

## EU-US Umbrella Agreement on data protection

In order to strengthen safeguards for the protection of personal data exchanged between EU and US law enforcement authorities and to facilitate reciprocal cooperation, the *Umbrella Agreement* was signed in June 2016. Its conclusion by the Council needs Parliament's consent, to be voted in November.

### State of play

Negotiations on the '[Umbrella Agreement](#)' (UA) between the USA and EU on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences, were [finalised](#) in September 2015. The Commission's [proposal](#) for a Council decision to conclude the agreement was submitted in April 2016, only after the US Congress had passed the [Judicial Redress Act](#) (JRA). The [Commission](#), in fact, made signature of the UA conditional on adoption of the JRA. Signed into law in February 2016, it extends to all data subjects in the EU the right to enforce their data protection rights in US courts (e.g. in case of unlawful disclosure of records or for unjustified refusal to access data). In its [2014](#) and [2015](#) resolutions on surveillance programmes, following [Edward Snowden's](#) revelations, the European Parliament (EP) stressed the need for the UA to ensure effective administrative and judicial remedies in the US without discrimination for data subjects in the EU, also in the light of the [Schrems](#) judgment of the Court of Justice of the EU (CJEU). The UA was [signed](#) on 2 June 2016, and on 18 July the Council formally [requested](#) the EP's consent.

#### *Role of the European Parliament*

In accordance with Article 218(6)(a)(v) TFEU, read together with Article 16 TFEU, the Council needs to obtain the European Parliament's consent before adopting the [decision](#) concluding, on behalf of the EU, the international agreement. The Albrecht [Report recommending](#) the EP consent to its adoption was [discussed](#) and then [voted](#) in the Committee on Civil Liberties (LIBE), after receiving a statement of clarification from the Commission and favourable opinions from the Committees on [Legal Affairs](#) and on [Foreign Affairs](#). The EP is due to vote on giving consent to the Council decision during the November II plenary session.

### Data protection and EU-US law enforcement cooperation

The need to ensure all individuals benefit from a high level of data protection according to European standards, including their right to seek judicial review, even when the related data are [transferred](#) outside the EU for law enforcement purposes, was emphasised in the CJEU's [Schrems](#) and [Digital Rights Ireland](#) cases: accordingly, any interference in the [fundamental rights](#) of privacy and data protection should be limited to what is strictly necessary and proportionate. The European Data Protection Supervisor (EDPS) in his [Opinion](#) and the [Article 29 Working Party](#) in its [statement](#) welcomed the UA (to be considered in conjunction with the [EU-US Privacy Shield](#) agreement (covering the commercial exchange of data); however, they asked for some clarifications and promised to follow its future implementation closely, in relation also to the new EU data protection [framework](#) in the law enforcement sector.

Different to Privacy Shield, the UA will not constitute the legal basis for any data transfers to the US (which are rather found in specific agreements). As a binding instrument, instead, it intends to enhance law enforcement (LE) [cooperation](#) between the EU and its Member States and the USA, by establishing a **common framework** on the protection of data exchanged and processed by LE authorities on both sides of the Atlantic. It contains provisions, for instance, on purpose and use limitations of data transferred, data quality and integrity, rules on onward transfer, right to access and rectification, judicial redress and enforceability. It also covers data transferred by private entities of one party to LE authorities of the other party; it does not cover data exchanges between national security authorities, nor between private entities. Complementing existing safeguards, it aims to facilitate data transfers and the negotiation of future specific data-sharing agreements. The UA aims, finally, along with parallel initiatives, at restoring trust in transatlantic data flows.

