

ANNEX

Extract from the Appendix of the letter from the Article 29 Working Party to Vice-President Viviane Reding on the actions set out by the European Commission in order to restore trust in data flows between the EU and the US.

Appendix: WP29 additional recommendations to strengthen personal data protection under the Safe Harbour Decision

Access by US authorities

- The ability to suspend transfers should be clarified and the limitations to adherence to the Principles should be restricted to minimize surveillance by submitting them to the EU proportionality and necessity principles. Limitations to adherence to the Principles always entail the risk of breaching personal rights. Besides, additional safeguards should be introduced. The Commission should be notified by the Department of Commerce of any statute or government regulations that would affect adherence to the principle.

- The EU definition of “data processing” should be added to the Safe Harbour Decision itself as the US concept of data processing does not include data acquisition, which means data protection rights are not applicable at this stage. It has to be made clear in the Safe Harbour Decision that data acquisition is data collection and a form of data processing, which allows data subjects to exercise their rights already at this stage of data collection.

- Self-certified organizations should be allowed by national authorities to inform data subjects and competent DPAs of their surveillance and the Safe Harbour Decisions should contain an obligation to do so.

- EU data subjects should be granted with the same data protection rights than US ones, especially in case of surveillance through US national authorities.