

E-Evidence: Start of Negotiations on EU-US Agreement

Thomas Wahl

News

On 26 September 2019, the European Commission [announced the start of formal negotiations with the United States Department of Justice](#) on an EU-US agreement to facilitate access to electronic evidence in criminal investigations. Both parties reaffirmed their intention to conclude an agreement as quickly as possible. The next EU-US Justice and Home Affairs Ministerial meeting in December 2019 will review progress. At its meeting on 6 June 2019, the JHA Council endorsed a mandate for the Commission to start negotiations for an international e-evidence agreement with the United States (see [eucriM 2/2019](#), 113).

The USA has a negotiating mandate through the CLOUD (Clarifying Lawful Overseas Use of Data) Act of March 2018, which provides criteria for the negotiation of international agreements to facilitate the ability of other countries/partners to obtain electronic data relating to the prevention, detection, investigation, and prosecution of serious crime (for the CLOUD Act, see [eucriM 2/2019](#), pp. 113-114 and the article by *J Daskal* in [eucriM 4/2018](#), pp. 220-225).

On 6 November 2019, the Commission services [reported on the second negotiation round](#). The report reveals that there are still several matters of dispute. The Commission stressed that an EU-US Agreement can only be concluded following agreement on internal EU rules on e-evidence. The Commission also expressed its unhappiness with the UK-US agreement on access to electronic data for the purpose of countering serious crime signed on 3 October 2019.

Other problematic issues included:

- Different definition of data categories in European and American law;
- Types of offences for which data exchange should become possible;
- Involvement of judicial authorities in cross-border orders for e-evidence;
- Definition of service providers and types of service providers to be covered by the agreement;
- The need for strong privacy, data protection, and procedural rights safeguards.

The third negotiating round took place in Washington on 10 December 2019, the day before the EU-US JHA Ministerial meeting.

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Published in
2019, Vol. 14(3) [eucriM](#) pp 179
– 180

ISSN: 1862-6947
<https://eucriM.eu>



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The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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