

AmCham EU statement on Article 43(a) in the GDPR

14 September 2015

Article 43(a) reflects the increasing need for laws to be modernised to address government access to digital data. The European Parliament's draft of Article 43(a) highlights important unresolved issues around the appropriate combination of data protection rights and law enforcement needs. AmCham EU welcomes the global conversation started by draft Article 43(a).

However, we believe that these issues should be addressed through bilateral and multilateral channels between governments. The current draft of Article 43(a), albeit improved, will still only lead to conflicts of law for companies that operate both inside and outside the EU, without any tangible benefits to the individuals

The use of extraterritorial jurisdiction for the transfer of data should be carefully considered in the international context including for criminal justice and national security purposes.

AmCham EU is concerned that a unilateral provision in the GDPR, penalising companies for lawful behaviour, will not provide any meaningful solution to the otherwise legitimate concerns.

Certainly, the proposed provision highlights that the existing legal agreements among countries, such as mutual legal assistance treaties (MLATs), need to be modernised. These agreements already provide a mechanism for governments to obtain digital information outside their borders, but there is room for improvement. The world needs an updated set of broadly accepted rules that preserve the rule of law and that is applicable effectively across national borders. However, as this example emphasises, the solution can only be and should be resolved at a government – to – government level.

The GDPR can be an important part of moving toward the modernisation of existing agreements, without including the proposed Article 43(a). Indeed, AmCham EU supports the provision in Article 43(a)(1) that says it is “*without prejudice to a mutual legal assistance treaty or international agreement in force between the requesting third country and the Union or a Member State.*” This recognises the need for new and modern international agreements.

We emphasise the need to modernise international agreements and increase transparency. The GDPR should incorporate these principles in a way that companies are not in a conflict of laws for which they have no control.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2014 and directly supports more than 4.3 million jobs in Europe.

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