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European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	8188/16
Subject:	Draft Council Decision on the signing, on behalf of the European Union, of an Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

In annex appears the text of the above-mentioned draft Decision on the signing as approved by Coreper on 11 May 2016 in view of the adoption by the Council.

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of an Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 in conjunction with Article 218 (5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 3 December 2010, the Council authorised the Commission to open negotiations with the Government of the United States of America concerning an agreement on the protection of personal data when transferred and processed for the purpose of preventing investigating, detecting or prosecuting criminal offences, including terrorism.
- (2) The negotiations with the Government of the United States of America have been completed and the text of the Agreement was initialled on 8 September 2015.
- (3) The Agreement aims at establishing a comprehensive framework of data protection principles and safeguards when personal information is transferred for criminal law enforcement purposes between the U.S., on the one hand, and the EU or its Member States on the other. The objective is to ensure a high level of data protection and, thereby, enhance cooperation between the parties. Whilst not being itself the legal basis for any transfer of personal information to the U.S., the Umbrella Agreement supplements, where necessary, data protection safeguards in existing and future data transfer agreements or national provisions authorising such transfers.

- (4) The Union has competence covering all the provisions of the Agreement. In particular, the Union has adopted Directive 2016/680 /EU¹ on the protection of individuals **natural persons** with regard to the processing of personal data by competent authorities for the purposes of **the** prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, **and repealing Council Framework Decision 2008/977/JHA. Transfers by Member States subject to appropriate safeguards are foreseen by Article 37(1)(a) of this Directive.**
- (5) ~~The European Union has exclusive competence to the extent that the Agreement may affect common Union rules or alter their scope.~~
- (6) In accordance with Article 6a of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as annexed to the TEU and to the TFEU, the United Kingdom and Ireland are not bound by the rules laid down in the Agreement which relate to the processing of personal data when carrying out activities which fall within the scope of Chapter 4 (Judicial-cooperation in criminal matters) or Chapter 5 (Police cooperation) of Title V of Part Three of the TFEU where the United Kingdom and Ireland are not bound by the rules **governing the forms of judicial cooperation in criminal matters or police cooperation** which require compliance with the **provisions laid down in the** Agreement.
- (7) In accordance with Articles 2 and **2a** of Protocol **No** 22 on the position of Denmark, as annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not ~~taking part in the adoption of this Decision and is not~~ bound by the **rules laid down in the** Agreement or subject to ~~its~~ **their** application **which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of the TFEU.**

(7a) Any notification under Article 27 of the Agreement as regards the United Kingdom, Ireland or Denmark should be done in accordance with the status of those Member States under the relevant provisions of EU law and in close consultation with them.

- (8) The Agreement should be signed subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

¹ Directive of the European Parliament and of the Council on the protection of **natural persons** with regard to the processing of personal data by competent authorities for the purposes of **the** prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, **and** repealing Council Framework Decision 2008/977/JHA.

Article 1

The signing of the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses on behalf of the Union is hereby authorised, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

~~The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person indicated by the Commission.~~

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement on behalf of the European Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council

The President
