



Council of the  
European Union

Brussels, 12 October 2021  
(OR. en)

12141/21

JAI 1011  
COPEN 357  
COASI 139  
EUROJUST 87  
EJN 65

## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

---

Subject: COUNCIL DECISION authorising the opening of negotiations with Japan for the amendment of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters

---

**COUNCIL DECISION (EU) .../...**

**of ...**

**authorising the opening of negotiations with Japan  
for the amendment of the Agreement between the European Union and Japan  
on mutual legal assistance in criminal matters**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Negotiations should be opened with a view to amending the Agreement between the European Union and Japan on mutual legal assistance in criminal matters<sup>1</sup> (the ‘Agreement’).
- (2) The processing of personal data under the Agreement involves the processing, exchange and subsequent use of relevant information for the purposes set out in Article 82 of the Treaty on the Functioning of the European Union (TFEU). That processing should comply with the applicable data protection rules. The data protection provisions of the Agreement should therefore be reviewed and new provisions agreed, that allow the Union to ensure that such processing complies with Directive (EU) 2016/680 of the European Parliament and of the Council<sup>2</sup>.

---

<sup>1</sup> Agreement between the European Union and Japan on mutual legal assistance in criminal matters (OJ L 39, 12.2.2010, p. 20).

<sup>2</sup> 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).

- (3) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>1</sup>, and delivered an opinion on 16 July 2021<sup>2</sup>.
- (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 TFEU, Ireland is bound by Council Decision 2010/616/EU<sup>3</sup> and is therefore taking part in the adoption of this Decision.
- (5) In accordance with Articles 1, 2 and 2a of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

---

<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>2</sup> OJ: Please insert the reference to the opinion contained in document ST 10983/21.

<sup>3</sup> Council Decision 2010/616/EU of 7 October 2010 on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters (OJ L 271, 15.10.2010, p. 3).

### *Article 1*

1. The Commission is hereby authorised to open negotiations with Japan for the amendment of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters, in order to align that Agreement with Directive (EU) 2016/680 as regards the protection of personal data processed under the Agreement.
2. The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the addendum to this Decision, subject to any directives which the Council may subsequently issue to the Commission.

### *Article 2*

The Commission is hereby nominated as the Union negotiator.

### *Article 3*

1. The negotiations shall be conducted in consultation with the Working Party on Judicial Cooperation in Criminal Matters (COPEN).
2. The Commission shall report regularly to the COPEN 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*

---