

Ms. Vêra Jourová  
European Commission  
Department for Justice, Consumers  
and Gender Equality  
200, Rue de la Loi  
1049 Brussels  
Belgium

15 January 2016

560/516

## Safe-Harbor-Agreement

Dear Ms. Jourová,

The IDW has been following with interest the EU Commission's political commitment in negotiating a solution for data transfer following the invalidation of the Safe Harbor agreement with the USA. A new agreement with the USA (Safe-Harbor II) is an urgent issue from the IDW's point of view, since the decision of European Court of Justice (ECJ) of October 6th, 2015 affects German audit firms operating internationally.

Until recently, the safe harbor agreement enabled the transfer of data to the USA and retention of such data on servers located in the USA – however, on October 6th, 2015 the ECJ declared the basis for this course of action invalid. The data protection authorities of EU Member States (Art.29 Working Party) have allowed a period of grace that will expire at the end of January 2016. During this timeframe, those entities affected should devise an alternative basis.

At present, there is considerable uncertainty surrounding a possible alternative basis. It is unclear whether the ECJ's fundamental considerations against reliance on the Safe Harbor agreement also extend to other such bases. For example, the German data protection authorities are currently not sanctioning so-called Binding Corporate Rules, and, in regard to EU-standardized agreement terms, are reserving their right to closer examination. Whilst the entities affected are currently within the period of grace referred to above, because of the considerable legal uncertainty there may be an immediate need to investigate possible new server configurations going forward once this period of grace has ex-

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pired. Moving data to servers within the EU would involve a disproportionate amount of time and effort and, from a technical perspective, would be impossible to achieve before the end of January 2016.

In view of this situation, we would like to implore you to work, as a short term measure, towards extending the period of grace granted by the Art. 29 Working Party until such time as a new Safe Harbor agreement with the USA has been satisfactorily concluded. Furthermore, both the EU Commission and the Art. 29 Working Group should make it clear that other mechanisms currently in place providing a basis for data transfer – especially EU-standardized agreement terms – remain valid in the interim.

We would be pleased to discuss with you any questions that may arise.

Yours sincerely,

Prof. Dr. Naumann