

## **U.S. Comments in Response to the Colombian Revised Draft Circular on the Protection of Data and Allowance of International Transfer of Data**

The United States appreciates the opportunity to provide comments on the revised draft circular on the Protection of Data and Allowance of International Transfer of Data (Revised Draft Circular)<sup>1</sup> proposed by the Superintendency of Industry and Commerce (SIC).

We commend the SIC for its engagement with the United States after the release of the last version of the draft circular. The decision of the SIC to include the United States in the Revised Draft Circular's list of countries providing an adequate level of protection of personal data is a step in the right direction in recognizing the U.S. privacy protection regime. This change in the Revised Draft Circular is a positive step that will ensure the protection of Colombian citizens' privacy and avoid the significant negative economic impact to consumers and service suppliers that would result from any disruption of international data flows between Colombia and the United States.

As the SIC considers comments on the Revised Draft Circular, we set forth two concerns and request the opportunity to discuss further with the SIC.

First, we suggest removing the reference to the EU-US Privacy Shield from the Revised Draft Circular and citing directly to the elements of the U.S. system to protect privacy (many of which are discussed in the EU-US Privacy Shield agreement). The reference to the Privacy Shield and Safe Harbor agreements introduces unnecessary ambiguity regarding the status of the United States on the list of adequate countries in the Revised Draft Circular and adds unnecessary complications in describing the U.S. system to protect privacy.

Second, we recommend an explicit reference to "transmissions" in the Revised Draft Circular to clarify that the Revised Draft Circular applies to all data transfers, including the subset of transfers defined by Colombia as "transmissions" in Decree 1377 (2013).<sup>2</sup> Transmissions are merely a subset of the larger category of data transfers and, moreover, present a lower level of concern regarding risk to personal data than other types of data transfer. To ensure that there is no ambiguity regarding the applicability of the Revised Draft Circular to all data transfers, the SIC should include the term "transmission" in the Revised Draft Circular and clarify that countries included on the adequacy list are safe for both international data transfers as well as international data transmissions.

We commend Colombia for the inclusion of the United States as adequate for the transfer of personal data and strongly encourage the SIC to make the additional clarifications to the Revised Draft Circular discussed above.

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<sup>1</sup> Available at <http://www.sic.gov.co/sites/default/files/normatividad/072017/Transferencia-internacional-de-datos-PFR2.pdf>.

<sup>2</sup> Decree 1377 defines a "transmission" as a transfer made between a Colombian controller and a foreign processor.