

Billing Code: 4410-14

DEPARTMENT OF JUSTICE

Judicial Redress Act of 2015; Attorney General Designations

Attorney General Order No.

AGENCY: Office of the Attorney General; United States Department of Justice.

ACTION: Notice of designation by the Attorney General of “covered countries” and “designated Federal agencies or components”

SUMMARY: In accordance with the Judicial Redress Act of 2015, relating to the extension of certain Privacy Act remedies to citizens of designated countries, notice is given that the Attorney General has designated 26 countries and 1 regional economic integration organization, as set forth below, as “covered countries.” Notice is also given that the United States anticipates designating additional EU member countries as soon as practicable. In addition, notice is given that the Attorney General has designated four Federal agencies and nine components of other Federal agencies, as set forth below, as “designated Federal agencies or components.”

DATES: The designations herein are effective on February 1, 2017, the date of entry into force of the U.S.-EU Data Protection and Privacy Agreement.

FOR FURTHER INFORMATION CONTACT: Kenneth Harris, Acting Deputy Director, Office of International Affairs, Criminal Division, United States Department of Justice, 1301 New York Avenue, Suite 900, Washington, DC, 20005, 202-514-0080.

SUPPLEMENTARY INFORMATION:

On December 2, 2016, the European Union (the “EU”) undertook the final steps necessary under EU law to approve an executive agreement between the United States (the “U.S.”) and the EU (the “Parties”) relating to privacy protections for personal information transferred between the U.S., the EU, and the EU Member States for the prevention, detection, investigation, or prosecution of criminal offenses. The Agreement, commonly known in the United States as the Data Protection and Privacy Agreement (the “DPPA”), establishes a set of protections that the Parties are to apply to personal information exchanged for the purpose of preventing, detecting, investigating, or prosecuting criminal offenses. Article 19 of the DPPA establishes an obligation for the Parties to provide, in their domestic law, specific judicial redress rights to each other’s citizens. The Judicial Redress Act, Public Law 114-126, 130 Stat. 282 (5 U.S.C. 552a note), is implementing legislation for Article 19.

Determinations and Designations Pursuant to Section 2(d)(1)

For purposes of implementing section 2(d)(1) of the Judicial Redress Act:

(1) The Attorney General has determined that the countries and the regional economic integration organization listed below have entered into an agreement with the United States that provides for appropriate privacy protections for information shared for the purpose of preventing, investigating, detecting, or prosecuting criminal offenses; to wit, the DPPA;

(2) The Attorney General has determined that the country or regional economic integration organization, or member country of such organization, permits the transfer of personal data for commercial purposes between the territory of that country or regional economic organization and the territory of the United States, through an agreement with the United States or otherwise;

(3) The Attorney General has certified that the policies regarding the transfer of personal data for commercial purposes and related actions of the countries and the regional economic integration organization, or member countries of such organization, listed below, do not materially impede the national security interests of the United States; and

(4) The Attorney General has obtained the concurrence of the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security to designate the following regional economic integration organization and countries as a “covered country”:

(a) Designation as a “covered country.” The following regional economic integration organization and countries have each been designated as a “covered county,” effective on February 1, 2017, the date of the DPPA’s entry into force:

1. European Union;
2. Austria;
3. Belgium;
4. Bulgaria;
5. Croatia;
6. Republic of Cyprus;
7. Czech Republic;
8. Estonia;
9. Finland;
10. France;
11. Germany;
12. Greece;
13. Hungary;

- 14. Ireland;
- 15. Italy;
- 16. Latvia;
- 17. Lithuania;
- 18. Luxembourg;
- 19. Malta;
- 20. Netherlands;
- 21. Poland;
- 22. Portugal;
- 23. Romania;
- 24. Slovakia;
- 25. Slovenia;
- 26. Spain; and
- 27. Sweden.

(b) Anticipated designation as a “covered country” as soon as practicable. With respect to three countries, Denmark, Ireland, and the United Kingdom, Article 27 of the DPPA excludes them from coverage unless the European Commission notifies the United States that Denmark, Ireland, or the United Kingdom has decided that the DPPA applies to its State. The EU has notified the United States that Ireland has agreed that the DPPA applies to it, and Ireland has been designated as a “covered country” above. With respect to Denmark and the United Kingdom, the Department of Justice intends to move promptly to designate each of those countries as a “covered country” on receiving notice, in accordance with the provisions of Article 27 of the DPPA, that the country has decided that the DPPA applies to it.

Determinations and Designations Pursuant to Section 2(e)(1)

For purposes of implementing section 2(e) of the Judicial Redress Act:

(1) The Attorney General has determined that information exchanged by the Federal agencies or components listed below with the above-designated countries and regional economic integration organization is within the scope of the DPPA;

(2) The Attorney General has obtained the concurrence of the head of the relevant agency, or of the head of the agency to which the component belongs, as needed, for the following “designated Federal agency or component” designations:

(a) Designation of Federal agencies as a “designated Federal agency or component.” The following Federal agencies, and all of their respective components, have each been designated as a “designated Federal agency or component,” effective on February 1, 2017, the date of the DPPA’s entry into force:

1. United States Department of Justice;
2. United States Department of Homeland Security;
3. United States Securities and Exchange Commission; and
4. United States Commodity Futures Trading Commission.

(b) Designation of individual components of Federal agencies as a “designated Federal agency or component.” The following components of a Federal agency have each been designated as a “designated Federal agency or component,” effective on February 1, 2017, the date of the DPPA’s entry into force:

1. Bureau of Diplomatic Security, United States Department of State;
2. Office of the Inspector General, United States Department of State;

3. Alcohol and Tobacco Tax and Trade Bureau, United States Department of the Treasury;
4. Financial Crimes Enforcement Network, Department of the Treasury;
5. Internal Revenue Service, Division of Criminal Investigation, Department of the Treasury;
6. Office of Foreign Assets Control, United States Department of the Treasury;
7. Office of the Inspector General, United States Department of the Treasury;
8. Office of the Treasury Inspector General for Tax Administration, United States Department of the Treasury; and
9. Special Inspector General for the Troubled Asset Relief Program, United States Department of the Treasury.

Scope of EU Designation

Designation of the European Union as a “covered country” is intended to ensure that records transferred by European Union institutional components, such as Europol, Eurojust, and OLAF (the European Antifraud Office), are treated as “covered records” pursuant to section 2(h)(4) of the Judicial Redress Act. Designation of the European Union as a “covered country” is not intended to, and does not, constitute designation of its member states as covered countries.

Non-retroactivity

It is intended that no cause of action shall be afforded by the Judicial Redress Act retroactively with respect to any record transferred prior to the date of the DPPA’s entry into force on February 1, 2017.

Non-reviewable Determination

In accordance with section 2(f) of the Judicial Redress Act, the determinations by the Attorney General described in this notice shall not be subject to judicial or administrative review.

January 17, 2017
Date

Loretta E. Lynch
Loretta E. Lynch
Attorney General