

Transatlantic Counter-Terrorism Cooperation After Lisbon

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Introduction

EU-US counter-terrorism cooperation has been an area of EU external relations with substantial growth in the recent past. The political momentum for such cooperation was boosted post-9/11 and resulted in the conclusion of a number of international agreements between the European Union and the United States. Concluded primarily under the third pillar, these agreements have been subject to considerable criticism in Europe, both in terms of democracy and legitimacy and in terms of substance and the compatibility of their content with fundamental rights. These issues are now due to be reviewed following the entry into force of the Lisbon Treaty, which brings about a number of significant constitutional changes to the way the Union operates both internally and externally. This article is a contribution to the current discussion on the direction and content of future transatlantic counter-terrorism cooperation arrangements in the light of the entry into force of the Lisbon Treaty. I will begin by highlighting the key legal, constitutional, and political issues surrounding the existing EU-US counter-terrorism agreements; I will then outline the main changes brought about by the Lisbon Treaty that have the potential to influence transatlantic relations in the field of counter-terrorism and criminal matters more generally; and I will finish by putting forward a series of recommendations highlighting key issues to be taken into account in the future development of transatlantic cooperation against terrorism.

Transatlantic Counter-Terrorism Cooperation before Lisbon: The Legacy of 9/11 and the Third Pillar

Transatlantic counter-terrorism cooperation before Lisbon was exemplified by the conclusion of a series of agreements between the European Union and the United States covering a wide range of issues and triggered primarily by the events of 9/11. The first major step in this context was the conclusion of the EU-US agreements on extradition and mutual legal assistance.¹ Their signature marked an important constitutional precedent for the European Union, with the agreements being the first major international agreements concluded under the third pillar.² The agreements were the outcome of the political momentum generated post-9/11 at the EU level. This momentum resulted both in furthering European integration internally, via the adoption of a raft of EU legislation (the Framework Decisions on terrorism and the European Arrest Warrant being prime examples in this context), and in boosting the EU's position as a global actor in the field.³ While these agreements reflected the Parties' political will to cooperate post-9/11, subsequent agreements were generated from the need to comply with US measures taken after the attacks. The first example concerns the agreements relating to the transfer, from airlines to the US Department of Homeland Security, of Passenger Name Records (PNR) of passengers flying from the EU to the US, which were necessitated in order to ensure that compliance of airlines with US law requiring such transfers did not breach EU law. Following the acceptance by the Commission of the adequacy of US data protection standards, transatlantic cooperation in this context began as a first pillar international agreement (between the Community and the US).⁴ Following an ECJ ruling against the legality of the first pillar legal basis used,⁵ the EC-US agreement was replaced by third pillar agreements between the EU and the US.⁶ Last but not least, the publicity regarding the transfer to the US authorities of personal data contained in transactions processed by SWIFT⁷ generated political pressure resulting in another third pillar agreement enabling the transfer of such data to the US authorities, signed one day before the entry into force of the Lisbon Treaty.⁸ The signature of these agreements by the European Union has been met by strong objections and concerns on political, democratic, and human rights/rule-of-law grounds.

1. Political concerns

Increased cooperation with the US could be seen as welcome as a sign of the emergence of the EU as a global actor in criminal matters. From this perspective, the signature of agreements in criminal matters with the US was of great constitutional significance, as the agreements constituted precedents for external action under the third pillar and, at least for some, rendered academic the then contested issue of whether the Union had a legal personality.⁹ However, the agenda of furthering European integration in the field of criminal matters has had to be promoted against the background of growing political concerns with regard to the extent and nature of transatlantic cooperation post-9/11. These concerns – which are of course inextricably linked with the content of transatlantic counter-terrorism cooperation – centered on the nature of the US response post-9/11 and the perceived willingness of the EU to uncritically adopt the US “war on terror” approach. In this context, it should be remembered that two of the major elements of transatlantic cooperation in the field of criminal matters, the PNR and the Terrorist Finance Tracking Programme (TFTP) Agreements, consist of an EU response to US unilateral post-9/11 demands and entail to a large extent the acceptance of the legality of US measures under EU law. In its willingness to emerge as a global actor in the field of counter-terrorism and criminal law in general, the European Union has demonstrated a willingness to accommodate to a great extent emergency measures developed outside the Union. As will be seen below, the compatibility of some of these heavily securitised measures with EU law (in particular privacy and data protection standards) has been contested. External action in the field of cooperation in criminal matters came at a juncture, where security was also being prioritised at the level of internal EU action, reflected in policy terms particularly in the Hague Programme, which focused to a great extent on the collection and exchange of a wide range of personal data for security purposes.¹⁰

2. Democratic concerns

Concerns with regard to the uncritical adoption of US standards by the EU have been compounded by the marked lack of democratic scrutiny and transparency in the negotiation and conclusion of the agreements. From a constitutional point of view, the fact that the agreements were ultimately negotiated under the third pillar meant that negotiations were formally led by the Presidency of the European Union and that the European Parliament did not have any role in the process of negotiation and signature. These constitutional constraints were combined with the negotiating practice of Member States (and at times the Commission), which effectively shielded the agreements from any kind of meaningful debate and scrutiny. The EU-US agreements remained classified until the very last weeks before signature, notwithstanding repeated requests for their publication for the purpose of scrutiny.¹¹ The Europol-US Agreement was not even published in the Official Journal.¹² The first version of the PNR Agreement (between the Community and the US) was transmitted to the European Parliament for examination under deadlines which, according to Parliament, did not enable it to conduct meaningful scrutiny – with the handling of scrutiny leading to Parliament challenging the agreement in the ECJ.¹³ The TFTP Agreement was, as seen above, signed a day before the entry into force of the Lisbon Treaty – in an attempt to conclude it under the intergovernmental process of the “old” third pillar, thus pre-empting the Community elements brought about by Lisbon and effectively sidelining the European Parliament. Unsurprisingly, this handling led to the eventual rejection of the agreement by the Parliament after Lisbon.¹⁴ The conclusion of these agreements, negotiated with minimal transparency in the face of sustained and growing fundamental rights concerns expressed by parliaments, EU expert bodies, and civil society,¹⁵ was presented as a *fait accompli*, with signature dates set out in advance and limited time for debate and scrutiny.¹⁶

3. Substantive concerns – fundamental rights and the rule of law

A key fundamental rights concern in transatlantic counter-terrorism cooperation involves privacy.¹⁷ The agreements on mutual legal assistance, PNR and TFTP, all provide for the transfer of a wide range of everyday personal data to a wide range of US authorities. The adverse consequences of such extensive information sharing for the right to privacy and data protection have been documented repeatedly and in detail. The conclusion of these agreements in such broad terms and with limited protection safeguards raises the question of whether, in its emergence as a global actor in criminal matters, the European Union has compromised its proclaimed internal standards and values. The human rights concerns stemming from the acceptance of a heavily securitised US agenda involving maximum collection of personal data are exacerbated in the light of the minimal rule-of-law safeguards secured by the EU in some of the agreements. The scope of information exchange agreements and the specification as to which US authorities will receive personal data have been drafted in such broad terms that the *foreseeability* and sure footing of the legislation leave much to be desired. Moreover, in particular in the PNR Agreement, safeguards secured by the EU side are not expressly legally binding but take the form of “letters” by the US executive.¹⁸

The Lisbon Treaty

The Lisbon Treaty introduces a number of changes with potentially far-reaching consequences for EU external action in general and transatlantic counter-terrorism cooperation in particular. They involve both changes in the internal constitutional architecture of the Union (such as, in principle, the abolition of the pillars), as well as changes in the provisions on the Union’s external action. Underpinning these changes is the emphasis placed by the Lisbon Treaty on upholding the values of the Union and on protecting fundamental rights. As will be seen below, these changes can potentially address the shortcomings of the existing transatlantic cooperation analysed above.

1. Changes in the policy: European values in EU external relations

A key feature of the Lisbon Treaty is its emphasis on the values upon which the Union is deemed to be founded. These values are central not only to defining European identity internally but also to guiding the external action of the Union. Not surprisingly, respect for fundamental rights and the rule of law are expressly included in the list of EU values found in Art. 2 TEU. This enumeration of the values upon which the Union is founded is not merely declaratory. According to Art. 3(1) TEU, the promotion of these values is a key aim of the Union. The role of the Union in promoting its values is further highlighted with regard to EU external action, with Art. 3(5) TEU stating that “in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens.”

The centrality of the values of the Union, when the Union acts at the global level, is further confirmed by the specific Treaty provisions on external action. According to Art. 21(1) TEU, ‘the Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world,’ which include: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms and respect for human dignity. According to Art. 21(2) TEU, the Union will define and pursue common policies and actions, and it will work towards a high degree of cooperation in all fields of international relations, in order to, *inter alia*, safeguard its values and consolidate and support democracy, the rule of law, human rights, and the principles of international law. Art. 205 TFEU reiterates that these provisions will guide the Union’s action on the international scene. It is thus clear that the promotion of fundamental rights and the rule of law, forming key values of the Union, is a key element of EU external action after Lisbon.

2. Institutional changes – Addressing the democratic deficit?

The Lisbon Treaty introduces far-reaching institutional changes as regards the negotiation and conclusion of international agreements in criminal matters. These changes emanate from the abolition of the pillars in Lisbon and, in principle, the “communitarisation” of the third pillar. In this light, Art. 47 TEU expressly grants the Union legal personality. The negotiation and conclusion of international agreements in matters previously falling under the third pillar are now governed by the general provision of Art. 218 TFEU. A major development in this context is the enhanced role of the European Parliament. According to Art. 218(6)(v), the consent of the European Parliament in agreements covering fields to which the ordinary legislative procedure applies is required. This would cover the majority of areas falling under the TFEU Title on the Area of Freedom, Security and Justice (AFSJ). This change has the potential to address to a great extent the democratic concerns prevalent in the conclusion of the “previous” third pillar agreements, and the democratic debate and transparency in the development of EU external action in criminal matters will hopefully be enhanced. By its rejection of the third pillar TFTP Agreement, the European Parliament has shown that it intends to take its new powers seriously in practice. The rejection of this agreement – on institutional and human rights grounds – is a sign that the European Parliament will assume a central role in the negotiation and conclusion of international agreements in the field of counter-terrorism, with the Parliament being increasingly involved in the early stage of the negotiation of the mandate to these agreements.¹⁹ This role is implied in Art. 218(10) TFEU, which states that the European Parliament must be informed immediately and fully at all stages of the procedure. It may also be regarded as a reflection of the duty of sincere mutual cooperation, which the Lisbon Treaty extends expressly to cover cooperation between the EU institutions.²⁰

3. Substantive changes – Fundamental rights at the heart of the European project

The commitment to respect human rights lies at the heart of the Lisbon Treaty. Along with the central position of respect for fundamental rights in the list of the values of the Union, this commitment is clearly reflected in Art. 6 TEU. The sources of fundamental rights are manifold. The Union recognises the rights, freedoms, and principles set out in the Charter of Fundamental Rights, which will have the same legal value as the Lisbon Treaty.²¹ Fundamental rights, as guaranteed by the European Court of Human Rights (ECHR) and as they result from the constitutional traditions common to the Member States, constitute general principles of the Union’s law.²² The Treaty also calls for the Union’s accession to the ECHR.²³ These provisions make respect for fundamental rights a key component of both EU internal and external action. The multiplicity of the sources of fundamental rights at the EU level (and, in particular, the express recognition of the legal value of the Charter) means that the content of these rights is both enhanced and expanded. This point is of particular relevance as regards fundamental rights that come into play in the context of transatlantic counter-terrorism cooperation, in particular the right to the protection of private life and the right to data protection, which is expressly recognised in the Charter.²⁴

Another constitutional development which renders the protection of fundamental rights central to EU external action stems from the principle of consistency between EU external action and the other EU policies,²⁵ particularly when read in combination with the provisions on the EU as an Area of Freedom, Security and Justice. Respect for fundamental rights is a key element of the development of the Union into an “area of freedom, security and justice”²⁶ and the importance of fundamental rights in this context has also been emphasised in the Stockholm Programme.²⁷ The development of internal EU law in the field of cooperation in criminal matters must thus respect fundamental rights. The principle of consistency means that external action on AFSJ in general – and counter-terrorism in particular – must be consistent with internal standards in this field.

Transatlantic Counter-Terrorism Cooperation after Lisbon

Where do the Lisbon changes leave us with regard to transatlantic counter-terrorism cooperation? A revised TFTP Agreement²⁸ has now obtained the consent of the European Parliament under the Lisbon framework.²⁹ However, this is not the end of the road with regard to the conclusion of international agreements in the field of cooperation in criminal matters. Along with negotiations on the conclusion of a new, post-Lisbon EU-US PNR Agreement,³⁰ the conclusion of the TFTP Agreement was accompanied by a commitment to negotiations on the conclusion of a horizontal EU-US Agreement on data protection in the field of criminal law.³¹ In view of forthcoming negotiations on these agreements, and the possibility of transatlantic cooperation being extended to further areas in the future, Lisbon gives rise to a number of issues to be taken into account when shaping the principles and content of such cooperation from an EU perspective.

1. Political considerations – Upholding the values of the Union

As mentioned above, one of the key objections with regard to the conclusion of the third pillar EU-US agreements has been the perceived uncritical acquiescence of EU negotiators to heavily securitised US demands in the post-9/11 era. The time has come to rethink the acceptance of heavily securitised emergency measures in the EU legal order. The emergence of the European Union as a global actor with a strong voice under Lisbon requires the Union to uphold and promote its values, at the heart of which lie the respect for fundamental rights and the rule of law. The emphasis on the need to take fundamental rights and the rule of law seriously is already evident at the EU level both internally (with the Stockholm Programme departing from the heavily securitised agenda of its Hague predecessor) and externally (with the ECJ ruling in *Kadi* linking the autonomy of the Union legal order with upholding fundamental rights and the rule of law³²). Not compromising but rather upholding and promoting these values in the field of transatlantic counter-terrorism cooperation is a key task of EU negotiators in the post-Lisbon era. Promoting these values in this context is also crucial to projecting the identity of the Union in the world, as well as for enhancing the legitimacy of these agreements internally.

2. Institutional/democratic considerations

In the light of the potentially significant consequences of EU-US agreements in the field of counter-terrorism for fundamental rights, a clear case for their conclusion needs to be made to the European public. The democratic and legitimacy deficit underpinning the third pillar agreements needs to be addressed. As mentioned above, the Lisbon Treaty addresses the democratic deficit to some extent, by strengthening the role of the European Parliament in the negotiation and conclusion of agreements between the EU and the US. However, this does not appear to be the case with regard to agreements concluded between the US and EU bodies in the criminal justice field, such as Europol and Eurojust – the third pillar decisions delineating the rules applying to these bodies provide for specific rules on the conclusion of agreements with third countries with no real involvement of the European Parliament.³³ This deficit needs to be addressed after the entry into force of the Lisbon Treaty, in the amendment of the Europol and Eurojust decisions in line with the legal bases provided for in the Lisbon Treaty.³⁴ The strengthening of democratic controls over proposals for future transatlantic counter-terrorism agreements needs to be accompanied by an enhancement of transparency and the involvement of civil society. Transparency can take the form of consultation regarding the need for such agreements and – notwithstanding the limits with regard to divulging details on negotiations – information as regards their progress and general direction. Key players in enhancing both the democratic debate

and transparency in this context are national parliaments, which have been granted an enhanced scrutiny role under the Lisbon Treaty.³⁵

3. Substantive considerations

As argued throughout this article, after Lisbon, EU external action in general and in criminal matters in particular must be guided by the values the Union proclaims to uphold and promote, including respect for fundamental rights and the rule of law. In the negotiation of future agreements on transatlantic counter-terrorism cooperation, the protection and promotion of the rights to private and family life as well as data is of particular importance. In this context, and in the light of the precedents of transatlantic counter-terrorism cooperation that are highly invasive to private life, two separate – but interrelated – questions need to be thoroughly examined: what kind of, and how much, personal information is necessary to be collected and transferred to the US for the specific purposes of the agreements negotiated? And, at a second stage, once there is agreement on the types and volume of data to be collected and transferred, are the privacy safeguards offered by the US compatible with EU values and standards? The proposed EU-US horizontal agreement on data protection may serve as a good starting point in addressing both questions as regards the conclusion of future agreements on transatlantic counter-terrorism cooperation (including agreements concluded by Europol and Eurojust) but also as regards the functioning of looser structures of operational cooperation between the EU and the US (such as the exchange of liaison officers). As regards upholding the rule of law, the EU-US data protection agreement may contribute towards the establishment of clear, legally binding standards on privacy protection and remedies for the affected individuals.

Upholding the values of the Union in the context of the collection and analysis of personal data for counter-terrorism purposes should also be a guiding principle for the development of internal Union law in the field of cooperation in criminal matters. In a number of instances, the US approach – as seen above, heavily criticised in the context of EU-US cooperation – is in the process of being adopted by the EU legal order. The adoption of similar measures at the EU level has been justified on the grounds of facilitating transatlantic cooperation, on the one hand by adding EU safeguards and on the other by ensuring reciprocity. In this light, the recently signed TFTP Agreement states that, during its course, the Commission will carry out a study into the possible introduction of an equivalent EU system allowing for a more targeted transfer of data.³⁶ In the field of PNR, and notwithstanding the sustained concerns with regard to the compatibility of the EU-US PNR Agreements with EU privacy and data protection law, the Commission tabled a proposal in 2008 for a Framework Decision with a similar system of transmission of PNR data by carriers flying *into* the EU.³⁷ The Commission justified the proposal as a result of “policy learning” from the existing PNR Agreements with the US and Canada and a new, “lisbonised” proposal is expected to be tabled in the near future.³⁸ While these proposals may be of use in setting EU standards, which can form benchmarks for subsequent EU negotiations with the US and globally,³⁹ their necessity and compatibility with fundamental rights must be fully justified before they are adopted at the EU level. The prospect of the EU importing heavily securitised law and policy with far-reaching privacy consequences is real.

Conclusion – Lisbon as an Opportunity for Change?

The legacy of the third pillar with regard to transatlantic counter-terrorism cooperation leaves much to be desired with regard to upholding fundamental rights and the rule of law in EU external action. The Lisbon Treaty has brought about a number of changes with a potentially profound impact on the EU as a global actor in the field of cooperation in criminal matters: it addresses the democratic deficits caused by the abolition of the third pillar and the greater involvement of the European Parliament in transatlantic counter-terrorism cooperation; it emphasises respect for fundamental rights as lying at the heart of the European

project; and it focuses on the values of the Union and the duty to uphold and promote them in EU external action. In the light of these changes, Lisbon must be viewed as an opportunity to put the dialogue on transatlantic counter-terrorism cooperation in a different perspective. With the momentum for further agreements between the EU and the US in the field of cooperation in criminal matters growing, now is the time for the European Union to reframe a heavily securitised agenda and emerge as a strong global actor upholding fundamental rights and the rule of law.

1. Agreement on extradition between the European Union and the United States of America, O.J. L 181, 19 July 2003, p. 27; Agreement on mutual legal assistance between the European Union and the United States of America, O.J. L 181, 19 July 2003, p. 34. See also the Council Decision, on the basis of Arts. 24 and 38 TEU, concerning the signature of these agreements: O.J. L 181, 19 July 2003, p. 25.↔
2. See *V. Mitsilegas*, 'The New EU-US Co-operation on Extradition, Mutual Legal Assistance and the Exchange of Police Data' in 2003 *European Foreign Affairs Review* 8, pp. 515-536. See also the parallel negotiation and later signature of an agreement between Europol and the US on the exchange of personal data (doc. 13689/02 Europol 82, 4 November 2002) – for details, see Mitsilegas *op. cit.*↔
3. See *V. Mitsilegas*, *op. cit.* (footnote 2).↔
4. Commission Decision on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States' Bureau of Customs and Border Protection, O.J. L 235, 6 July 2004, p. 11 (including an Annex with the relevant US Undertakings); and Council Decision on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the US Department of Homeland Security, Bureau of Customs and Border Protection, O.J. L 183, 20 May 2004, p. 83 (the Agreement is annexed to the Decision).↔
5. Joined cases C-317/04 and C-318/04, *European Parliament v Council*, [2006] ECR I-4721.↔
6. An interim agreement to address the legal vacuum resulting from the Court's ruling in 2006 was followed by another agreement in 2007: Council Decision 2006/729/CFSP/JHA on the signing, on behalf of the European Union, of an Agreement between the European Union and the USA on the processing and transfer of PNR data by air carriers to the US Department of Homeland Security (L 298, 27 October 2006, p. 27 – the text of the Agreement is annexed to this Decision); and the Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement), O.J. L 204, 4 August 2007, p. 18. See also Council Decision approving the signing of the Agreement on the basis of Arts. 24 and 38 TEU, p. 16.↔
7. For further information, see *G. González Fuster, P. de Hert and S. Gutwirth*, 'SWIFT and the Vulnerability of Transatlantic Data Transfers,' in 2008 *International Review of Law, Computers and Technology* 22, pp. 191-202.↔
8. Council Decision 2010/16/CFSP/JHA of 30 November 2009 on the signing, on behalf of the European Union, of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program, O.J. L 8, 13 January 2010, p. 9 (and p. 11 for the text of the Agreement).↔
9. For an overview of the debate with regard to the existence and extent of the EU legal personality in the context of the third pillar, see *J. Monar*, 'The EU as an International Actor in the Domain of Justice and Home Affairs,' in 2004 *European Foreign Affairs Review* 9, pp. 395-415.↔
10. O.J. C 53, 3 March 2005, p. 1.↔
11. See House of Lords European Union Committee, *EU-US Agreements on Extradition and Mutual Legal Assistance*, 38th Report, session 2002-03, HL Paper 135.↔
12. For an overview of the limited scrutiny of this agreement, see *Mitsilegas op. cit.* (footnote 2).↔
13. *V. Mitsilegas* 'Border Security in the European Union. Towards Centralised Controls and Maximum Surveillance' in E. Guild, H. Toner and A. Baldaccini (eds.), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*, Hart Publishing, 2007, pp. 359-394. Of course, the Court's ruling resulted in the agreements being negotiated under the third pillar with the Parliament having a much more limited scrutiny role.↔
14. See *J. Monar*, 'The Rejection of the EU-US SWIFT Interim Agreement by the European Parliament: A Historic Vote and its Implications,' in 2010 *European Foreign Affairs Review* 15, pp. 143-151.↔
15. On the extradition/mutual legal assistance agreements and the Europol/US agreement, see *Mitsilegas, op. cit.* (footnote 2); on the PNR Agreements, see *V. Mitsilegas* 'The External Dimension of EU Action in Criminal Matters,' in 2007 *European Foreign Affairs Review* 12, pp. 457-497; on SWIFT, see the Opinion of the European Data Protection Supervisor of 25 January 2010 and the Opinion of the Art. 29 Working Party of 22 January 2010.↔
16. A number of the Agreements envisaged an *ex post* scrutiny at the national level, with their conclusion being subject to Member States' internal constitutional procedures. While the EU-US agreements on extradition and mutual legal assistance were signed in 2003, their conclusion on behalf of the EU took place only on 2009 – see Council Decision 2009/820/CFSP, O.J. L 291, 7 November 2009, p. 40.↔
17. Another concern is the death penalty-extradition agreement – *Mitsilegas op. cit.* (footnote 2).↔
18. The text of the PNR Agreement does not include details of the PNR data transfer per se. They are set out in a separate accompanying 'US letter to the EU,' signed by the former Homeland Security Secretary *Michael Chertoff*. The letter is, in turn, followed by an 'EU letter to the US' confirming that, on the basis of the assurances provided in the US letter, the EU deems that the US ensure an adequate level of data protection and that, based on this finding, 'the EU will take all the necessary steps to discourage international organisations or third countries from interfering with any transfers of EU PNR data to the United States' – p. 25.↔
19. On the potential role of the European Parliament in shaping policy in the negotiation of international agreements post-Lisbon, see *R. Passos*, 'Mixed Agreements from the Perspective of the European Parliament,' in *Ch. Hillion and P. Koutrakos* (eds.), *Mixed Agreements Revisited*, Hart, 2010, pp. 269-294.↔
20. Art. 13(2) TFEU.↔
21. Art. 6(1) TEU.↔

22. Art. 6(3) TEU.↔
23. Art. 6(2) TEU.↔
24. See Art. 7 of the Charter on the right to private and family life and Art. 8 on the right to data protection. See also Art. 47 for the right to an effective remedy. Moreover, Art. 16 TFEU affirms the special place of data protection in the Lisbon Treaty.↔
25. Art. 21(3) TEU, §2.↔
26. Art. 67(1) TFEU.↔
27. O.J. C 115, 4 May 2010, p. 1.↔
28. Council doc. 11222/1/10 REV 1, Brussels, 24 June 2010.↔
29. European Parliament legislative resolution of 8 July 2010 on the draft Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, P7_TA(2010)0279.↔
30. The Commission's Action Plan to Implement the Stockholm Programme (COM(2010) 171) envisages the tabling of proposals for authorising the negotiation of PNR agreements with relevant third countries (p. 21). For more recent developments, see European Voice, *Commission to seek new data sharing mandates*, 2 September 2010, p. 6.↔
31. See EP Resolution above, point 4.↔
32. Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351. On the link between guaranteeing the autonomy of the Union legal order in the emergence of the Union as a global actor in criminal matters and upholding fundamental rights and the rule of law, see V. Mitsilegas, 'The European Union and the Globalisation of Criminal Law,' in 2009-2010 *Cambridge Yearbook of European Legal Studies* 12, forthcoming.↔
33. On Europol, see Council Decision 2009/371/JHA establishing the European Police Office (Europol), O.J. L 121, 15 May 2009, p. 37, Art. 23. The European Parliament can merely request the Presidency of the Council, the Chairperson of the Europol Management Board, and the Director of Europol to appear before it to 'discuss matters relating to Europol' – Art. 48. On Eurojust, see new Art. 26a inserted by Council Decision 2009/426/JHA 'on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime,' O.J. L 138, 4 June 2009, p. 14. The original 2002 Decision (O.J. L 63, 6 March 2002, p. 1) provides mainly for the European Parliament to be informed about the work of Eurojust via the submission of written reports (Art. 32). For details, see V. Mitsilegas, 'The Third Wave of Third Pillar Law: Which Direction for EU Criminal Justice?' in 2009 *European Law Review* 34, pp. 523-560.↔
34. See Art. 85 TFEU for Eurojust and Art. 88 TFEU for Europol.↔
35. See, in particular, Art. 12 TEU.↔
36. Art. 11.↔
37. *Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for Law Enforcement Purposes*, COM (2007) 654 final, Brussels, 6 November 2007.↔
38. The Commission's Action Plan to Implement the Stockholm Programme (COM(2010) 171) envisages a legislative proposal on a common EU approach to the use of PNR data for law enforcement purposes, to be tabled in 2010 – p. 29.↔
39. See European Voice *op. cit.* (footnote 30).↔

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