



Council of the
European Union

111371/EU XXV. GP
Eingelangt am 12/07/16

Brussels, 12 July 2016
(OR. en)

8523/16

Interinstitutional File:
2016/0126 (NLE)

JAI 341
USA 23
DATAPROTECT 43
RELEX 334

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the conclusion, on behalf of the European Union, 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

COUNCIL DECISION (EU) 2016/...

of ...

**on the conclusion, on behalf of the European Union, 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**

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(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ Consent of [date], (not yet published in the Official Journal).

Whereas:

- (1) In accordance with Council Decision (EU) 2016/... of 20 May 2016¹ 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 (the "Agreement") was signed on 2 June 2016, subject to its conclusion at a later date.
- (2) 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 United States of America (United States), on the one hand, and the European Union 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 United States, the Agreement supplements, where necessary, data protection safeguards in existing and future data transfer agreements or national provisions authorising such transfers.

¹ Council Decision (EU) 2016/...[(not yet published in the Official Journal)].

- (3) The Union has competence covering all the provisions of the Agreement. In particular, the Union has adopted Directive (EU) 2016/680 of the European Parliament and of the Council¹ 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 on the free movement of such data. Transfers by Member States subject to appropriate safeguards are foreseen by point (a) of Article 37(1) of that Directive.
- (4) In accordance with Article 6a of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (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 by the Member States when carrying out activities which fall within the scope of Chapter 4 or 5 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.
- (5) In accordance with Articles 2 and 2a of Protocol No 22 on the position of Denmark annexed to the TEU and the TFEU, Denmark is not bound by the rules laid down in the Agreement or subject to 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 5 of Title V of Part Three of the TFEU.

¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 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 on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

- (6) 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 Union law and in close consultation with them.
- (7) The European Data Protection Supervisor delivered an opinion on 12 February 2016¹.
- (8) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

¹ OJ C 186, 25.2.2016, p. 4.

Article 1

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 is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 29(1) of the Agreement¹.

Article 3

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President

¹ The date of entry into force of the Agreement for the European Union will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.