

*Legislation***Senate Passes Amended Judicial Redress Act; Prerequisite for U.S.-EU Umbrella Agreement**

The Senate Feb. 9 passed an amended version of the Judicial Redress Act by unanimous consent, which would authorize the Department of Justice to designate certain “covered countries,” whose citizens could bring civil actions in U.S. courts under the U.S. Privacy Act.

The passage of the Judicial Redress Act is a prerequisite for an umbrella U.S.-European Union law enforcement agreement, which was initialed by the U.S. and EU officials Sept. 8, 2015 (175 PRA, 9/10/15).

“International negotiations are tricky when there are aspects that require Congressional action,” 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 Feb. 10.

The Senate Judiciary Committee Jan. 28 approved the amended version of the bill, which would allow the Attorney General—with concurrence of the Secretary of State, Secretary of Treasury and the Secretary of Homeland Security—to revoke access to U.S. courts if “the country or regional economic integration organization, or member country of such organization” fails to permit the transfer of personal data (19 PRA, 1/29/16).

“The U.S. has already finalized the agreement with the EU and we’ve seen statements from the Europeans that they oppose the Senate language,” Krayem said.

The next step is reconciliation with the House pre-amendment version of the bill, which the House approved Oct. 20 (203 PRA 203, 10/21/15).

Krayem noted that “the House has already passed its own version of Judicial Redress so the issue is more about quickly going to Conference on bill, less than the House taking up the Senate bill.”

EU-U.S. Privacy Shield. The Judicial Redress Act is also important for the recently-agreed EU-U.S. Privacy Shield—which replaced the invalidated U.S.-EU Safe Harbor framework—that would allow the transfer of personal data out of the EU to the U.S. for commercial purposes (22 PRA, 2/3/16).

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 PPA 194, 10/7/15).

The passage of the Judicial Redress Act wasn’t a prerequisite to the EU-U.S. Privacy shield but was an important development for EU negotiators (16 PRA, 1/26/16).

The amended version of the bill “could throw a monkey’s wrench into the process, but some negotiators have stated that the deal was not necessarily contingent upon Congress passing this bills first,” Krayem said.

Commenting on the significance of the passage, Sen. Orrin Hatch (R-Utah) said the bill “demonstrates that the United States respects cross-border data privacy.” In a Feb. 10 press release he added that “it will complete an important agreement with the EU and thereby improve the ability of law enforcement to fight crime and terrorism.”

Also applauding the passage of the bill, Victoria A. Espinel, president and chief executive officer of BSA | The Software Alliance, said “this is another positive step for strengthening the continued cooperation between the EU and US on data issues.” She added in a Feb. 9 statement that the bill “strengthens both security and privacy while maintaining trust for valuable commerce in a global market.”

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