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## P R O C E E D I N G S

MR. KERRY: So good morning. Welcome to the Brookings Institution on this -- I guess this confused morning. I am glad you all made it here. I am Cameron Kerry, I am the Ann R. and Andrew H. Tisch Distinguished Visiting Fellow here at Brookings Institution. Part of our governance studies program and growing center for technology innovation. Before we move into the program I would ask if we can just observe a brief moment of silence in honor of the dead and wounded in Paris.

Thank you, my mother was an American born in Paris and she was among the hordes of people who fled Paris in front of the Nazis so today I can say, as she said in 1940, Vive La France.

When Brookings Institution invited Commissioner Věra Jourová of the European Commission to come here and speak when she came to Washington about a year ago, we knew it was going to be an important event. We certainly did not know how important. Commissioner Jourová, you come here at a fateful time. Certainly when we scheduled this event, we knew that we would be dealing with the issues of data protection, data transfer, and the status of the U.S. E.U. Safe Harbor Agreement after the ruling by the Cour de Justice at the European Union on October 6<sup>th</sup> and that's the topic that this was built under.

We certainly did not anticipate that we would also have the events of Friday. Both of these touch on Commissioner Jourová's portfolio as the Commissioner for Justice Consumers and Gender Equity since just about a year ago. Of course, the high profile part of that portfolio has been the data protection regulation and the Safe Harbor negotiations. Those negotiations began on a low level, when I was still at the Department of Commerce over two years ago. They have continued and certainly taken on new urgency of late but the Commissioner's portfolio also extends to other justice

issues including refugees and law enforcement.

Before joining the European Commission, she was a Minister for Regional Development in the Czech Republic. She has served in municipal governments, she has worked both within government and outside government on issues of E.U. funding so that brings deep competency in a variety of issues to her new portfolio at Justice. She is a graduate of the great Charles University in Prague and she also has a Masters in the theory of culture from Charles University, something that I think clearly qualifies her to deal with some of the issues and divides between the United States and Europe when it comes to privacy and data protection so I very much look forward to hearing your remarks today, Commissioner Jourová. Thank you for coming. The floor is yours.

(Applause)

MS. JOUROVÁ: Thank you, Mr. Kerry for your kind words of introduction. Especially the review of my long CV was a touching moment for me. It is a great pleasure and honor for me to speak at Brookings this morning on the very topical issue which was already announced, which is Trans-Atlantic data flows. Ladies and gentlemen, allow me however, to begin with a few words about the tragic events that took place in Paris on Friday the 13<sup>th</sup>.

These brutal attacks killing, as far as we know now, 129 innocent people, injuring many others, were an attack against our freedoms, our way of life, and our values of tolerance and peaceful coexistence. It is precisely these values that we will defend. We shall not be guided by fear and we must not let the attackers disrupt our life. Instead, we shall be resolute in our response to terrorism and hatred. Let me also take this opportunity to thank our American friends for their strong solidarity with the people of Paris in their hour of need.

Europe marked the events with a minute of silence this morning. Here, in Washington, a vigil was held on Friday evening at Lafayette Square, attended by the French community and many Americans including the representatives of the President of the United States and flags are at half-mast. We are grateful for this, thank you.

At the beginning of this year, Paris was already stunned by the attacks on the Charlie Hebdo newspaper and at kosher supermarket. The European Union responded by setting out a new European agenda on security to strengthen cooperation between the police and criminal justice authorities of European countries and by reaffirming our values. Last Friday's events sadly reminded us how relevant and urgent this implementation of this security agenda is. As Justice Commissioner, I have put a focus on two issues. One is the actively promote tolerance and respect and fight discrimination in our societies. In October, we held a high level event dedicated to fighting both anti-Semitism and anti-Muslim hatred.

We agreed on a number of concrete actions to promote tolerance and respect, especially in the area of education. Another key concern is radicalization of young people in some of our prisons, which must not become a breeding ground for terrorism. The European Union's member states have varying levels of experience with this issue, yet the face a common challenge with too many young Europeans joining the so called Islamic State and traveling to Syria as foreign fighters. That is why last month we gathered Justice Ministers and experts from around Europe to exchange the latest expertise in the area of preventing radicalization and de-radicalization in the criminal justice system.

Another key element of our European agenda on security is enhancing criminal justice cooperation both within the E.U. and also with key allies; first and foremost, the United States. This includes measures to confiscate assets or to effectively

exchange relevant information, for example, criminal records.

Just a few hours before the attacks in Paris, my colleague, Commissioner Avramopoulos and I were meeting the attorney general and the homeland security secretary for our regular dialogue on Justice and home matters. We reaffirmed the importance of our law enforcement cooperation, which serves to protect our citizens' security as well as their freedoms. Hence, coming back to our topic of Trans-Atlantic data flows, allow me to first underline that this is of the utmost importance, both for effective enforcement and our strong commercial relationship.

In fact, I see this field as a triangle between the fundamental right to privacy and protection of personal data. Our citizens' need for security insert our economic opportunities and business growth. All these need to go hand in hand. We cannot have a tradeoff between one and the other. One of our main achievements in this area has been the negotiation on an umbrella agreement on privacy and data protection which sets high standards of data protection for our law enforcement exchanges. These exchanges rely on personal information, not only of suspects but also victims and witnesses of crime. This data is key for our law enforcement authorities but we must build structures so that this information can be treated by public authorities in a secure way and for specific purposes. And people must have a right to access or correct their personal data if a mistake has been made. Europeans and Americans broadly agree on this but our legal systems differ and the umbrella agreement builds an important bridge between the two.

The major difficulty we have faced over the years is the fact that the 1974 Privacy Act only grants rights to U.S. citizens and residents whereas in the E.U. there is no such limitation for U.S. citizens in our redress system. One of the essential elements of our agreement is for the Judicial Redress bill that has recently been voted on

by the House. The Judicial Redress bill would extend the rights that U.S. citizens and residents enjoy under the 1974 Privacy Act also to Europeans. This is a long-awaited and historical step and we appreciate the efforts of the administration and Congress so far. It would end de facto discrimination. We now await adoption of the Judicial Redress bill by the Senate and I look forward to discussing this with senators on the Hill tomorrow. For the remainder of my visit to Washington this week, my goal is to bring us closer to finalizing discussions on a new framework for commercial transfers of personal data.

These discussions were launched already in early 2014 following the European Commission's recommendations to strengthen the Safe Harbor framework as an answer to the NSA revelations. I am in close contact with Commerce Secretary Penny Pritzker on this and we will meet together again this afternoon following another round of talks between our teams over the last couple of days here in Washington and on the previous ones which were held in Brussels. The recent European Court of Justice ruling in the Schrems case has given a new importance and additional urgency to these discussions. The ruling reaffirmed the fundamental right to protection of personal data including where such data is transferred outside of the European Union.

We are guided in our discussions by the ruling. Since the day of the ruling, my immediate priority has been to reassure our citizens that their personal data is safe, to give clarity to businesses about remaining alternative possibilities for data transfer and to ensure a uniform European enforcement of the ruling. Together with Secretary Pritzker, we have stepped up discussions on a renewed stronger framework to replace the old Safe Harbor which has been declared invalid by the court.

I firmly believe that a new comprehensive arrangement for the transfer of personal data with strong safeguards and legal protections is the best way to achieve the two things. One, effective protection of the U.S. citizen's data rights when data is

transferred and two, putting Trans-Atlantic commercial relations on a sound footing; alternative ways of transferring data are a short term solution. With the current volume of Trans-Atlantic data transfers, it is clear that we need a comprehensive and effective framework in place as soon as possible. Only a comprehensive arrangement with clear legal commitments, enforced by the U.S. authorities can ensure the level of data protection Europeans are entitled to under EU law. And this is what the judgment requires. Where personal data travels, the protection has to travel with it. This is why I am here in Washington, to work together with our U.S. partners on a renewed Trans-Atlantic framework that will allow for continued data flows between Europe and the United States. A renewed arrangement that will mean robust safeguards and legal certainty for citizens and businesses alike.

When I met business and industrial representatives in Brussels, they emphasized that they were looking for guidance on international data transfers following the ruling. This is why on the 6<sup>th</sup> of November, the Commission issued an exploratory communication which provides an overview of alternative transfer tools, the conditions under which they can be used and their limitations.

During my visit to the United States, I am also reaching out to business and civil society organizations here in America to hear their views and concerns. What I would like to do this morning is to dispel some myth and misunderstandings that followed the Schrems ruling and to explain and underscore what the European Commission now wants to achieve going forward.

Let me start with a misunderstanding. Firstly, there is a perception among our U.S. interlocutors that the European Court of Justice made a judgment on the U.S. legal system. Some have gone as far as expressing disappointment with our highest court because it did not describe the intelligence reforms undertaken by the

United States since the NSA revelation. In fact, the Court did not attempt to describe the U.S. system. It rather set a general standard that has to be met by any country, including the United States for its data protection rules to be considered adequate under E.U. law. The judgment does not require an identical organization of the U.S. legal system compared to the E.U. but on data transfers, the U.S. has to offer safeguards which are globally equivalent to the ones that we have in Europe. That is why our current discussions with -- that is what our current discussions with the U.S. are about.

The Code says that a system based on self-certification, such as safe harbor is acceptable, provided that there are effective detention and supervision mechanisms. This has indeed been one of the key points we have already highlighted in our 2013 recommendations, especially those regarding transparency, enforcement and redress. And here, we can build on the work we have done together since January 2014. We are now in discussions on how to formalize these mechanisms in a more binding way. A second misunderstanding is based on the idea that there is no fragmentation or some say, balkanization of international data transfers governed by 28 protection authorities in the E.U.

First, the Commission, as well as the 28 data protection authorities have stressed the need for uniform application of the ruling in the E.U. Second, the Court ruling does not call into question the Commission's power to take decisions, allowing for free flow of personal data from the E.U. to assert country, rather it clarifies the possibilities and obligations for data protection authorities to investigate complaints raised by individuals such as that of Mr. Schrems, however, it is only the Court of Justice that can hold a decision to be invalid.

Let me now turn to our negotiations with the United States. Directly after the judgment, I was in contact with Commerce Secretary Pritzker to discuss the way



forward and while we can build on progress achieved since the talk started in January 2014, the Commission swiftly came forward with concrete proposals with what is still needed now to meet the benchmarks set by the Schrems ruling. I have come to Washington to hear the reaction of the U.S. side and I trust that our American partners approach the issue the same way, with the same sense of urgency. We must conclude the discussions with our U.S. counterparts on a renewed framework for Trans-Atlantic data flows with a higher level of protection as soon as possible. This is important for Trans-Atlantic commercial relations and for effective protection of citizens' personal data. We need to make sure that the new arrangement lives up to the standard of the Court ruling. In light of the Court's judgment, we need more clarifications from our U.S. counterparts on a number of points.

These discussions have not been easy. They are not easy but they have already yielded results. The U.S. has already committed to stronger oversight by the Department of Commerce, stronger cooperation between European data protection authorities and the Federal Trade Commission. This will transform the system from a purely self-regulating one to an oversight system that is more responsive as well as proactive. We are also working with the U.S. to put into place an annual joint review mechanism that will cover all aspects of the functioning of the new framework, including the use of exceptions for law enforcement and national security grounds and that will include the relevant authorities from both sides.

Finally, when it comes to the intervention of public authorities, in particular for reasons of law enforcement and national security, the Code underlines that such access to data must be subject to clear conditions and limitations. Against the recent attacks in Paris, it is important to stress that targeted access can become crucial, for instance in the fight against terrorism. We know this, however, we are already set in

our 2013 recommendations and as confirmed by the Court ruling, we need to ensure that there are sufficient limitations and safeguards in place to prevent access or use of personal data on a generalized basis and we need to ensure that there is sufficient judicial control over such activities.

Whilst this remains the biggest challenge in the judgment and in our talks with the United States, we should not forget that a debate on these issues has taken and still is taking place over here in the United States. We have interest in reform steps such as the United States Freedom Act and the President's instructions to the intelligence community, the so called presidential policy directive 28 on surveillance and the need to take into account the privacy rights of non-Americans. We have seen movement towards more targeted and tailored surveillance on the issue of collected data. Safeguards commonly reserved for U.S. citizens have now been extended to E.U. citizens for example, on the dissemination of data or the period of retention. We will closely follow the continuation of these reforms and how they affect European citizens whose data is transferred to the United States. Together with the final adoption of the Judicial Redress Act in the Senate, these will be important elements for the new arrangement. In the meantime, back in Europe, we are working to swiftly finalize the ongoing negotiations on the data protection reform which will replace 28 different laws with a single regulation for the European Union which means one set of modern, technology neutral rules good for the protection of the individual and good for innovation and business.

This is a key component for our strategy for a digital single market and I remain confident that we can conclude these negotiations on the new regulation by the end of the year. The new European rules on data protection will foster the protection of a fundamental right as well as consumer trust but the new rules also are a business opportunity. They will create a level playing field for all companies handling personal

data of Europeans and they will reduce bureaucracy and transaction costs. This will also benefit businesses from overseas.

In conclusion, the E.U. and the U.S. are each other's most important trading partners, underpinned by a strong historical and political relationship. The E.U. and U.S. are also key partners to stand united to face challenges such as the fight against terrorism. Data flows between our continents are essential for people and businesses as well as for our law enforcement cooperation. Regarding commercial data exchanges, we need a new framework for both our citizens whose data must be protected when it travels abroad and for our businesses. This requires action on both sides but I am confident that we will meet the deadline of January 2016 for a new arrangement on international commercial data transfers. Why do we have to meet such a deadline? Because we have clear guidelines from the European Highest Court because we can build on discussions held since January 2014 because it is both in the Europeans' and Americans' interest and finally because there is a strong political commitment at the highest level on both sides of the Atlantic.

We have shown, with the umbrella agreement, in the area of law enforcement that we can agree on common approaches on data protection. We should now repeat it in the area of commercial data transfers. Ladies and gentlemen, I thank you for your attention and I am available for your questions during discussion, thank you.

(Applause)

Now this is the moment of truth, I have proof that I can read. (Laughter)

MR. KERRY: You asked me to speak slowly, Commissioner Jourová; I do that quite naturally so I won't need to slow down. Thank you for your remarks and I think particularly some of your clarifications on what the court of justice did or did not do. And for your statement that doesn't reach the issues of U.S. surveillance as such.

Before we talk about the significance of that and the data protection Safe Harbor issues, I do want to talk a little bit about the events of Friday, the aftermath and your justice portfolio and the refugee issues. We've certainly seen that the refugee issues have pulled at many of the seams of the European Union, from nationalism to the relationship between the Union and member states and since Friday, particularly with the news that one of the attackers appears to have come in from Syria and with some of the movement of the attackers across borders in Europe, we see more pulling at those seams, we see calls for increased surveillance and crackdowns. Where do you see those issues leading?

MS. JOUROVÁ: I wish I knew this. I can only predict, understanding perhaps more than those who do not deal with those issues, what is going on now. I can share with you here how I see that atmosphere in the European Union because the refugee crisis and increasing intolerance, it is a testing moment for the European Union, for the member states, and for their cooperation among themselves and cooperation and common understanding with European institutions. I must say that when we realized, in fact this year in Spring that this will come with huge intensity, I thought a lot about the system which has been set up in Europe for managing refugee waves, whether the system is ready to help solve and to manage the coming high inflow of people and we have many internal rules. We have European rules, we have the member states which never gave the European Union full competence for managing the migration and the policy; they kept it to themselves during the negotiations of the Amsterdam Treaty and so this is a shared competence and so what I thought a lot about and what I read a lot about was whether the system can manage the current situation, and the more and more we try to solve it, the more discussions (inaudible) not only at our internal rules which will have to be changed.

There is no doubt that we must look at the long terms migration and asylum policy in the E.U. but also, in discussions, there are voices that we should look at, the International Law rules, whether they are properly in place now, in force, this is something completely new. We are speaking about the Geneva Convention from 1951 which was the after second World War arrangement and a legally binding international treaty for how we shall help the people in need, those fleeing the war zones, endangered on their life so we are even discussing now these rules. I don't mean that we are putting them into question, but we must look at the whole system and mobilize all the legal and human, and institutional capacities and possibilities to manage the crisis. Of course, when we look at this, the ways how to tackle the problem, I look at the United States which is the Federal set up. The Federal government has the power to manage the refugee inflows, unlike the European Union, which doesn't have it and we have to agree on everything with the member states; this is a shared competence and as you know, the European Union is not a homogenous group of nations, if I may say, or countries. There are big differences in the approaches.

I myself come from Center European or you can say an East European country and I myself have said several times in many discussions that we must understand the approach of the member states stemming from the historical experience and while the West European countries invited the migrants to work and to co-create the prosperity of Western societies, we lived behind the Iron Curtain and as such, we created purely homogenous mono-cultural societies. This is a very different basis for how we filter in our brains what should be done now but surely speaking, the policy of the E.U. now consists of two paths. One is the short term managing -- short term tactics and strategy and plan, how to manage the situation and the other thing is the long term measure which will bring the review of the European migration and asylum policy.

The short term measures are more and more focused on external actions. We are very clear that we have to limit the numbers of people coming to Europe. That we have to help the states where the refugees are concentrated, Lebanon, Jordan, Turkey, we are helping financially and through many other kinds of support. We have now a good deal of the African countries from Malta, from the last week creating the fund of help there and so our efforts are focused a lot on external actions and of course, we call for international actions and international cooperation in fighting Islamic state and helping to stop all of the wars which chase the people out of their homes towards Europe.

This is a series of actions which are planned now and which are agreed upon by the member states also and we all understand that we face unprecedented crises. My job is to make sure that there will be no unpredicted increase of criminality which is a big task. I had several talks with the ministers of justice. Their role is to predict and to prevent increased criminality, be it in the refugee camps or in the centers or around. Be it increasing hate speech and hate crime which show our recent figures and my special concern is that vulnerable people, women, children, elderly people must not pay their price because every time such crisis comes, and the people in need are concentrated in big numbers, the vulnerable people are affected first.

This is a complex issue which needs comprehensive series of actions.

MR. KERRY: If we can follow the thread for these issues to privacy and data protection. Among the reactions to the events, we've heard calls -- you've got both sides of the Atlantic for increased surveillance, increased breadth of surveillance, increased authorities for surveillance. Do you see that having an impact on the scope of surveillance and on data protection issues?

MS. JOUROVÁ: Well, of course surveillance is our main issue and that is also the reason why we did not conclude the negotiations on the Safe Harbor before

summer because we needed and we still need more clarification and better description of the exceptions which justify the access to data under Safe Harbor and we need to find all the possible ways of how we can continuously monitor the necessity and proportionality of surveillance in the United States towards the data of European citizens collected by the companies subscribed under Safe Harbor. So, this is another complex issue, I must say that from my Washington trip, I have a very good feeling that our U.S. colleagues also in the field of surveillance are more collaborative and perhaps better understanding what we need because one of the things that we need, and this is a trivial thing, is the precise definition of the terms which we work with. So, national security, what is it? Public interest, what is it? Because these general expressions might have very different interpretations across the Atlantic so this is what we work on now and again, I have a good feeling after several meetings that we had here that we are coming to a clear definition and we are coming to the new approach of ongoing monitoring of the situation here on the side of the Commission because we have our part of work in it. The Safe Harbor must not be one of the solutions that will be left to go to life but there will have to be continuous care from the sight of commission and that data protection authorities and what we have in mind is to focus on the surveillance and the protection of data in the United States as such with regards to Safe Harbor data because to understand better and have better knowledge and focus on the whole situation in the United States, it will help us to see how it works under Safe Harbor so this is the way that we look at it now and our American counterparts are now helping us to find all the possible ways of how to do this ongoing monitoring, including cooperation with the civil society, which is a new element -- and which I met on Friday and which threatened me.

MR. KERRY: Well I am sure there will be questions on that. Let me ask one more question before we go to the audience -- tee up your questions but, as you

said, the surveillance issues have been really at the center of the Safe Harbor negotiations. Those are issues both sides of the Atlantic -- so in the same civil society, representatives, both here and Europe have raised questions about some of the changes in, for example, the French surveillance blow up.

MS. JOUROVÁ: We have much to do in that respect as well.

MR. KERRY: And that gets to the issue of how we address this question that the Court of Justice has put to the Commission, to data protection authorities and to companies involved in data transfers. The questions of essential equivalence and full disclosure, I should say that in my other capacity as a lawyer to represent industry clients in relation to some of these issues but there is some sense where the Commission, as you said, has limited competence in the area of surveillance where the data protection authorities, very few, have competence, legal competence in this area that perhaps Safe Harbor is being held hostage to get at some of the member state issues that there are concerns about -- with regard to surveillance. I heard it put a couple of days ago in that way.

MS. JOUROVÁ: Yes, that is obviously a strong message towards the member states and we are aware that only several DPAs have the power to assign the limitations and the necessity and proportionality of the excess from the site of surveillance. Authorities in the EU, I talked about this with the ministers of justice and they take the ruling very seriously as a message from them to check their systems and of course this is a matter of the member states courts to push on respective systems of the member states so that is the proper balance between the right for privacy and the right for security and the access to interference into the privacy which must be justified necessarily and proportionately.

MR. KERRY: Well, we look forward to the outcome of your negotiations



and look forward to the continued debate to both sides of the Atlantic. Let's turn now to the audience; we have a microphone here so please wait for the microphone.

MS. JOUROVÁ: And please speak slowly and clearly. If you can use British English, this would be great.

MR. KERRY: And please also identify yourself so -- the gentleman on the left.

MR. EDWIN: Yes, my name is Jerry Edwin. I represent a consulting group, the Edwin group. Madame Commissioner, thank you so much for this briefing which really is enlightening and could you go a little farther with trying to assess what the effects of the Paris tragedies will have on the negotiations in the sense of stiffening those who would not back off from tough national security requirements and move towards the privacy protections that you need. What do you think will be the effect there, please and what would you like the effect to be? I think I can guess the latter but would you help on those please?

MS. JOUROVÁ: I said before, in my speech that this is an attack on our values and basic principles and what we value is our freedom and what is part of our freedom is the protection of privacy and this is what they want, that we change these basic things that our society is based on and so we already thought a lot about proper reaction on the attacks in Paris and Copenhagen in January already in those days. We decided not to react with panic, not to bring any historical changes and reactions dictated by fear and to be steady on the principles which are so dear to us so I know this is easy to say, I don't know as well as you don't know where the situation will escalate. We are not in a very difficult moment. Our security enforcement, our law enforcement does its best in Europe to bring security back. This is a challenge for all of us. This is also a problematic moment because of the way they did it in Paris changed our looking at what

could happen because when I spoke to experts for counterterrorism, they said the worst thing is if an individual fanatic person goes and does something because they say this is impossible to discover it through the telephone tapping or through the surveillance but this was organized. There was a communication between the groups so it is a new challenge which we see that they are changing also the technological ways, how they are preparing these terrorist attacks and so this will need proper response from the relevant bodies. What we do, on the side of justice and many things -- when I say the side of justice, there is another side of home affairs and securities so it is not purely my agenda. But on the level of justice, we have very intensive cooperation now with online providers or IT networks and social network providers which started already several months ago because we urged them to help to decrease the level of intolerance in society by deleting hate speech which has the potential to incite hate crime and violence. In these discussions, we are very careful because we understand that there is the freedom of expression which is extremely wide. By saying "extremely" I just mean the scope, not that I am criticizing it. You can offend people, you can make caricatures, you can use satire, everything you want but once you incite some open course for violence and hate crime, then it must be deleted and also announced to the relevant bodies and the other thing which we discussed very intensively now is when they discover some signs of preparing of terrorism attacks, there must be immediate action and announcement to the relevant bodies.

I must say that the companies and I spoke to the big players; they understood fully that they are part of the problem so they must be part of the solution and when you look at France, for instance which is now -- France, which we look at as a reference country also for this kind of problems. French Minister of Justice gave us the numbers. 15% of young men who got radicalized, got radicalized in prisons. The rest,

the vast majority of them got radicalized online and so this is not an untypical situation. This refers to UK and Sweden and other countries so we have to concentrate on the online sphere. It must not be censorship; it must not be a breach of the freedom of expression but it must be the enforcement of rule of law on the internet sphere because the internet must not be the zone without law and especially, I must say, in some East European countries, where I came from, the people think that on the internet you can do whatever but this is a very strange -- what many people think that the laws do not apply for the internet.

MR. KERRY: So we are a little bit past our time but we have time for one or two more questions. There was a question across the aisle here.

MR. RAUL: Thank you, Alan Raul, Sidney Austin, commissioner Jourová, you spoke of the clarifications that your U.S. interlocutors are giving you with regard to national security and public interest and other explanations that would go to the U.S. surveillance regime and data protection safeguards associated with it. Mr. Kerry asked you and you responded about essential equivalence and the responsibilities of the member states and that their perception of their obligations under the Schrems decision. My question is, is there an assumption in Europe that the safeguards in Europe, by the member states with regard to surveillance are more powerful, more effective than those in effect in the United States, and if so, what's the basis for believing that protections in Europe are stronger than those in the United States. We have here our Privacy and Civil Liberties Oversight Board which is independent and judicial approval of surveillance and the ability to bring legal actions against the U.S. government. Are any of those measures also available in Europe or are there other safeguards that are comparable? Thank you.

MS. JOUROVÁ: We have a series of rules by member states because,

as you know, we still don't have the uniform rules adopted. This is the assessment but the necessary safeguards are in place is an issue for the courts and the member states and you can see many pieces of case law with regards to the level of protection like France, which you mentioned before, so I would be careful comparing the system and safeguards you have in the United States and in the European Union but I must say that our task is to have a good oversight of what is happening here which is more difficult for us than to have an oversight with what is happening in the European Union because there we have the DPAs which deal with the individual complaints which are in fact the testing cases for what safeguards are in place and whether the system of protection works. You understand your system better than I do; I tried to -- the reaction on the ruling and the long term work on Safe Harbor, it is important to understand your system, to see that the reforms are ongoing because this is something which has already been announced by president Obama which, while we see the trend and to increase the trust and the trust must be mutual so this is what we work on intensively.

Increasing trust is also based on the definition of the terms which we work with. For instance, we also need to define better probably what is essential equivalence in our talks that this is not pure equivalence, it must be something similar which will however bring the same result that the privacy and the data is protected.

MR. KERRY: Let's go to the back of the room so Mark Rotenberg.

MR. ROTENBERG: Mark Rotenberg of the electronic privacy information center. Thank you very much for your remarks and thank you also for Brookings for hosting this open and timely forum. I wanted to ask you specifically about the basis of the Schrems decision and what seems to me to be the significant changes in E.U. law since the original arrangement. As I read the opinion, it is not so much, as you say, a judgment about U.S. law or even a response to the revelations of NSA

surveillance. I see it as rather the consequence of the incorporation of Article VII and Article VIII in the Charter of Fundamental Rights, establishing a broad constitutional basis across the European Union for Privacy and data protection.

Now, if that's correct and understanding the authority of the commission, I think it's in 256 of the directive to make an adequacy determination for a third party country, that determination turns on the domestic law and international commitments of the third party country, any country, the United States, Canada, whoever it may be. So my question is this: Is it conceivable, is there a legal basis after the Schrems decision, understanding the significance of Article VII and Article VIII and Article XXV of the directive to have an agreement that doesn't almost necessarily require changes in U.S. law, how would the court permit any new arrangement that doesn't reflect a fundamental commitment to these basic rights it has already announced in the Schrems decision?

MS. JOUROVÁ: Of course, the Court ruling is based on the interpretation or is the interpretation of Article VII and VIII and it is about the right to privacy as a fundamental right. Of course, the relevant article of the directive was tested, what the conditions for the transfers to the certain country as laid down by the directive are sufficient but first of all, the Court, as you know, focused on the Safe Harbor itself as the decision but then it brings the fulfillment of Article VII, VIII and XXXV of the directive and so we need now to work on the new system to take the relevant parts of the Court ruling or the Court ruling itself, and make sure that the new system will meet the requirements 100% because there will be further complaints coming. It will be under further testing, this new decision. What is important for us or what gives me the strength to focus so much on these negotiations and to bring the new system to life which will fulfill the requirements is that there is simply such a huge transfer of data and such a huge dependence of the commercial cooperation between E.U. and U.S. that it needs, and I

am convinced about this, a specific regime or a specific arrangement because now when you look at the alternative rules, which are stemming from the directive, corporate binding rules, contractual clauses, whatever else is there possible to use. There has never -- guaranteed such a high protection, in fact protection which is guaranteed by the national authorities in the United States than under Safe Harbor and this is what I find important here, that we are going, if we manage to find solutions for all the still remaining issues, we will provide the companies doing business between E.U. and U.S. various advantageous systems which will stop the legal uncertainty and which will enable the transference under the clear rules. It will need some cooperation, a lot of cooperation from the side of businesses because this is, I sometimes say a luxury advantage which we are working on for business but we are doing it for good reason because we must keep strategic economic partnerships between E.U. and U.S. and we cannot hamper this by leaving it in the legal vacuum or without setting up the specific rules.

MR. KERRY: So, Commissioner Jourová I am mindful of your schedule; I am happy to take another question if you can indulge our audience. Okay, let's go to the back over here, I saw some hands earlier. Yeah, in the way back.

MR. SCHWISE: Hello, my name is Axel Schwise; I am a European attorney in Washington with Morgan Lewis. Quick question, what happens if by January 31<sup>st</sup> next year you do not have a Safe Harbor agreement that is binding and in place, what will happen?

MS. JOUROVÁ: For us this is a clear deadline which we ourselves set up. It was not forced by the DPA so this the information for those who might think that DPA is organizing our work. They are independent and their declarations said that by the end of January, they will accept the alternative tools. So, a good question would be for the DPAs, what will happen after January 2016. This deadline which we set up for

ourselves is a very quick and it's inviting for a very swift conclusion of negotiations. I believe we will manage to have within this deadline and if not, we will continue because this is, I am convinced, the only proper thing to do, to conclude the negotiations. We can do it only after we are 100% sure that the system will work. This was also the misunderstanding between us and the American authorities or negotiators because they thought that we had the deal already in the summer and we did not think the same thing so that's why I am now emphasizing here that we need to be clear what we are telling to each other; there might be some very trivial problems in communication.

MR. KERRY: Well, Commissioner Jourová listening to you talk about affirming values and principles in the wake of Paris 1311, I was reminded of what happened in my home city of Boston following the marathon bombing. David Ortiz, also known as Big Papi, the hero of our Boston Red Sox baseball team and its world championship was speaking at an event at the Fall Stadium honoring the survivors and victims of the marathon bombing and he said: "It's our f-ing city; we're not going to let them change us." Everybody thank you very much for being here today.

MS. JOUROVÁ: It's over.

MR. KERRY: Commissioner Jourová, I thank you for --

(Applause)

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CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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