

Ms. Susan Binns
Director
Directorate General Internal Market
Avenue Cortenbergh 107
05/29
B1049 Brussels
BELGIUM

February 16, 2001

Dear Ms. Binns,

Thank you for providing us with a copy of the January 19 draft decision of the Commission adopting standard contractual clauses pursuant to the provisions of the EU Data Protection Directive (95/46/EC). In the very limited time we have had the draft proposal, our preliminary review suggests that it may create several adverse consequences for U.S. enterprises.

While U.S. companies that join the Safe Harbor will not need to use the model contract, we are concerned that adoption of this proposal could undermine last year's agreement to use the Safe Harbor Principles as the basis for model contracts. Generally, the proposal appears to impose burdensome requirements, such as in the areas of access and onward transfer, that exceed what was contemplated in our agreement on the Safe Harbor Principles. In addition, the proposal imposes requirements in other areas, such as jurisdiction and liability, to which we believe prudent U.S. enterprises could object. Adoption of the proposal may also inhibit our joint efforts to negotiate agreements covering financial institutions. These are but a few of our immediate concerns.

concerns.

We look forward to more detailed discussions with the European Union before this proposal is finalized.

Sincerely,

Michelle O'Neill

Deputy Assistant Secretary for Information Technology Industries
U.S. Department of Commerce

T. Whittier Warthin

Acting Deputy Assistant Secretary Trade and Investment Policy
U.S. Department of the Treasury