

# International Due Diligence: U.S. vs. European Privacy Laws

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At the end of June 2009, the U.K. government dropped a compulsory identity card (ID) trial and announced that British citizens would not be forced to carry ID cards. This trial, which had started with airport workers, had been commissioned initially in order to help improve security at airports, but also with the aim of launching a larger identification scheme to stop illegal workers, people-trafficking, and identity fraud. Civil liberties groups spoke out vehemently against the program, saying that a national identity register would adversely impact privacy and race equality. The program has also led to public protest, albeit this was as much to do with the cost and effectiveness of the ID card program as privacy issues.

This type of public protest is common in Europe when it comes to privacy concerns. In a polarized standpoint to that in the United States, the European Union Directive on Data Protection mandates that each EU nation pass a national privacy law and create a Data Protection Authority to protect citizens' privacy and investigate attacks on that privacy.

As such, in many parts of Europe, it is illegal for personal information to be collected without consumers' permission; companies that process data must register their activities with the government; employers cannot read workers' private email; and consumers/employees have the right to review data maintained by companies about them and correct any inaccuracies. On the other hand, in the United States, employees surrender most of their rights to privacy when they enter and use company property. It is also common in the United States for companies to maintain data on consumers and sell this information to other companies. This leads to publicly available records that are often useful for due diligence and other types of investigations.

The difference between privacy laws in the United States and Europe leads to variations in the approach to due diligence investigations. In the United States, a registered private investigation agency can quickly and efficiently access certain information which assists in identifying an individual and his/her residential history. This information is extremely helpful when conducting court checks, as well as certain education or professional license verifications. In the United States, for the most part, anyone who has a credit history can be identified via national identifier database searches. However, in Europe, identification details, including residential address information, is only available for corporate executives through corporate registration records or information volunteered by the individuals. As another example, in the United Kingdom, access to electoral roll records is available, but only for individuals who have registered for the electoral roll, meaning in most instances, U.K. citizens only, and only for those who have volunteered their information to be listed in public records. This lack of publicly available identification information can make certain due diligence inquiries difficult to conduct.

In the United States, civil and criminal record information is also publicly available at both the state and county level, with some criminal information compiled into "national databases." These database-type litigation checks often contain records for at least 10 years and can be searched comprehensively based on a subject's name. In Europe, this type of comprehensive litigation check is not available. The civil information that can be searched is best described as a compilation of only the most high-profile of cases. In addition, in most European countries, criminal record information is only available upon request by the subject and is not considered public information like it is in the United States.

When requesting due diligence investigations in Europe, one must first decide on the scope of the investigation. Database-type checks are a good starting point, but due to the limited information available in Europe and elsewhere through database checks, source-type inquiries in these locations can also be used to supplement in-country due diligence investigations. For instance, knowledgeable and experienced local sources in Europe can ascertain a litigation and criminal history of a subject through reputational type inquiries. In general, credible sources are able to support database findings by providing a more thorough understanding of a company's and its principals' reputation and background based on industry and government contacts.

As the world becomes a smaller place and as Americans take note of data privacy rules of their European neighbors, free access to information in the United States could start changing. It has already been seen in recent years that privacy laws in the United States are starting to be introduced in a number of areas, albeit arising haphazardly and in a reactive fashion. For instance, in 2003, California passed a data breach notification law which requires companies to tell consumers when their personal information has been lost or stolen. This has led to similar laws in other states. It is possible that if Americans become more concerned about privacy issues, other, more stringent privacy laws could be introduced that would make the access to personal information more difficult, along lines similar to the restriction of information in Europe. If this were to occur, the need for thorough, professional due diligence will be as important as ever to ensure proper vetting of employees, vendors, and business associates.



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