

*Data Transfers***Senate Judiciary Amends, OKs Redress Act
In Support of U.S.-EU Data Transfer Pact**

In a move crucial to efforts to restore a vital mechanism for data transfers from the European Union to the U.S. before a looming deadline, the Senate Judiciary Committee Jan. 28 approved an amended bill, which would grant EU citizens limited access to U.S. courts to allege government misuse of their personal data.

But in a direct acknowledgement of the need to replace the invalidated U.S.-EU Safe Harbor Program, the committee conditioned its approval on EU member states permitting the transfer of personal data to the U.S. for commercial purposes.

The proposed law—Judicial Redress Act—is important because without it the chances for resolution of negotiations to replace the invalidated Safe Harbor would likely be zero. The European Court of Justice's Oct. 6, 2015 invalidation of the Safe Harbor affected not only some 4,400 U.S. companies certified in the program but untold thousands of EU companies that relied on the certification to transfer personal data to those companies (194 PRA 194, 10/7/15).

Unless the European Commission, the EU's executive arm, and U.S. authorities agree on a framework to replace Safe Harbor by the end of January 2016, EU member states' data protection agencies said they will consider taking enforcement actions against companies unlawfully transferring data. Paul F. Nemitz, director for fundamental rights and union citizenship at the Directorate-General Justice of the European Commission, said Jan. 28 that he hoped a deal would be reached by Feb. 1.

The Article 29 Working Party—made up of data protection agency officials from the 28 European Union member states—will meet Feb. 2 to discuss their positions a replacement framework (11 PRA, 1/19/16). The expectation is that Feb. 2 is really the consequential date regarding the finalization of a new agreement.

"With the looming deadline of Feb. 2 barely five days away, it was critical the Senate moved the bill out of Committee," Norma M. Krayem, senior policy advisor at Holland & Knight LLP in Washington and the co-chair of the firm's Data Protection and Cybersecurity Group, told Bloomberg BNA Jan. 28. "This has been a

crucial requirement for the Europeans since Day 1 on any deal," she said.

"More importantly," Krayem said, "it remains to be seen if it will pass muster in the current negotiations with the EU."

Under the committee amendment by Sen. John Cornyn, (R-Tex.), the Attorney General may—with concurrence of the Secretary of State, Secretary of Treasury and the Secretary of Homeland Security—revoke access to U.S. courts if the "the country or regional economic integration organization, or member country of such organization" fails to permit the transfer of personal data.

Judicial Redress Act. An agreement to replace the invalidated Safe Harbor remains possible (18 PRA, 1/28/16), but according to Andrea Glorioso, counselor at the Delegation of the European Union to the U.S., "access to proper judicial redress" in the U.S. for EU citizens as an important issue that needs to be addressed while negotiating the new Safe Harbor framework (16 PRA, 1/26/16).

The Judicial Redress Act would authorize the Department of Justice to designate certain foreign countries, whose citizens could bring civil actions in U.S. courts under the Privacy Act. The enactment of the Judicial Redress Act is a prerequisite for an umbrella U.S.-EU law enforcement agreement.

An umbrella agreement on the data protection safeguards for personal data transferred to the U.S. for law enforcement purposes was initiated by U.S. and EU officials Sept. 8 (175 PRA, 9/10/15).

The House Oct. 20 approved the pre-amendment version of the bill (203 PRA 203, 10/21/15).

"We're considering this bill because the Obama administration thought we need to make concessions in order to share law enforcement information with the EU," Cornyn said during the committee meeting. "Sharing law enforcement information should be matter of common interest. Period. We shouldn't have to barter for it," he added.

Applauding the Judiciary Committee, Sen. Chris Murphy (D-Conn.) urged the Senate to "immediately pass this crucial bill." In a Jan. 28 statement, he added that Failure to enact this bill into law would devastate U.S.-E.U. data sharing protocols, put our national security at risk and present a major setback for U.S. technology companies who do business around the world."

According to Glorioso, even though enactment of the Judicial Redress Act isn't a prerequisite for a new

U.S-EU Safe Harbor framework, not enacting it, “would send the wrong signal.”

BY JIMMY H. KOO

To contact the reporter on this story: Jimmy H. Koo in Washington at jkoo@bna.com

To contact the editor responsible for this story: Donald G. Aplin at daplin@bna.com

Full text of the amendment is available at <http://src.bna.com/chc>.