



EUROPEAN COMMISSION

Internal Market DG

The Director General

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Thank you for your letter of 23 March, delivered to me on 26 March. I regret that this was made available to the press simultaneously with its delivery to us. I hope that we can agree in future to warn each other of intended disclosures to the press or via our respective web-sites.

We share your view that it is important to establish arrangements which will ensure adequate protection and free movement for data in the financial services sector. We said at the close of the "Safe Harbor" talks that we were ready resume discussions on financial services as a matter of priority, but we have always regarded the initiative as being with the U.S. side. We understand the reasons for your not having taken any initiative during the last year, but you will understand for your part that we cannot put everything on hold to take account of U.S. domestic constraints.

We look forward to entering into discussions with you about the financial services sector shortly. I would take this opportunity to recall that our discussions with the Article 31 Committee (Member States representatives) and the Article 29 working party (Data Protection Commissioners) in 1999 and 2000 on the subject of the Fair Credit Reporting Act and the Gramm-Leach-Bliley Act revealed strong opposition to the idea of adequacy findings for these Acts as such. It will therefore be necessary to explore with you other routes to adequacy than the simple application of these Acts, unless you can bring new information to our attention in this regard.

In the meantime, it is likely that the Commission's draft decision approving standard contract clauses will go ahead and be finalised in May or June on the basis of the text posted on our web-site on 29 March. This text was the subject of a unanimous positive opinion of the Article 31 Committee on 27 March. It will shortly be sent to the Parliament for scrutiny. An earlier version (the one previously appearing on our web-site) had been accepted by the Article 29 Working Party in January. In the light of the consensus that has been built up in support of the draft decision, in accordance with our internal procedures, there would need to be very strong grounds for doing so to put the process into reverse at this stage.

Your case for wishing us to do so rests on arguments of process, of substance and of linkage with the proposed financial services talks. As regards the process, I do not accept that it has been untransparent or that it has not provided the business community with sufficient opportunities to make input. The initial stages of the preparatory work were indeed based on texts proposed by business organisations and the final text still bears a strong resemblance to these early versions in many respects. I recognise that our process has not respected the precise requirements that the US Government would be obliged to follow if it was preparing such a decision, but until such time as the U.S. and the EU agree on transparency standards in the context of regulatory co-operation, each side remains free to achieve transparency in its own way.

On substance, you do not specify what difficulties you have with the text, but you refer to the objections raised by business organisations. We have recently replied in detail to comments made by the International Chamber of Commerce, the Confederation of British Industry, the International Communications Round Table and the Securities Industry Association. All these exchanges of correspondence can now be found on our website and I hope that you will find there information that will allay many of your concerns. You say that you share the fears of industry that the decision will lead to uncertainty about the use of contracts. I am afraid that I do not understand the grounds for this concern. The decision will, on the contrary, remove uncertainty by obliging Member States to accept as providing adequate safeguards contracts conforming to the agreed standard. At the same time, the decision will not prevent Member State authorities from authorising transfers of personal data under *ad hoc* contracts, as they have done previously.

On linkage with our future talks on financial services, again I have difficulty in understanding the grounds for your concern. I can assure you that the decision will not prejudice or complicate those talks in any way. I think you would agree that to hold up the contracts decision until the financial services talks with the U.S. have been completed would be difficult for us, since it would amount to according higher priority to a specific sector in the U.S. than to a decision that is applicable to all sectors and for all third countries. I would also remind you that, at the close of the "Safe Harbor" talks, the Department of Commerce regarded the contracts decision as urgent.

I would add finally that the present decision will not exhaust the possibilities of Article 26(4) of the Directive. We can approve other model contracts in future and we continue to encourage business organisations to come forward with their proposals.

I am convinced that you will find that the most recent text of the contracts decision meets many of your (and industry's) concerns and that you will understand, in the light of the considerations set out above, that we now consider that the time has come to finalise this decision and thereby provide much needed guidance to economic operators.

John F. MOGG