

Procedure file

Basic information	
NLE - Non-legislative enactments	2016/0126(NLE)
EU/USA Agreement: protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses	
See also 2016/3004(RSP)	
Subject	
1.20.09 Protection of privacy and data protection	
6.40.11 Relations with industrialised countries	
7.40.04 Judicial cooperation in criminal matters	
Geographical area	
United States	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs	 ALBRECHT Jan Philipp	12/09/2016
		Shadow rapporteur	
		 VOSS Axel	
		 LAURISTIN Marju	
		 STEVENS Helga	
		 IN 'T VELD Sophia	
		 WINBERG Kristina	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Foreign Affairs	The committee decided not to give an opinion.	
 Legal Affairs		11/07/2016	
	 DZHAMBAZKI Angel		
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	3465	20/05/2016
European Commission	Commission DG	Commissioner	
	Justice and Consumers	JOUROVÁ Věra	

Key events			
29/04/2016	Preparatory document	COM(2016)0237	Summary
20/05/2016	Act adopted by Council after consultation of Parliament		
12/07/2016	Legislative proposal published	08523/2016	Summary
12/09/2016	Committee referral announced in Parliament		
24/11/2016	Vote in committee		
28/11/2016	Committee report tabled for plenary, 1st reading/single reading	A8-0354/2016	Summary
30/11/2016	Debate in Parliament		
01/12/2016	Results of vote in Parliament		
01/12/2016	Decision by Parliament	T8-0465/2016	Summary
01/12/2016	End of procedure in Parliament		
10/12/2016	Final act published in Official Journal		

Technical information	
Procedure reference	2016/0126(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
	See also 2016/3004(RSP)
Legal basis	Treaty on the Functioning of the EU TFEU 016-p2; Treaty on the Functioning of the EU TFEU 218-p6a
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/06417

Documentation gateway					
Document attached to the procedure		COM(2016)0238	29/04/2016	EC	
Preparatory document		COM(2016)0237	29/04/2016	EC	Summary
Document attached to the procedure		08557/2016	18/05/2016	CSL	
Legislative proposal		08523/2016	12/07/2016	CSL	Summary
Committee draft report		PE592.131	21/10/2016	EP	
Committee opinion		PE592.225	09/11/2016	EP	
Amendments tabled in committee		PE594.012	16/11/2016	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0354/2016	28/11/2016	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0465/2016	01/12/2016	EP	Summary

EU/USA Agreement: protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

PURPOSE: to conclude, on behalf of the European Union, an Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: in 2006, a High Level Contact Group ("HLCG"), composed of senior officials from the Commission, the Council Presidency and the U.S. Departments of Justice, Homeland Security and State, was established to explore ways that would enable the EU and the U.S. to work more efficiently together in the exchange of law enforcement information while ensuring that the protection of personal data and privacy are guaranteed. The conclusion reached in the HLCG final report of October 2009¹ was that an international agreement binding both the EU and the U.S. to apply agreed common data protection principles for transatlantic data transfers in the law enforcement area was the best option.

On 3 December 2010, the Council adopted a decision authorising the Commission to open negotiations on such an agreement between the European Union and the United States of America. On 28 March 2011, the Commission opened negotiations. On 8 September 2015, the Parties initialled the text.

The Agreement should now be concluded on behalf of the European Union.

CONTENT: the Commission proposes that the Council adopt a decision approving, on behalf of the EU, the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses.

The Agreement aims to establish a comprehensive framework of data protection principles and safeguards when personal information is transferred for criminal law enforcement purposes between the U.S., on the one hand, and the EU or its Member States on the other. The objective is to ensure a high level of personal data protection when transferred between the U.S., on the one hand, and the EU or its Member States on the other, for law enforcement purposes and, thereby, enhance cooperation between the parties.

Whilst not being itself the legal basis for any transfer of personal information to the U.S., the Agreement supplements, where necessary, data protection safeguards in existing and future data transfer agreements or national provisions authorising such transfers.

1) Scope and general objectives: the Agreement aims to establish for the first time, a data protection instrument that covers in a comprehensive and consistent manner all data transfers in a given area (i.e. transatlantic data exchanges in the field of police cooperation and judicial cooperation in criminal matters).

Furthermore, the Agreement will substantiate in the transatlantic context the general requirements on international data transfers laid down in the [future directive](#) on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data adopted on 14 April 2016.

2) Data protection principles and safeguards: the Agreement covers important principles governing personal data processing as well as key safeguards and limitations:

Purpose and use limitations: processing (which includes transfers) can take place only for explicit and legitimate purposes within the scope of the Umbrella Agreement, i.e. the prevention, investigation, detection or prosecution of criminal offences.

The Agreement ensures the application of the safeguards to the entire "life cycle" of a given data set from the original transfer from the EU to its processing by a U.S. competent authority and vice-versa, as well as its possible further processing by another U.S. authority or, in the case of a data transfer from the U.S. to a competent authority of the EU or (one of) its Member States, its possible further sharing with/processing by another EU or Member State authority.

Onward transfer: if a U.S. authority intends to further transfer data it has received from the EU or one of its Member States to a third country/international organisation not bound by the agreement, it will first have to obtain consent from the law enforcement authority in the EU which has originally transferred the data to the United States. This rule equally applies where an authority of the EU or one of its Member States intends to further transfer data it has received from the U.S. to a third country/international organisation.

The provisions expressly take into account the special sensitivity of the transfer in bulk of data of unsuspected persons (e.g. PNR data of every passenger taking a flight, independently of any specific suspicion). The Agreement requires that any further transfer of personal information other than in relation to specific cases, may only take place under specific conditions that provide due justification for the onward transfer.

In addition, the Parties to the Agreement must take measures to ensure:

- data quality and integrity of information ;
- information security and notification of an information security incident ;
- effective methods (such as logs) for demonstrating the lawfulness of processing and use of personal information;
- specific retention periods in order to ensure that data will not be retained for longer than necessary and appropriate. The retention periods will be subject to periodic reviews and will have to be published or otherwise made publicly available.

Special categories of data: the processing of personal data revealing racial or ethnic origin, political opinions or religious or other beliefs, trade-union membership or personal information concerning health or sexual life, may only take place when appropriate safeguards are in place in accordance with law (e.g. masking the information after effecting the purpose for which the data was processed or requiring supervisory approval to access the information).

3) Individual rights: data subjects will be able, for the first time, to avail themselves of rights of general application for any transatlantic transfer of personal data in the criminal law enforcement sector, these being:

- the right to access data and the right to rectification of data which concern them ;
- the right to administrative redress if an individual disagrees with the outcome of his or her request for access/rectification of personal data;
- the right to seek judicial redress for the i) denial of access, ii) denial of rectification or iii) unlawful disclosure by the authorities of the other Party

4) Aspects relating to the application of the Agreement and oversight: measures must be put in place in order to:

- promote accountability of the authorities processing personal data covered by the Agreement;
- establish one or more public authorities exercising independent oversight functions and powers, including review, investigation and intervention;
- ensure cooperation between oversight authorities; national contact points shall be established to assist with the identification of the oversight authority to be addressed in a particular case;
- conduct periodic joint reviews of the implementation and effectiveness of the Agreement.

The Agreement will be of unlimited duration (which is justified by the nature of the Agreement as a framework providing for protections and safeguards, as well as in the light of the possibility of suspending and terminating the Agreement).

EU/USA Agreement: protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

PURPOSE: to conclude, on behalf of the European Union, the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses was signed on 2 June 2016, subject to its conclusion at a later date.

The Agreement should now be approved on behalf of the Union.

The Union has competence covering all the provisions of the Agreement.

In particular, the Union adopted [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council¹ on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data. This Directive provides transfers by Member States subject to appropriate safeguards.

CONTENT: the draft Council Decision seeks to approve, on behalf of the European Union, the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses.

The Agreement aims at establishing a comprehensive framework of data protection principles and safeguards when personal information is transferred for criminal law enforcement purposes between the United States, on the one hand, and the European Union or its Member States on the other. Its objective is to ensure a high level of data protection and, thereby, enhance cooperation between the parties.

Whilst not being itself the legal basis for any transfer of personal information to the United States, the Agreement supplements, where necessary, data protection safeguards in existing and future data transfer agreements or national provisions authorising such transfers.

The United Kingdom and Ireland are not bound by the rules laid down in the Agreement which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or 5 of Title V of Part Three of the TFEU where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down in the Agreement.

Denmark is not bound by the rules laid down in the Agreement or subject to their application which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or 5 of Title V of Part Three of the TFEU.

EU/USA Agreement: protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Jan Philipp ALBRECHT (Greens/EFA, DE) on the draft Council decision on the conclusion, on behalf of the European Union, of the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses.

The committee recommended that the European Parliament give its consent to the conclusion of the Agreement.

In the short justification accompanying the draft resolution, it is recalled that, following calls by the European Parliament, on 3 December 2010, the Council adopted a decision authorising the Commission to open negotiations on an Agreement between the European Union and the United States of America on the protection of personal data when transferred and processed for the purpose of preventing investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters.

On 28 March 2011, the Commission opened negotiations with the U.S. Department of Justice. Over the course of the negotiations, the Parliament was regularly informed.

The text of the agreement was initialled on 8 September 2015.

Following the adoption by the U.S. Congress of the Judicial Redress Act on 24 February 2016, on 18 July 2016, the Council decided to request the European Parliament to give its consent to the conclusion of the Agreement.

The purpose of the Agreement is to ensure a high level of protection of the fundamental rights and freedoms of individuals, in particular the right to privacy with the respect to the processing of personal data when personal data are transferred to competent authorities of the European Union and its Member States and the US for these purposes.

The Agreement contains provisions setting out the basic data protection principles, namely:

- purpose and use limitations of personal data transferred;
- data quality and integrity and retention periods;
- rules on onward transfers, both to domestic authorities of the contracting party and to third country authorities or international organisation not bound by the Agreement. In the latter case, the prior consent of the law enforcement authority originally transferring the data is required.

One of the main novelties of the Umbrella Agreement is that it will allow the citizens of each Party to be able to seek judicial redress for the i) denial of access, ii) denial of rectification or iii) unlawful disclosure by the authorities of the other Party. These rights are exercised pursuant to the law of the State where they are invoked.

In order to overcome the lack of rights for non-US citizens, the US Congress adopted the Judicial Redress Act on 24 February 2016. This Act will extend to the citizens of covered countries (e.g. the Member States) some judicial redress grounds provided under the 1974 US Privacy Act.

Regarding the exemptions possible under Section 552a(j)(2) of the US Privacy Act, the data subject rights conferred by the Umbrella Agreement are formulated in an unconditional manner and accordingly, the US authorities may not invoke exemptions of the US Privacy Act for law enforcement databases to deny an effective judicial redress to EU citizens as it is currently the case for law enforcement databases such as for PNR data or the TFTP.

The Umbrella Agreement provides that the Parties shall have in place one or more public oversight authorities that exercise independent oversight functions and powers, including review, investigation and intervention, where appropriate on their own initiative. It shall be subject to periodic joint reviews.

The Rapporteur concluded that the agreement constitutes major progress for the protection of personal data when transferred between the EU and the US in the context of law enforcement activities.

EU/USA Agreement: protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

The European Parliament adopted by 481 votes to 75, with 88 abstentions, a legislative resolution on the draft Council decision on the conclusion, on behalf of the European Union, of the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses.

In line with the Committee on Civil Liberties, Justice and Home Affairs, the European Parliament gave its consent to the conclusion of the Agreement.

The Agreement aims at establishing a comprehensive framework of data protection principles and safeguards when personal information is transferred for criminal law enforcement purposes between the United States, on the one hand, and the European Union or its Member States on the other. Its objective is to ensure a high level of data protection.

EU/USA Agreement: protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

PURPOSE: to conclude, on behalf of the European Union, an Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences.

LEGISLATIVE ACT: Council Decision (EU) 2016/2220 on the conclusion, on behalf of the European Union, of the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences.

CONTENT: under this Decision, the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences is approved on behalf of the European Union. It was signed on 2 June 2016, subject to its conclusion at a later date.

Purpose: the Agreement aims to ensure a high level of protection of personal information and enhance cooperation between the United States and the European Union and its Member States, in relation to the prevention, investigation, - detection or prosecution of criminal offences, including terrorism.

For this purpose, this Agreement establishes the framework for the protection of personal information when transferred between the United States, on the one hand, and the European Union or its Member States, on the other.

This Agreement in and of itself shall not be the legal basis for any transfers of personal information. A legal basis for such transfers shall always be required. The Agreement supplements data protection safeguards in existing and future data transfer agreements or national provisions authorising such transfers.

Data protection principles and safeguards: the Agreement covers important principles governing personal data processing as well as key safeguards and limitations:

- purpose and use limitations: the transfer of personal information shall be for specific purposes authorised by the legal basis for the transfer and the further processing of personal information by a Party shall not be incompatible with the purposes for which it was transferred;
 - onward transfer: where a Competent Authority of one Party has transferred personal information relating to a specific case to a Competent Authority of the other Party, that information may be transferred to a State not bound by the present Agreement or international body only where the prior consent of the Competent Authority originally sending that information has been obtained;
 - maintaining quality and integrity of information: the Parties shall take reasonable steps to ensure that personal information is maintained with such accuracy, relevance, timeliness and completeness as is necessary and appropriate for lawful processing of the information;
- information security and notification of an information security incident: the Parties shall ensure that they have in place appropriate technical, security and organisational arrangements for the protection of personal information against all of the following: (a) accidental or unlawful destruction; (b) accidental loss; and (c) unauthorised disclosure, alteration, access, or other processing;
- the setting of precise retention periods to ensure that data will not be retained longer than is necessary and appropriate. Processing of personal information revealing racial or ethnic origin, political opinions or religious or other beliefs, trade union membership or personal information concerning health or sexual life shall only take place under appropriate safeguards in accordance with law.

The Parties shall ensure that any individual is entitled to seek access to his or her personal information and request a rectification if they consider it to be either inaccurate or has been improperly processed. They shall also ensure that any individual is entitled to seek administrative redress where he or she believes that his or her request for access has been improperly denied.

ENTRY INTO FORCE: 10.12.2016.