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Brussels, 6 March 2026
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JAI 55
ASILE 10
MIGR 28
FRONT 16
COEST 38

DECLASSIFICATION

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Subject: Recommendation for a COUNCIL DECISION authorising the opening of negotiations for an agreement between the European Union and the Swiss Confederation establishing a basis for the exchange of information on persons benefitting from temporary protection

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 9 December 2022

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2022) 712 final

Subject: Recommendation for a COUNCIL DECISION authorising the opening of negotiations for an agreement between the European Union and the Swiss Confederation establishing a basis for the exchange of information on persons benefitting from temporary protection

Delegations will find attached document COM(2022) 712 final.

Encl.: COM(2022) 712 final



EUROPEAN
COMMISSION

Brussels, 9.12.2022
COM(2022) 712 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations for an agreement between the European Union
and the Swiss Confederation establishing a basis for the exchange of information on
persons benefitting from temporary protection**

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

• **Reasons for and objectives of the recommendation**

Under Articles 10 and 27 of Temporary Protection Directive¹, Member States are to register personal data of beneficiaries of temporary protection and take all the appropriate measures to establish direct cooperation and an exchange of information² between the competent authorities. While the four countries associated to the Schengen Cooperation, namely Norway, Iceland, Switzerland and Liechtenstein, do not apply the Temporary Protection Directive, they have their own systems of temporary protection. Moreover, being part of the Schengen area, they constitute along with the EU Member States a single space where the beneficiaries of temporary protection can freely move in. For this reason, Switzerland has shown an interest in being able to exchange data with the Member States on displaced persons.

From the EU side, it is in the interest of the Member States to provide for the possibility to exchange data with Switzerland, which counted, on 25 October, 65 953³ registrations of persons enjoying protection on its territory. Such exchange of data will allow Member States to discover persons registered in Switzerland and potentially to stop providing for the benefits attached to the rights deriving from temporary protection where a person is registered in Switzerland.

The envisaged agreement aims at establishing a legal basis for the Member States to exchange the relevant data with Switzerland. The international agreement is not intended to be an instrument acknowledging the level of data protection in those third countries within the meaning of Chapter V of Regulation (EU) 2019/679⁴.

2. LEGAL BASIS

The procedural legal basis for a decision authorising the opening of negotiations of an agreement between the Union and a third country and addressing directives to the negotiator is Article 218(3) and (4) TFEU.

The substantive legal basis for the signature and conclusion of the new agreement can only be determined at the end of the negotiations, in light of its contents.

¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

² Member States need to exchange personal data to fulfil their tasks under Articles 11, 15 and 26 of the Temporary Protection Directive.

³ Cumulative number.

⁴ Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC.

3. BUDGETARY IMPLICATIONS

The agreement will not have budgetary implications.

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Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and the Swiss Confederation establishing a basis for the exchange of information on persons benefitting from temporary protection

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation from the European Commission,

Whereas:

- (1) At the Council meeting of 4 March 2022, in face of the mass influx of persons fleeing Ukraine as a consequence of Russia's invasion of Ukraine, the Council adopted unanimously Implementing Decision (EU) 2022/382⁵.
- (2) At the same Council meeting a statement was made to support Member States who are the main entry points of the mass influx of displaced persons fleeing war from Ukraine covered by Implementing Decision (EU) 2022/382 and to promote a balance of efforts between all Member States, Member States agreed not to apply Article 11 of Council Directive 2001/55/EC in relation to persons enjoying temporary protection in a given Member State in accordance with the Council Implementing Decision (EU) 2022/382 and moving to another Member State without authorisation, unless on a bilateral basis, Member States agree otherwise.
- (3) Under Article 10 of Council Directive 2001/55/EC, Member States have an obligation to register at national level the personal data of the persons enjoying temporary protection on their territory. In addition, Article 27(1) of the Directive foresees that for the purposes of the administrative cooperation required to implement temporary protection the Member States should, in liaison with the Commission, take all

⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

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appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

- (4) It is in the interest of the Member States to exchange information with third countries being part of the Schengen area without control at internal borders. In this respect, Switzerland, which counted, on 25 October, 65 953⁶ registrations of persons enjoying temporary protection on its territory has expressed an interest in such exchange of information. Many of these persons may have registered previously in a Member State, and therefore enabling an exchange of data on these persons with Switzerland will allow those Member States to stop providing for the benefits associated to the rights attached to temporary protection to the persons concerned.
- (5) In addition, it is in the interest of the Member States to ensure a certain stability and balance in the distribution of persons fleeing the war in Ukraine, while ensuring that the system is not open to abuse.
- (6) The Union should therefore participate in negotiations with a view to concluding an agreement between the Union and the Swiss Confederation,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate an agreement with the Swiss Confederation establishing a basis for the exchange of information on persons benefitting from temporary protection.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the Working Party on Asylum.

⁶ Cumulative number.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

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