



Council of the
European Union

Brussels, 18 May 2016
(OR. en)

8505/16

**Interinstitutional File:
2016/0127 (NLE)**

**JAI 337
USA 21
DATAPROTECT 41
RELEX 330**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the signing, 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 offences

COUNCIL DECISION (EU) 2016/...

of ...

**on the signing, 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 offences**

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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 3 December 2010, the Council authorised the Commission to open negotiations with the Government of the United States of America (United States) concerning an agreement on the protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism.
- (2) The negotiations with the Government of the United States have been completed and the text of the Agreement was initialled on 8 September 2015.
- (3) 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, 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.
- (4) 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 Article 37(1)(a) of that Directive.

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).

- (5) 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.
- (6) In accordance with Articles 2 and 2a of Protocol No 22 on the position of Denmark, annexed to the TEU and to 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.
- (7) 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.
- (8) The Agreement should be signed subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the 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 offences is hereby authorised, subject to the conclusion of the said Agreement¹.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council

The President

¹ The text of the Agreement will be published together with the decision on its conclusion.