



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 September 2010**

**12408/10  
EXT 1**

**JAI 645  
DAPIX 10  
USA 100  
DATAPROTECT 59  
RELEX 667**

**PARTIAL DECLASSIFICATION**

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of document: 12408/10 RESTREINT UE

dated: 23 July 2010

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Subject: Recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and the United States of America 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

- Discussion paper

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Delegations will find attached the partially declassified version of the above-mentioned document.



**ANNEX**

**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 23 July 2010**

**12408/10  
EXT 1 (22.09.2010)**

**JAI 645  
DAPIX 10  
USA 100  
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**NOTE**

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from : Presidency

to : Working Party on Information Exchange and Data Protection (formation Data Protection)

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No. prev. doc. : 11295/10 JAI 561 CATS 56 USA 88 DATAPROTECT 51 RELEX 568  
RESTREINT UE  
10378/10 JAI 494 USA 76 DATAPROTECT 42 RELEX 479 RESTREINT UE  
10379/10 JAI 495 USA 77 DATAPROTECT 43 RELEX 480 RESTREINT UE

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**Background**

On 28 May 2010, the Council received a recommendation from the Commission for the opening of negotiation of an EU-US data protection Agreement.

The background to this recommendation is set out in sufficient detail in the explanatory memorandum to the recommendation. The recommendation builds, to a large extent, on the work undertaken by the High-Level Contact Group on Information-Sharing and Privacy and Personal Data Protection (HLCG). The HLCG was established by the EU-US Justice and Home Affairs Ministerial Troika on 6 November 2006 and presented a final report on 28 May 2008<sup>1</sup> followed by an addendum in 2009<sup>2</sup>. These reports identified a set of core privacy and data protection principles along with related issues pertinent to the EU-US relationship.

Both the Council and the European Parliament had asked the Commission to produce a recommendation for an EU-US data protection Agreement. In the Stockholm Programme the European Council invited the Commission to propose a 'recommendation for the negotiation of a data protection and, where necessary, data-sharing agreement for law enforcement purposes with the US, building on the work carried out by the EU-US High-Level Contact Group on data protection' ('the agreement')<sup>3</sup>. The European Parliament has also called for an EU-US agreement ensuring adequate protection of civil liberties and personal data<sup>4</sup>.

### **EDPS opinion**

The European Data Protection Supervisor has issued an opinion on the Commission recommendation<sup>5</sup>, in which he welcomes the conclusion of a binding international agreement between the European Union and the United States, 'the purpose of such an agreement being to bring legal certainty and provide for a harmonised and high level of protection when it comes to information sharing in the framework of police cooperation and judicial cooperation in criminal matters'. The EDPS opinion is generally positive on the draft negotiation mandate, but also refers to a number of concerns.

The recommendation was presented to JAIEX on 2 July and to CATS on 5 July 2010.

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<sup>1</sup> 9831/08 JAI 275 DATAPROTECT 31 USA 26.

<sup>2</sup> 15851/09JAI 822 DATAPROTECT 74 USA 102.

<sup>3</sup> OJ 4.5.2010, C115/1, p. 36.

<sup>4</sup> Cf. Resolution 2008/2199 of March 2009; most recently, recommendation of the Committee on Civil Liberties, Justice and Home Affairs of 5 February 2010, doc. A7-0013/2010.

<sup>5</sup> 10379/10 RESTREINT UE JAI 495 USA 77 DATAPROTECT 43 RELEX 480.

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**(page 6)**

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