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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. Cion doc.: 9089/22 + ADD 1

Subject: Proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of New Zealand competent for fighting serious crime and terrorism
– Adoption

1. On 13 May 2020 the Council adopted a decision authorising the opening of negotiations with New Zealand for an agreement between the European Union and New Zealand on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the New Zealand authorities competent for fighting serious crime and terrorism¹.

¹ 7047/20 + ADD 1.

2. The objective of the agreement is, in accordance with Article 25(1), point (b) of Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol)², to authorise the exchange of personal data between Europol and New Zealand on the basis of an international agreement concluded pursuant to Article 218 of the Treaty on the Functioning of the European Union. This is the first international agreement concluded between Europol and a third country on this legal basis, as previous agreements between Europol and third countries were concluded on the basis of a cooperation agreement under Article 23 of Decision 2009/371/JHA (former Europol Decision).
3. On 13 May 2020 the Commission submitted to the Council a proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of New Zealand competent for fighting serious crime and terrorism and a proposal for a Council Decision on the conclusion of that Agreement³.

² OJ L 135/53, 24.05.2016.

³ 9089/22 + ADD 1, 9090/22 + ADD 1.

4. In the course of the negotiations over the past two years, from 13 May 2020 to 13 May 2022, the Commission did not consult the special committee designated by the Council, despite the fact that Article 218(4) of the Treaty on the Functioning of the European Union (TFEU) and Article 2 of the Council Decision authorising the opening of negotiations provide that the negotiations are to be conducted in consultation with that committee⁴. The text of the Agreement, initialled by the Commission and New Zealand on 3 December 2021, was thus submitted to the JHA Counsellors for the first time on 19 May 2022, well after the conclusion of the negotiations. As a result of this late submission, a second meeting of the JHA Counsellors had to be held on 3 June 2022 to allow Member States to express their views on whether certain changes to the text of the agreement needed to be made. In that connection, the Commission was asked to ensure compliance with Article 218 TFEU and accordingly, in future negotiations, to regularly consult the special committee designated by the Council as regards the progress of those negotiations, in accordance with its obligations under that Article and with the principle of sincere cooperation. This will allow the special committee designated by the Council to be consulted and to express its views in advance on issues that arise in connection with future agreements, particularly matters of territorial applicability and the appropriate wording in respect of the effects of Protocols 21 and 22 on bilateral external relations.
5. The European Data Protection Supervisor (EDPS), whom the Commission consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725⁵, published his formal opinion on 10 June 2022 confirming that the agreement adduces adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals⁶. That favourable opinion allowed the JHA Counsellors to confirm their agreement to the proposal for a Council Decision on the signing of the Agreement with New Zealand.

⁴ 7047/20 + ADD 1.

⁵ OJ L 295/1, 21.11.2018.

⁶ 10180/22.

6. The texts of the Decision and the Agreement, following finalisation by the legal/linguistic experts, are set out in documents 9954/22 and 9269/22, respectively⁷.
7. The Permanent Representatives Committee is therefore invited to:
 - confirm the agreement reached on the proposal for a Council Decision on the signing of the Agreement (9089/22 + ADD);
 - recommend that the Council adopt the proposal for a Council Decision on the signing of the Agreement at the Transport, Telecommunications and Energy (Energy) Council meeting on 27 June 2022;
8. The Council Decision on the signing of the Agreement will be published in the Official Journal of the European Union. The European Parliament will be informed in accordance with Article 218(10) TFEU and the Council Decision on the signing of the Agreement will be sent to the European Parliament.

⁷ Ireland is bound by Regulation (EU) 2016/794 and is therefore taking part in the adoption of the Decision. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark has not taken part in the adoption of Regulation 2016/794 and is not bound by it or subject to its application. Denmark is therefore not taking part in the Decision. In addition, Article 2 of the Council Decision on the signing of the Agreement has been amended to clarify that it falls within the competence of the President of the Council to designate the person(s) empowered to sign the Agreement on behalf of the Union.