

Brussels, 2 July 2018

## **Letter to MEPs: European Parliament Resolution on EU-US Privacy Shield**

The draft resolution on the EU-US Privacy Shield will be discussed in the Plenary session this week. The American Chamber of Commerce to the EU (AmCham EU) urges you and your colleagues to oppose calls in the draft resolution to suspend the Privacy Shield.

### **Businesses operating across the Atlantic and consumers need the Privacy Shield to stay in place.**

A continued constructive dialogue between the EU and US on data transfers is important to improve its implementation. The Privacy Shield delivers significant new protections for European citizens and is an essential bridge for trade between the world's largest economies. The new redress mechanism introduced by the Shield covers complaints relating to all personal data and types of commercial transfers from the EU to the US, thereby strengthening all transfer tools, including Model Clauses.

**Transatlantic data flows are the highest worldwide** and today over 3 200 commercial organisations are certified under the Privacy Shield. Following a successful first annual review during which parties identified areas for improvement, the US Federal Trade Commission announced a number of enforcement actions. This dialogue should continue ahead of the second annual review which will be held in September 2018 in Brussels.

**The Privacy Shield is an indispensable tool for businesses.** If the Privacy Shield is suspended, opportunities for businesses with operations in both the EU and the US and in particular small and medium-sized enterprises will be highly limited. Other data transfer mechanisms, such as Model Clauses and Binding Corporate Rules (BCRs), can be burdensome and more difficult to implement. Model Clauses are also facing their own judicial challenge in the Irish High Court. This leaves firms operating in Europe to rely on derogations in the General Data Protection Regulation (GDPR) to transfer data, such as consent. However derogations are designed to underpin rare or occasional transfers, and not the high-volume exchanges between the EU and US that routinely take place. Moreover, derogations apply far fewer safeguards to data transfers than the Privacy Shield does. In fact, the European Data Protection Board (EDPB) has specifically warned that it would be 'inappropriate' for transferors to rely on the consent derogation to support transfers of data that 'occur periodically or on an ongoing basis' (see EDPB guidance on consent, April 2018).

If the Privacy Shield is suspended, companies operating in Europe will find their ability to transfer data to the world's largest economy immediately and significantly constrained. **We urge you to oppose calls for the suspension of the Privacy Shield** (as referenced in paragraph 35 of the draft resolution) and to support a continued and constructive dialogue between the EU and US on data transfers.