

Brussels, 2 May 2018
(OR. en)

5034/1/18
REV 1

LIMITE

ENFOPOL 5
CT 2
RELEX 8
JAI 6

NOTE

From: Presidency
To: Delegations

Subject: Draft COUNCIL DECISION authorising the opening of negotiations for an agreement between the European Union and the Republic of Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish competent authorities for fighting serious crime and terrorism

Delegations will find attached a revised draft of the above draft Council Decision, amended in order to reflect changes made in the corresponding text used as a model (5964/1/18 REV 1).

Changes compared to the initial Commission proposal are underlined, deletions are marked by (...).

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and the Republic of Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish competent authorities for fighting serious crime and terrorism

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Articles 16(2) and 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) This Regulation, in particular its Article 25, sets out the rules for the transfer of personal data from the European Union Agency for Law Enforcement Cooperation (Europol) to third countries and international organisations. Europol may transfer personal data to an authority of a third country on the basis of an international agreement concluded between the Union and that third country pursuant to Article 218 TFEU 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 such an Agreement between the European Union and Turkey.

¹ Regulation (EU) 2016/794 of 11 May 2016, 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 stated 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 should, in any event, be able to do so 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 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 effective remedy and fair trial recognised by Article 47 of the Charter. The Agreement should be applied in accordance with those rights and principles.
- (6) The Agreement should not affect, and be without prejudice to, transfer of personal data or other forms of cooperation between the authorities responsible for safeguarding national security.
- (7) The United Kingdom and Ireland are bound by Regulation (EU) 2016/794 and are 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 its Addendum and issued an opinion on 14 March 2018.

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to (...) open negotiations for an agreement between the European Union and the Republic of Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish competent authorities for fighting serious crime and terrorism.

2. The negotiations shall be conducted on the basis of the negotiating directives of Council set out in 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, 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 negotiations and shall forward all negotiating documents to it without delay.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*
