguards, in particular on the basis of international agreements of the EU with third countries, will not be ruled out. The German delegation recognizes that the continuous flow of data is extremely important for transatlantic trade.

5. The German delegation believes that the General Data Protection Regulation should create a legal framework for safeguards based on obligations accepted by the EU and the third country in question which are subject to government monitoring and which companies in the third countries are able to accept. Within this legal framework, which would also be the standard for the “Safe Harbor” model, companies accepting such models should be required to adopt appropriate safeguards as minimum standards for protecting personal data. In addition, effective control mechanisms, such as an independent government data protection supervisory authority, should monitor compliance with these safeguards, and any violations should be suitably punished. Further, possible options for effective legal redress for individuals should be discussed. It should also be possible for safeguards agreed between the EU and third countries in the form of international agreements to be flanked by sector-specific codes of conduct containing additional, more specific safeguards. The discussions should incorporate the progress already achieved in the Council under the Irish Presidency on Articles 38 and 38a as well as Articles 39 and 39a.
  
6. The German delegation proposes thoroughly discussing the issue of transmission to third countries in the DAPIX Council Working Party before the JHA Council on 7-8 October 2013 and reporting on its discussion at that JHA Council. The aim should be to agree within the Council at political level on how to handle or improve “Safe Harbor” under the new General Data Protection Regulation.

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