

Opinion from the Court of Justice on the compatibility with the Treaties on the Agreement between the US and the EU on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

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The European Parliament rejected two motions for resolution presented pursuant to Rule 108(2) of the Rules of Procedure on **seeking an opinion from the Court of Justice** on the compatibility with the Treaties 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.

1) In the first motion for resolution, presented by the GUE/NGL group (and rejected by 165 votes to 442, with 36 abstention), Members considered that that there is legal uncertainty as to whether the draft agreement is compatible with the **provisions of the Treaties** (Article 16 of the TFEU) and the **Charter of Fundamental Rights of the European Union** (Articles 7, 8 and 52(1) as regards the right of individuals to protection of personal data and Article 47 as regards the availability of an effective judicial remedy).

Members at the origin of the motion for resolution noted that:

- according to the European Data Protection Supervisor (EDPS), there are concerns that the supervisory data protection authorities (DPAs) in the US do not meet the Court of Justice requirements for being considered fully independent and with effective powers of intervention;
- the US Judicial Redress Act does not overturn the existing exemptions to data subject rights which certain systems of records in the US may provide pursuant to the US Privacy Act, such as PNR data;
- Parliament's Legal Service has pointed out that the EU-US Umbrella Agreement (specifically Article 5(3)) will serve as a form of adequacy decision, creating a '*de iure*' legal presumption of compliance by the US with EU data protection standards and potentially undermining real compliance with EU Data Protection law.

2) In this second motion for resolution, presented by the ALDE group (and rejected by 206 votes to 394, with 42 abstentions), Members considered that there is legal uncertainty as to whether the agreement is compatible with the **provisions of the Treaties** (Article 16) and the **Charter of Fundamental Rights of the European Union** (Articles 7, 8, 21, 47 and 52(1)) as regards the right of individuals to protection of personal data, the principle of non-discrimination and the right to an effective remedy and to a fair trial.

Members at the origin of the motion for resolution noted that:

- to date, the European Union or its Member States have not been designated by the US Department of Justice as a 'covered country' for its citizens to be able to bring civil actions against certain US government agencies under the Privacy Act of 1974;

- the judicial remedies afforded by the US Judicial Redress Act would not be granted to non-EU nationals in the Union whose personal data are processed and transferred to the US pursuant to the Agreement;
- the current US legislation includes various limitations and preconditions as to the scope of application, the causes of action provided, the designation of agencies covered, and the application of the Privacy Act of 1974 in law enforcement matters;
- personal data processed on the basis of the EU-US Agreement on Passenger Name Records (PNR) and the EU-US Agreement on the processing and transfer of Financial Messaging Data from the EU to the US for the purposes of the Terrorist Finance Tracking Program (TFTP) are currently exempted from the provisions on civil remedies under the Privacy Act of 1974.

Members considered that:

- attention should be paid to the following points: the **definitions** of the concepts of ‘personal data’ and ‘data processing’ differ from the EU definitions;
- the **data retention** period should be defined more strictly in relation to the purpose pursued;
- the restrictions to an **individual’s access rights** are very broad and access could be improved by the establishment of an indirect access right mechanism.