



Plenary sitting

B8-1304/2016

24.11.2016

MOTION FOR A RESOLUTION

pursuant to Rule 108(6) of the Rules of Procedure

seeking an opinion from the Court of Justice on the compatibility with the Treaties of the proposed agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences (2016/3004(RSP))

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on behalf of the GUE/NGL Group

European Parliament resolution seeking an opinion from the Court of Justice on the compatibility with the Treaties of the proposed agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences (2016/3004(RSP))

The European Parliament,

- having regard to the proposal for a Council decision on the conclusion, on behalf of the Union, the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences,
- having regard to Article 218(11) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to its legal opinion of 14 January 2016,
- having regard to Opinion 1/2016 of the European Data Protection Supervisor (EDPS) of 12 February 2016 on the agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection and prosecution of criminal offences¹,
- having regard to the statement of the Article 29 Working Party on the EU-US Umbrella Agreement of October 2016²,
- having regard to Article 16 of the TFEU and to Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union,
- having regard to the Court of Justice judgment *Schrems v. Data Protection Commissioner* of 6 October 2015 annulling the Safe Harbour Decision³,
- having regard to the opinion of the Advocate-General of the European Court of Justice on the EU-Canada Passenger Name Record (PNR) Agreement of 8 September 2016⁴,
- having regard to the Court of Justice judgment *European Commission v Federal Republic of Germany* of 9 March 2010⁵,

¹https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2016/16-02-12_EU-US_Umbrella_Agreement_EN.pdf

²http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/2016/20161026_statement_of_the_wp29_on_the_eu_umbrella_agreement_en.pdf

³ <http://curia.europa.eu/juris/document/document.jsf?docid=169195&doclang=en>

⁴ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-09/cp160089en.pdf>

⁵<http://curia.europa.eu/juris/document/document.jsf?text=&docid=79752&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1878268>

- having regard to Rule 108(6) of its Rules of Procedure,
- A. whereas, on 3 December 2010, the Council adopted a decision authorising the Commission to open negotiations on an Agreement between the European Union and the United States of America on the 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 (hereinafter ‘Umbrella Agreement’);
- B. whereas the text of the agreement was initialled on 8 September 2015;
- C. whereas the EDPS and the Article 29 Working Party have raised questions around the compatibility of the Umbrella Agreement with the Charter and secondary EU data protection legislation, especially concerning the right to judicial redress, the access of law enforcement agencies, limitation of data subject access rights and data retention periods;
- D. whereas, according to the EDPS, there are concerns that the supervisory data protection authorities (DPAs) in the US do not meet the Court of Justice requirements for being considered fully independent and with effective powers of intervention, as there are concerns as to whether DPAs would be able to block transfers of personal data if these did not abide by EU data protection legislation;
- E. whereas the US Judicial Redress Act does not overturn the existing exemptions to data subject rights which certain systems of records in the US may provide pursuant to the US Privacy Act, such as PNR data;
- F. whereas Parliament’s Legal Service has pointed out that the EU-US Umbrella Agreement (specifically Article 5(3)) will serve as a form of adequacy decision, creating a ‘de iure’ legal presumption of compliance by the US with EU data protection standards and potentially undermining real compliance with EU Data Protection law;
- 1. Takes the view that there is legal uncertainty as to whether the draft agreement is compatible with the provisions of the Treaties (Article 16 of the TFEU) and the Charter of Fundamental Rights of the European Union (Articles 7, 8 and 52(1) as regards the right of individuals to protection of personal data and Article 47 as regards the availability of an effective judicial remedy);
- 2. Decides to seek an opinion from the Court of Justice on the compatibility of the proposed agreement with the Treaties;
- 3. Instructs its President to take the necessary measures to obtain such an opinion from the Court of Justice and to forward this resolution, for information, to the Council and the Commission.