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**Data protection in a Transatlantic
Perspective**

EP LIBE Committee Hearing

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The EU and the US have a long standing cooperation in the field of justice and home affairs and on the basis of the shared values such as the rule of law, democracy, freedom, solidarity, and economic freedom.

Sharing the relevant information is an essential element of an effective cooperation in the fight against crime both within the EU and with the US. The EU-US security partnership is important and indispensable.

Our security depends upon our ability to fight terrorists and criminals, and as they can circulate more freely, so must our knowledge about them.

To this end in last years several transatlantic instruments were concluded establishing mechanisms to facilitate the smooth exchange of information and personal data for specific purposes (ex: PNR, TFTP II, MLA, Extradition agreement). The safeguards and protections afforded largely vary between these instruments.

And the result is a patchwork. This is far from being satisfactory and it is hardly understandable as we refer to the protection of a fundamental right. VP Reding has stressed her determination to end this piecemeal approach.

Sharing information is critical to national security and law enforcement authorities. "Security" and "Privacy" are not contradictory terms.

We need police and judicial cooperation with the US and this involves exchanging the necessary data, however, in doing so we must not forget the overarching importance of respect to fundamental rights.

In the past, the protection of personal data has been a controversial and recurrent issue each time the question on exchange of personal data across the Atlantic for law enforcement purposes was discussed.

A EU/US bilateral agreement should sort this out. We have shared values, we have many commonalities between our systems but:

- our systems for protecting personal data and privacy are not identical. Removing the protection gaps and disparities between the two legal systems will improve the legal certainty and protection level of our citizens.
- we have different approaches to data collection, protection and sharing. This is the case, for example, on the question of redress or supervision of processing activities carried out by law enforcement authorities. These differences in approaches have made it more complex to find mutually acceptable standards on the protection of personal data, which can permit the exchange of information for security purposes across the Atlantic.

In Europe, after the entry into force of the Lisbon Treaty, the protection of personal data has acquired even more relevance. Data protection is a fundamental right and should be treated as such, be it in a European instrument on information sharing or in the future agreement with the US.

Your hearing takes place at the moment where the European Union is considering its position for the future negotiations on EU – US data protection agreement.

As you know on 26 May 2010 the Commission has transmitted the Council a recommendation with draft negotiating guidelines for opening such negotiations with our American counterparts.

The objectives of the EU for the future EU-US framework agreement:

- to ensure a high level of protection in case of transfer of personal data, in line with the EU Charter and the Treaty of Lisbon,
- to establish a single and coherent legally binding and enforceable personal data protection standards,
- to establish a mechanism that ensures effective application and create a solid basis for cooperation between the EU and the US.

In other words, the future agreement shall contain all the necessary high level data protection standards, with obligations for data controllers and enforceable rights for data subjects, as well as mechanisms to ensure the application of those standards.

The citizens and private sector expect a single set of legally binding data protection standards applicable uniformly across the Union, as well as in the transatlantic cooperation within the area of police and judicial cooperation in criminal matters. This will ensure legal security.

The future agreement should establish an umbrella which shall apply to the relevant EU and Member States bilateral agreements with US and sets out obligations for data controllers and enforceable rights for data subjects.

It will be challenging, but necessary if we want to eliminate a thorny obstacle in transatlantic relations. Such an agreement will give us the opportunity to work on our differences and build on our commonalities by finding satisfactory solutions which will allow us to pursue our cooperation and information sharing.

Europe and the U.S. have to seize the opportunity of a solid agreement on data protection to bring new dynamism to the transatlantic partnership and agree on a 'gold' standard that would set the tone for the rest of the world.

The Commission expects Council to adopt an ambitious mandate before the end of the year 2010 so we can start negotiations with the US authorities from the beginning of 2011.