



Council of the
European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL 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 terrorism

COUNCIL DECISION (EU) 2020/...

of ...

**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 terrorism**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2) and Article 88, in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Regulation (EU) 2016/794 of the European Parliament and of the Council¹ was adopted on 11 May 2016 and is applicable as of 1 May 2017.
- (2) The provisions of Regulation (EU) 2016/794, in particular those concerning the transfer of personal data from the European Union Agency for Law Enforcement Cooperation (Europol) to third countries and international organisations, provide that Europol may transfer personal data to an authority of a third country on the basis of an international agreement concluded between the Union and the third country pursuant to Article 218 of the Treaty on the Functioning of the European Union adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.
- (3) Negotiations should be opened with a view to concluding 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 terrorism (the 'Agreement').

¹ 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) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

- (4) As also explained in Recital 35 of Regulation (EU) 2016/794, the Commission should be able to consult the European Data Protection Supervisor (EDPS) also during the negotiation of the Agreement and, in any event, before the Agreement is concluded.
- (5) The Agreement should respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life, recognised in Article 7 of the Charter, the right to the protection of personal data, recognised in Article 8 of the Charter, and the right to an effective remedy and the right to a fair trial recognised in Article 47 of the Charter. The Agreement should be applied in accordance with those rights and principles.
- (6) The Agreement should not affect, and should be without prejudice to, the transfer of personal data or other forms of cooperation between the authorities responsible for safeguarding national security.
- (7) Ireland is bound by Regulation (EU) 2016/794 and is therefore taking part in the adoption of this Decision.

- (8) 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 is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (9) The EDPS has been consulted on this Decision and the Addendum thereto, and issued an opinion on 31 January 2020,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to open 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 terrorism.
2. The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Addendum to this Decision.

Article 2

The Commission is hereby nominated as the Union negotiator.

Article 3

The negotiations shall be conducted in consultation with the relevant Council Working Party and in accordance with the directives contained in the Addendum to this Decision, subject to any directives which the Council may subsequently issue to the Commission.

The Commission shall regularly report to the Council Working Party on the progress of the negotiations and shall forward all negotiating documents to it without delay.

Article 4

This Decision is addressed to the Commission.

Done at ...,

For the Council

The President
