



Council of the  
European Union

Brussels, 1 October 2019  
(OR. en)

12524/19

**LIMITE**

**JAI 992  
COPEN 373  
CYBER 266  
DROIPEN 148  
JAIEX 142  
ENFOPOL 424  
DAPIX 280  
EJUSTICE 124  
MI 674  
TELECOM 308  
DATAPROTECT 222  
USA 75  
RELEX 869**

**NOTE**

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From: Commission services  
To: Delegations

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Subject: Report from the Commission on the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, 25 September 2019

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Delegations will find in Annex a Report from the Commission on the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, 25 September 2019.

**Report from the Commission on the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, 25 September 2019**

On 6 June 2019<sup>1</sup>, the Council of the European Union authorised the Commission to open negotiations on behalf of the Union with the United States of America for an agreement on cross-border access to electronic evidence for judicial cooperation in criminal matters.

The Commission's and US's negotiating teams met on 25 September 2019 for the first negotiation round on an EU-US Agreement on e-evidence. The US Delegation included Deputy Assistant Attorney Generals from the Department of Justice, as well as other colleagues from the US Department of Justice's Office for International Affairs, the State Department and the US Mission to the EU. The Commission was represented by Chief Negotiator Alexandra Jour-Schroeder, Deputy Chief Negotiator Peter Csonka and other members of the negotiating team from DG JUST and DG HOME. Representatives from the European External Action Service and European Union Delegation in Washington were also present.

This first formal negotiation meeting was an opportunity for each side to set out its opening positions. The Commission made clear that its negotiating stance is defined in the Council mandate, which is public, taking into account the April 2018 e-evidence proposals<sup>2</sup> and considering that they will still evolve during the legislative procedure. The European Union confirmed that it had a mandate to conclude an EU-wide agreement.

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<sup>1</sup> Council Decision of 6 June 2019 authorising the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, available at [www.consilium.europa.eu](http://www.consilium.europa.eu)

<sup>2</sup> COM(2018) 225 final, COM(2018) 226 final

The United States confirmed that they had obtained the Circular 175 formal mandate to negotiate with the European Union. The US stressed that their objective was to negotiate a framework agreement supplemented by bilateral agreements with individual EU Member States.

In line with the agreement between Commissioner Jourova and US Attorney General Barr, the first negotiating session concentrated on areas of substance rather than the legal form of the agreement. Discussions took place, amongst other things, on the types of electronic evidence and criminal proceedings that could be covered by the Agreement. The European Commission underlined that the agreement should include both content and non-content data. An initial discussion took place on workflows that should be followed by each of the parties, including which authorities should be involved. On safeguards, parties exchanged information about aspects that they find important to be covered by the agreement. The Commission explained the need to supplement the EU-US data protection Umbrella Agreement with additional safeguards to reflect the specificities of direct cooperation, as set out in the mandate, and stressed the need to align the scope of the future agreement with that of the Umbrella Agreement in terms of the US authorities covered.

It was concluded to work further on each of the topics discussed, with the objective of making swift progress.

A second negotiating round in Washington is planned to take place in the first weeks of November. Further contacts could also be envisaged before the next EU-US JHA Ministerial on 10-11 December.