



Council of the European Union
General Secretariat

Directorate-General Communication and Information
The Director-General

SGS17/03559

Brussels, 02 -05- 2017

Ms Rachael Tackett
ask+request-4003-b1e05110@asktheeu.org

Subject: confirmatory application No 07/c/01/2017

Dear Madam,

The General Secretariat of the Council, acting as secretariat for the European Council pursuant to Article 235(4) of the Treaty on the Functioning of the European Union, has the honour to notify you the enclosed reply from the European Council to your confirmatory application submitted on 22 March 2017.

You will also find enclosed 2 documents to which the European Council decided to grant access.

Yours sincerely,

Reijo KEMPPINEN

**REPLY ADOPTED BY THE EUROPEAN COUNCIL ON 27 APRIL 2017
TO CONFIRMATORY APPLICATION 07/c/01/17,
made by email on 22 March 2017,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents related to the "Privacy Shield"**

The European Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter "Regulation No 1049/2001") and Article 10(2) of its Rules of Procedure (European Council Decision No 2009/882/EU, OJ L 315, 2.12.2009, p. 51) which makes Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) applicable *mutatis mutandis* and has come to the following conclusion:

1. On 18 February 2017 the applicant filed an initial application with the European Council for access to "*all reports, correspondence, and memorandum on the Privacy Shield framework... from October 1, 2015 to the present*".
2. On 14 March 2017, the General Secretariat replied to this application on behalf of the European Council, informing the applicant that it did not hold any documents covered by the application (ref. 17/0376-ws/jj).
3. On 22 March 2017, the applicant filed a confirmatory application against this reply, challenging the assertion that the European Council does not hold any documents covered by the application.

4. It should be noted that the applicant made an identical application addressed to the Council of the European Union, equally on 18 February 2017. The General Secretariat replied to this application on 14 March 2017 on behalf of the Council as well, releasing nine documents and withholding one (ref. 17/0375-ws/jj). This latter refusal is subject to a distinct confirmatory application of 23 March (08/c/02/17), addressed to the Council. The present reply of the European Council is not concerned with confirmatory application 08/c/02/17, which is treated separately by the Council of the European Union.
 5. Based on the applicant's confirmatory application of 22 March 2017 and although the matter of the Privacy Shield has not been treated by it, the European Council has again thoroughly verified whether it holds any documents covered by the initial and confirmatory application.
 6. It has identified a letter of 29 January 2016 from the International Chamber of Commerce to the President of the European Council and a reply letter by the President's Cabinet of 15 February 2016.
 7. The applicant may have access to these two documents. The European Council does not hold any other document concerned by her application.
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The world business organization

The Secretary General

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SECRÉTARIAT GÉNÉRAL DU
CONSEIL DE L'UNION EUROPÉENNE

88E16/01046

Reçu le 02-02-2016

DEST. PRINC.
DEST. COMSTES

M. TUSK
Mme ROGER

Donald Tusk
President of the European Council
European Council
Rue de la Loi/Wetstraat 175
B-1048 Brussels
Belgium

29 January 2016

**Subject: European Union and the United States negotiations on the EU-US
Safe Harbour Agreement**

Dear Mr Tusk,

On behalf of the International Chamber of Commerce (ICC), and its over six million companies, chambers of commerce and business associations in more than 130 countries, I would like to recognise the tireless efforts of the respective parties of the European Union (EU) and the United States (US) in renegotiating the Safe Harbour agreement, and urge both parties to redouble efforts to complete these important negotiations.

Data flows between the US and the EU have led to an array of business models and forms of international trade and investment which boost gross domestic product (GDP) and contribute immensely to economic growth and sustainable development. McKinsey reports that every year global data flows contribute between \$250 and \$450 billion to world GDP. Introducing legal uncertainty to this environment puts transactions at risk and adds costs — hampering the growth and efficiency of business activities which are central to national productivity and the global economy.

Since the decision of the European Court of Justice (ECJ) to invalidate the EU's adequacy finding related to the EU-US Safe Harbour agreement, the basis for transfers of personal data from the EU to US has been subject to legal uncertainty for companies from all sectors and sizes, including small and medium enterprises, in every part of the world. This uncertainty rising from the Article 29 letter after the decision and the complexity involved in executing alternative data transfer mechanisms has led, for some companies, to significant delays in contractual

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negotiations and implementation of new projects, initiatives and services involving personal data from Europe and can result in negative impacts to international trade and investment at a time when the global economy cannot afford such dislocation.

Over 5,000 companies are certified under the Safe Harbour agreement but the impact is far greater as the lack of certainty in transfers has extended across all transfer mechanisms including established model contracts and EU binding corporate rules. Therefore, global companies need guidance and legal certainty on the continued validity of these transfer mechanisms to maintain cross-border data flows.

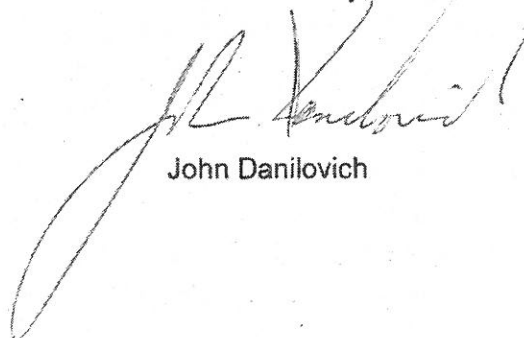
ICC also encourages both negotiating parties to continue work to implement the Umbrella Agreement which will contribute to a more trusted environment for Trans-Atlantic data sharing in relation to criminal investigations

ICC respectfully urges both negotiating parties to:

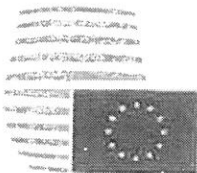
- Intensify efforts to conclude in a timely manner the Safe Harbour negotiations to address the issues raised by the ECJ and
- Reaffirm the continued availability of the other existing transfer mechanisms

ICC works to further the development of an open world economy with the firm conviction that international commercial exchanges are conducive to both greater global prosperity and peace among nations. It is in this context that we urge governments to resolve this pressing matter for international trade.

Yours sincerely,



John Danilovich



European Council
Cabinet of the President

SGS16/01881

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Brussels,

15 FEB. 2016

Dear Mr Danilovich,

Thank you for your letter of 29 January 2016 on the renegotiations of the Safe Harbour arrangements. President Tusk has asked me to reply on his behalf.

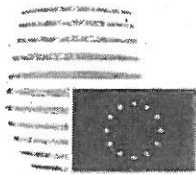
I share your view that, after the ruling by the Court of Justice of the European Union, there was an urgent need to ensure a durable legal framework for the transatlantic flow of personal data in the future. The European Council has stated on many occasions its resolve to stimulate economic growth and innovation also by establishing sound rules on data processing for the digital economy. In that context, smooth data flows between the European Union and the United States are essential.

We are therefore satisfied with the successful outcome of the negotiations on a renewed framework for the exchange of personal data across the Atlantic that was announced by the Commission on 2 February. The Council followed the negotiations for the EU-US Privacy Shield closely and encouraged the negotiators to find a comprehensive agreement expeditiously.

As regards the EU-US Umbrella agreement for the law enforcement sector, the European Union will be able to take further steps once the US Congress has adopted the Judicial Redress Bill. After adoption of this bill, the Commission will be in a position to prepare a proposal for a Council Decision on signing the Umbrella agreement. I am confident that the Council will give its full attention to that proposal.

Mr. John Danilovich, ICC Secretary General
International Chamber of Commerce (ICC)
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**European Council
Cabinet of the President**

A renewed framework for the transatlantic transfer of personal data that provides both legal security for economic actors and respects the fundamental rights of citizens is in the profound interest of both the European Union and the United States to foster economic growth and innovation in the digital age. I trust that businesses on both sides of the Atlantic will make the successful implementation of this new arrangement a priority.

Yours sincerely,

Piotr Serafin

Head of Cabinet