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Subject: Report on the fourth round 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, 3 March 2020

Delegations will find attached the partially declassified version of the above-mentioned document.



Council of the European Union
General Secretariat

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NOTE

From: Commission Services
To: Delegations

Subject: Report on the fourth round 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, 3 March 2020

Delegations will find in Annex the Report on the fourth round 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, 3 March 2020.

Report on the fourth round 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, 3 March 2020

The European Commission and United States negotiating teams held a two-hour video conference on 3 March 2019 on the negotiation for an EU-U.S. Agreement on cross-border access to electronic evidence.

The U.S. Delegation included Deputy Assistant Attorney Generals Bruce Swartz and Brad Wiegmann. The Commission was represented by Chief Negotiator Alexandra Jour-Schroeder, deputy Chief Negotiator, Peter Csonka and colleagues from DG JUST, DG HOME and the EEAS.

The discussion provided the opportunity to update each other on the latest developments, ahead of the EU-U.S. Senior Officials Meeting in Rovinj, Croatia on 5-6 March 2020.

The Commission provided a brief update on the state of play of the legislative procedure for the internal EU rules on cross-border access to e-evidence, in particular regarding the expected timing for the adoption of a position of the European Parliament.

The U.S. Delegation gave a short read-out of their meeting with the LIBE Committee of the European Parliament in Washington on 24 February 2020. This had been seen on the U.S. side as useful and allowed a number of issues to be addressed, especially on the nature of the U.S. CLOUD Act. The Commission reiterated its position as set out in the mandate authorising the Commission to negotiate on behalf of the EU, i.e. to negotiate a comprehensive EU-wide agreement.

On substance, the negotiating round covered three main issues, mainly on the procedural rights safeguards that the Union will require to apply in relation to this agreement. The negotiating teams discussed:

- judicial remedies (fair trial, presumption of innocence, rights of defence);
- appropriate safeguards to ensure that data may not be requested for the use in criminal proceedings that could lead to the death penalty;
- the list of offences to be covered by this agreement.

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