

EDPS Gives Advice on Commission Mandate for EU-US E-Evidence Agreement



News

Thomas Wahl

On 2 April 2019, the European Data Protection Supervisor (EDPS) issued an opinion on the Commission's plans to obtain a mandate from the Council to enter into negotiations with the USA over an agreement on cross-border access to electronic evidence for judicial cooperation in criminal matters. The proposals were tabled by the Commission on 5 February 2019, and a first debate at the ministerial level took place from 7-8 March in the JHA Council.

The EDPS aims at delivering constructive and objective advice on the Council directives that will guide the Commission on several data protection issues in the negotiations.

The EDPS reminded the Commission and the Council that a future EU-US agreement on e-evidence should be based on strong safeguards for the individual's fundamental rights. The negotiating directive of the Council should include reference to the EU's data protection provision in Art. 16 TFEU. The agreement should also build on the EDPS recommendations on strengthened safeguards, which has been proposed in view of the EU-US Umbrella Agreement in 2016 ([Opinion 1/2016](#)).

In keeping with the proportionality principle, the EDPS specifically recommends that judicial authorities designated by the other party to the agreement be involved in the process of gathering electronic evidence as early as possible. This ensures that judicial authorities can effectively review the compliance of any requests for evidence with fundamental rights and raise grounds for refusal if appropriate.

The EDPS opinion also looks specifically into other aspects of the directive up for negotiation, such as the mandatory nature of the agreement, onward transfers, rights of the data subject, control by an independent authority, judicial redress, and administrative remedies, etc.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947

<https://eucrim.eu>



About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

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



Co-funded by
the European Union