



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 26 November 2010**

**16972/10**

**JAI 1001  
USA 122  
RELEX 1017  
DATAPROTECT 91**

**COVER NOTE**

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from: General Secretariat of the Council  
to: Delegations

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RESTREINT UE

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Subject: Draft Council decision authorising the opening of the negotiations for an EU-US agreement 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 and judicial cooperation in criminal matters  
-Letters from the EP

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Annex I sets out a letter of 24 November 2010 from the rapporteur of the European Parliament to Minister De Clerck, regarding the above Agreement.

Annex II sets out a letter of 24 November 2010 from the Chair of the LIBE Committee to Minister de Clerck on the same topic.

Dear Mr De Clerck,

As the decision of the Council on the mandate for a future EU-US international agreement 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 and judicial cooperation in criminal matters is coming up soon, I would like to reiterate the firm support to the Commission draft mandate expressed by the European Parliament in its Resolutions of 11 November 2010 on the forthcoming EU-US Summit and the Transatlantic Economic Council<sup>1</sup> and on the global approach to transfers of passenger name record (PNR) data to third countries, and on the recommendations from the Commission to the Council to authorise the opening of negotiations between the European Union and Australia, Canada and the United States<sup>2</sup>.

In this context, I would also like to stress crucial points from Parliament's perspective, namely the application of the agreement to existing and future bilateral agreements as well as the creation of enforceable data protection rights in line with the Charter of Fundamental Rights of the European Union and the Data Protection Directive 95/46/EC.

The relevant paragraphs read:

"The European Parliament (...)

*47. Calls on the Council to agree swiftly on an ambitious negotiating mandate for a EU-US data protection agreement; urges the Union's negotiator to move the negotiations forward in order to ensure full protection of fundamental rights; supports the Commission's approach to have such a framework agreement apply to all future and all existing EU or Member State personal data transfer and processing agreements with the US, in the framework of judicial and police cooperation;*

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<sup>1</sup> P7\_TA-PROV(2010)0396.

<sup>2</sup> (P7\_TA(2010)0397).

*10. Welcomes and strongly supports the recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the EU and the USA on 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; supports the Commission's approach of having such a framework agreement apply to all future and all existing EU or Member States' agreements with the USA on personal data transfer and processing for the purpose of preventing, investigating, detecting or prosecuting criminal offences in the framework of judicial and police cooperation;*

*11. Emphasises that the firm objectives set out in the Commission's recommendation to the Council to authorise the opening of negotiations for an agreement between the EU and the USA on 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 are essential for any data-sharing agreements with USA – as is an early start to negotiations on enforceable data-protection rights, in line with the Charter of Fundamental Rights of the European Union and with Directive 95/46/EC;"*

The European Parliament and notably the LIBE Committee, me as rapporteur and the shadow rapporteurs of the political groups will continue the work on this dossier in the spirit of loyal cooperation with the other institutions to ensure that the principles outlined in the Treaties as well in the Charter are duly taken in account.

We are looking forward to further constructive exchanges with the Council Presidency and the Commission.

Yours sincerely,

Jan Philipp ALBRECHT

Dear Mr De Clerck,

As the decision of the Council on the mandate for a future EU-US international agreement 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 and judicial cooperation in criminal matters is coming up soon, I would like to reiterate also on behalf of the LIBE coordinators and the rapporteur who wrote to you on the same subject the firm support to the Commission draft mandate. This support was clearly expressed by the European Parliament in its Resolutions of 11 November 2010 on the forthcoming EU-US Summit and the Transatlantic Economic Council<sup>1</sup> and on the global approach to transfers of passenger name record (PNR) data to third countries, and on the recommendations from the Commission to the Council to authorise the opening of negotiations between the European Union and Australia, Canada and the United States<sup>2</sup>.

The relevant paragraphs read as follows:

"The European Parliament (...)

*47. Calls on the Council to agree swiftly on an ambitious negotiating mandate for a EU-US data protection agreement; urges the Union's negotiator to move the negotiations forward in order to ensure full protection of fundamental rights; supports the Commission's approach to have such a framework agreement apply to all future and all existing EU or Member State personal data transfer and processing agreements with the US, in the framework of judicial and police cooperation;*

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*10. Welcomes and strongly supports the recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the EU and the USA on 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; supports the Commission's approach of having such a framework agreement apply to all future and all existing EU or Member States' agreements with the USA on personal data transfer and processing for the purpose of preventing, investigating, detecting or prosecuting criminal offences in the framework of judicial and police cooperation;*

*11. Emphasises that the firm objectives set out in the Commission's recommendation to the Council to authorise the opening of negotiations for an agreement between the EU and the USA on 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 are essential for any data-sharing agreements with USA – as is an early start to negotiations on enforceable data-protection rights, in line with the Charter of Fundamental Rights of the European Union and with Directive 95/46/EC;"*

The European Parliament and notably the LIBE Committee will continue the work on this dossier in the spirit of loyal cooperation with the other institutions to ensure that the principles outlined in the Treaties as well as in the Charter are duly taken in account.

We are looking forward to further constructive exchanges with the Council Presidency and the Commission.

Yours sincerely,

Juan Fernando LOPEZ AGUILAR