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Meeting of COREPER 3 February 2016

Pages 1 through 5: NOT RELATED TO THE SUBJECT

- **AOB – Safe Harbour – state of play**

COM informed that a political agreement for renewed and safe framework for transatlantic data flows was reached 2 February, having a new title - EU – US Privacy Shield. This new framework for transatlantic data flows protects the fundamental rights of Europeans and ensures legal certainty for businesses. The new arrangement lives up to the requirements of the European Court of Justice. It will also be a living mechanism, which will be reviewed continuously to check whether it functions well.

COM reiterated the main achievements:

1) Strong obligations on companies handling the data (there will be regular updates and reviews of participating companies from US side). The new arrangement will be transparent and contain effective supervision mechanisms to ensure that companies follow the rules they submitted themselves to. If companies do not comply in practice they face sanctions and removal from the list.

2) Clear safeguards and transparency obligations on US government access - COM emphasised that for the first time, the US has given the EU binding assurances that the access of public authorities for law enforcement and national security will be subject to clear limitations, safeguards and oversight mechanisms. An annual joint review (will also include the issue of national security access) will serve to substantiate the commitments made.

The US commitments concerning surveillance are set out in a written form (letter from the Office of the Director of National Intelligence), ruling out indiscriminate mass surveillance on data transferred under the Safe Harbour arrangement. US Secretary of State John Kerry committed to establishing a redress possibility in the area of national security for EU citizens' through an Ombudsperson within the Department of State, who will be independent from national security services. The Ombudsman will follow-up complaints of EU citizens in relation to the national security exemption for the access to the data.

3) Effective protection of European's rights - any citizen who considers that their data has been misused under the Safe Harbour scheme will benefit from several accessible and affordable dispute resolution mechanisms: from the company to the EU Data Protection Authorities, who will work together with the Federal Trade Commission to ensure that complaints by EU citizens are investigated and resolved. As a last resort there will be a new mechanism - arbitration, a permanent mechanism available to EU citizens.

- **Next steps:**

Article 29 working group (data protection authorities) had a meeting on 2nd and 3rd February and concluded that more time is still needed to complete its assessment for all personal data transfers to the US.

In coming weeks COM will prepare the draft of adequacy decision for the Privacy Shield and will send it to Article 29 working group for an opinion.

