



The Latest in the EU's Post-Safe Harbor Era

Insights

10.27.15

In light of the EU's destruction of the Safe Harbor that we've previously discussed in this blog, we take the opportunity to update with the latest from EU Commissioner, Věra Jourová, who, in an address to the EU Parliament's Civil Liberties, Justice and Home Affairs Committee ("LIBE") yesterday, stated that there are already agreements "in principle" with the U.S. Department of Commerce on Safe Harbor 2.0.

Highlighting that there have been "several meetings at a technical level" with EU and U.S. officials, Ms. Jourová stated that "For the coming weeks, intensive technical discussions will continue and we have agreed to be in regular contact before I go to Washington in mid-November . . . These discussions are not easy, but I am confident that by then we should already have seen progress."

The progress may be slow coming as previous announcements of the EU postponed any possible development of a new Safe Harbor until January 2016. According to Ms. Jourová, the U.S. has to offer "globally equivalent" safeguards "to the ones we have in Europe." That requirement comes in addition to the self-verification portion of the Safe Harbor, which requires "effective detection and supervision mechanisms." Jourová said the "the U.S. has delivered on this by committing to a stronger oversight by the Department of Commerce, stronger cooperation with European data protection authorities and priority treatment of complaints by the Federal Trade Commission." But more work is needed. And a final hurdle is the Safe Harbor's requirement that the "intervention of public authorities, in particular for reasons of law enforcement and national security" be subject to "clear conditions and limitations" as well as "sufficient judicial control over such activities."

Pending bills in Congress may help the EU resolve its concerns. Ms. Jourová mentioned that "the U.S. has undergone a period of internal review" with regard to the USA Freedom Act, Presidential Policy Directive 28 and the Judicial Redress Act (currently in the Senate). She said that "we now need to focus on these and other elements and to carefully analyze the extent to which they meet the requirements of the [Shrems] judgment."

Stay tuned!