

# Joint EU-U.S. statement following the EU-U.S. Justice and Home Affairs Ministerial Meeting

Washington DC, 9 November 2018

On 9 November 2018, the EU-U.S. Ministerial Meeting on Justice and Home Affairs took place in Washington DC. The United States of America hosted the meeting and was represented by the U.S. Acting Attorney General Matthew G. Whitaker and Secretary for Homeland Security, Kirstjen Nielsen.

The European Union was represented by the Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos, as well as by the Austrian Federal Minister for the Interior Herbert Kickl, the Austrian Federal Minister for Constitutional Affairs, Reforms, Deregulation and Justice Josef Moser, the Romanian Minister of the Interior Carmen Daniela Dan and the Romanian Secretary of State for Justice Sebastian Costea on behalf of the current and incoming Presidencies of the Council of the European Union.

The United States and the European Union reaffirmed their commitment to jointly address common challenges in the areas of justice and home affairs and praised the excellent level of exchanges and operational cooperation, for the benefit of the security of citizens on both sides of the Atlantic.

The United States and the European Union underlined the importance of effective information sharing for their shared efforts to combat terrorism, focusing on battlefield information, Passenger Name Records (PNR) and aviation security. Participants emphasised the importance of PNR information sharing as a tool for the prevention of terrorist travel and agreed to prepare for a joint evaluation in 2019, in compliance with the provisions of the EU-US PNR Agreement. The United States and the European Union recognised the need to enhance their efforts to address the challenge of terrorists' use of the internet to direct and inspire attacks, while respecting individual rights, including freedom of speech. Both sides shared information on their respective initiatives, including efforts to better engage and partner with service providers.

The United States and the European Union recognised that electoral systems in democratic states face unprecedented challenges that require innovative and comprehensive solutions, as well as cooperation and best practice exchanges between like-minded countries. On that topic, participants briefed each other on current actions to build more resilient electoral systems. In order to promote exchanges between relevant experts from both sides on current challenges to elections, including such challenges as disinformation campaigns and other forms of online and offline interference, the United States and the European Union agreed to set up a regular dialogue on these matters, the details of which should be developed at the next Senior Officials meeting in 2019.

The United States and the European Union reiterated the priority they attach to fighting cybercrime and enhancing cybersecurity. They recognised the need to maintain a global, open, stable and secure cyberspace for the promotion of economic and social development and, in this context, stressed the valuable contribution of joint work conducted by U.S. and EU law enforcement agencies to combat, deter and prevent cybercrime and called for the expansion of such cooperation, as appropriate. Participants also acknowledged the challenge in obtaining timely and lawful access to encrypted data, in accordance with individual rights and civil liberties, by those investigating and solving criminal offenses and exchanged views on their respective practices to counter such challenges. Participants took note of the dialogue that took place in Brussels between the cybersecurity experts at DHS and the EU and agreed to continue to collaborate to strengthen the cybersecurity posture on both sides of the Atlantic.

The United States and the European Union agreed on the importance for both law enforcement and judicial authorities of swift cross-border direct access to electronic evidence, as demonstrated by recent legislation approved or under examination in the United States and the EU. Participants further recognised the benefit of exploring, and agreed to discuss, the possibility of an EU-US agreement to facilitate access to electronic evidence.

The United States and the European Union exchanged information on developments in the area of migration and border management, with a particular focus on efforts to prevent and combat migrant smuggling and trafficking of human beings. The United States and the European Union agreed on the importance of advancing towards reciprocal visa free travel under their respective legal frameworks and, following the most recent tripartite meeting on visa reciprocity, welcomed the progress of the five concerned Member States towards meeting the statutory requirements of the Visa Waiver Program, in order to be considered for designation in the programme.

The United States and the European Union underscored their shared concerns about the major international drug-control threats posed by illicit synthetic opioids , including fentanyl and its derivatives. Both sides took note of the U.S.-EU Political Dialogue on Drugs held on October 18, 2018.

Reiterating the progress made and the need to face global challenges together, the European Union and the United States remain committed to reinforce their partnership and meet again in the first half of 2019 in Bucharest, Romania.

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# Kartellrecht: Kommission bittet im Rahmen von Pay-TV-Untersuchung um Stellungnahmen zu den Verpflichtungsangeboten von Disney

Growth in the euro area is forecast to ease from a 10-year high of 2.4% in 2017 to 2.1% in 2018 before moderating further to 1.9% in 2019 and 1.7% in 2020. The same pattern is expected for the EU27, with growth forecast at 2.2% in 2018, 2.0% in 2019 and 1.9% in 2020.

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## Antitrust: Commission seeks feedback on commitments offered by Disney in pay-TV investigation

The Commission's concerns relate to contractual clauses in certain bilateral agreements between six major film studios, including The Walt Disney Company ("Disney"), and the pay-TV broadcaster Sky UK, under which the studios license their output of films over a certain period of time for pay-TV to Sky UK. These clauses appear to prevent Sky UK from allowing EU consumers outside the UK and Ireland to access pay-TV services available in the UK and Ireland.

Some agreements also contain clauses requiring the studios to ensure that, in their licensing agreements with broadcasters other than Sky UK, these broadcasters are prevented from making their pay-TV services available in the UK and Ireland.

In a Statement of Objections addressed to the six studios and Sky UK in [July 2015](#), the Commission took the preliminary view that these clauses restrict broadcasters' ability to accept unsolicited requests from consumers located outside the licenced territory (so called "passive sales") and, as a result, may eliminate cross-border competition between pay-TV broadcasters and partition the EU's Single Market across national borders.

Specifically with regard to Disney's output agreement with Sky UK, the Commission's concerns relate only to online transmission of pay-tv services.

### **Proposed commitments**

Disney has decided to offer commitments to address the Commission's competition concerns. These commitments are similar to those offered by

Paramount in [April 2016](#) to address the Commission's competition concerns, which were accepted and made legally binding in [July 2016](#). Disney has offered the following commitments, which would apply throughout the European Economic Area (EEA):

1. When licencing its film output for pay-TV to a broadcaster in the EEA, Disney would not (re)introduce contractual obligations which prevent or limit a pay-TV broadcaster from responding to unsolicited requests from consumers within the EEA but outside the broadcaster's licensed territory (no "Broadcaster Obligation").
2. When licensing its film output for pay-TV to a broadcaster in the EEA, Disney would not (re)introduce contractual obligations which require Disney to prohibit or limit a pay-TV broadcaster located outside the broadcaster's licensed territory from responding to unsolicited requests from consumers within the licenced territory (no "Studio Obligation").
3. Disney would not seek to bring any action before a court or tribunal for the violation of a Broadcaster and/or Studio Obligation, as applicable, in an existing agreement licensing its output for pay-TV.
4. Disney would not act upon or enforce any Broadcaster and/or Studio Obligation to which is subject in an existing agreement licensing its output for pay-TV.

The commitments would apply for a period of five years and cover both standard pay-TV services and, to the extent that they are included in the licence(s) with a broadcaster, also subscription video-on-demand services. The commitments cover both satellite broadcast services and online services.

The proposed commitments concern Disney, its successors and all of the current and future subsidiaries over which it exercises sole control within the meaning of Council Regulation (EC) No 139/2004.

A summary of the proposed commitments has been published in the [EU's Official Journal](#). Interested parties can submit comments within one month from the date of publication. The full text of the commitments will be available on the [case website](#).

## **Background**

In [July 2015](#), the Commission sent a Statement of Objections to six studios (Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros) and the pay-TV broadcaster Sky UK.

In [April 2016](#), Paramount offered commitments to address the Commission's

competition concerns. The commitments were accepted and made legally binding in [July 2016](#). More information on Paramount's commitments is available on the Commission's [competition website](#).

The Commission's investigation continues regarding the conduct of NBCUniversal, Sony Pictures, Fox, Warner Bros and Sky UK.

[Article 101](#) of the Treaty on the Functioning of the European Union (TFEU) and [Article 53](#) of the EEA Agreement prohibit agreements and concerted practices which may affect trade and prevent or restrict competition. Article 9(1) of [Regulation 1/2003](#) enables companies investigated by the Commission to offer commitments in order to meet the Commission's concerns and empowers the Commission to make such commitments binding on the companies. Article 27(4) of Regulation 1/2003 requires that before adopting such decision the Commission shall provide interested third parties with an opportunity to comment on the offered commitments.

If the market test indicates that the commitments are a satisfactory way of addressing the Commission's competition concerns, the Commission may adopt a decision making the commitments legally binding on Disney (under Article 9 of the EU's antitrust Regulation 1/2003). Such a decision would not conclude that there is an infringement of EU antitrust rules but legally binds Disney to respect the commitments it has offered.

If a company breaks such commitments, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to find an infringement of the EU antitrust rules.

More information, including the full version of the commitments is available on the Commission's [competition website](#), in the [public case register](#) under the case number [AT.40023](#).

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## **[ESMA renews binary options prohibition for a further three months from 2 January 2019](#)**

The European Securities and Markets Authority (ESMA) has agreed to renew the prohibition of the marketing, distribution or sale of binary options to retail clients, in effect since 2 July, for a further three-month period.

ESMA has carefully considered the need to extend the intervention measure currently in effect. It considers that a significant investor protection concern related to the offer of binary options to retail clients continues to exist. ESMA has therefore agreed to renew the measure from 2 January 2019 on

the same terms as the previous renewal decision that started to apply on 2 October 2018.

The renewal was agreed by ESMA's Board of Supervisors on 7 November 2018.

### **Next steps**

ESMA intends to adopt the renewal measure in the official languages of the EU in the coming weeks, following which ESMA will publish an official notice on its website. The measure will then be published in the Official Journal of the EU and will start to apply from 2 January 2019 for a period of three months.

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## **Ententes et abus de position dominante: la Commission demande un retour d'informations sur les engagements proposés par Disney dans l'enquête sur la télévision payante**

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