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Answer given by Mr Reynders
on behalf of the European Commission
(8.12.2020)

While the joint review has been launched in line with Article 23 of the Umbrella Agreement, the start of the COVID-19 crisis in March 2020 has slowed down the process which involves multiple actors including representatives of the United States (US) and EU law enforcement and supervisory authorities. Moreover, recent case-law needs to be fully taken into account in the context of the Umbrella Agreement's review. The Commission aims at finalising the review in the coming months.

Judicial redress is governed by Article 19 of the Umbrella Agreement. In line with this provision, the US adopted the Judicial Redress Act that extended important judicial redress provisions of the US Privacy Act of 1974 to EU citizens, including in relation to Passenger Name Record (PNR) and Terrorist Finance Tracking Program (TFTP) data¹. The Judicial Redress Act gives EU citizens the right to seek judicial redress before US courts in case certain US 'designated' federal authorities have denied access or rectification, or unlawfully disclose their personal data. Both the Department of Homeland Security and the Office of the Treasury Inspector General for Tax Administration (US Department of the Treasury), respectively competent for PNR and TFTP, are listed among the federal authorities designated by the Attorney General to which the Judicial Redress Act applies.

As required by Article 23 of the Umbrella Agreement, the effectiveness of such redress mechanisms is one of the main issues to be assessed by the ongoing review. This will also be addressed in the Commission's report.

Following the invalidation of the Privacy Shield, there is willingness between the Commission and the US Authorities to work together to find ways by which to address the issues raised by the Court of Justice of the EU².

¹ In addition to the judicial, redress possibilities under the EU-US PNR Agreement (Article 13) and the TFTP (Article 18.2). The Federal Registry also clarifies that the DHS exemptions of the US Privacy Act (PA) on the right to access and amendment would not apply to PNR data (see link <https://www.govinfo.gov/content/pkg/FR-2012-05-23/html/2012-12395.htm>). According to the clarifications received by the US government, no other exemptions to the PA exist.

² https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=684836