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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
N° prev. doc.:	11884/25 + ADD 1
Subject:	Commission recommendation for a Council Decision authorising the opening of negotiations on a framework agreement between the European Union and the United States of America on the exchange of information for security screenings and identity verifications relating to border procedures and applications for visa: comments and text suggestions

Delegations will find attached the text of 11884/25 + ADD 1, with text suggestions and comments from Member States integrated in the text, to facilitate the discussion at JHA Counsellors meeting on 18 September 2025.

General comments/questions

AT: In line with our previous position, Austria welcomes the draft negotiating mandate for the European Commission with regard to an EU-US framework agreement on information exchange relating to border procedures and applications for visa. The text seems to be balanced and consistent with the discussions in the IXIM WP.

However, Austria would like to express its' concern about the envisaged timeline and the general feasibility of bilateral data exchanges for the purpose of border security. Given the complexity of issues to be negotiated in the framework agreement, it seems unlikely that the deadline of 31 December 2026 set by the US for concluding EBSP agreements can be met.

Furthermore, it is of our understanding that the US is rather interested in data stored in European information systems, like the VIS, sBMS and CIR, which contain data equivalent to the US ABIS system, rather than in national databases. Therefore, it remains doubtful if full reciprocity can be reached.

In order to reach an operationally mutually beneficial solution in the future, Austria is open to explore ways of international data exchange based on the European information systems.

DE: - The primary objective of a framework agreement with the U.S. must be to achieve added value for European security and thus for the security of the Member States while upholding fundamental rights and complying with the requirements of data protection law. Furthermore, the mandate to negotiate a framework agreement should help the Member States to present the U.S. with a united front, including in bilateral negotiations. We suggest that both of these points be explicitly formulated in the proposed mandate and the directives.

- In a past meeting of the Working Party on JHA Information Exchange (IXIM), the European Commission presented initial thoughts on sharing information with third countries ("Prüm international"). Does the Commission see any way to link these thoughts to the Enhanced Border Security Partnership (EBSP)? If this approach is viewed as a possible instrument for the EBSP, it would be desirable for the framework agreement to contain wording that includes this option, such as a standard technical solution which in future would enable the proposed exchange of information between the Member States and the U.S. if a corresponding EU instrument were to be created for this purpose.

- Both the proposed Recommendation for a Council Decision (4) and the directives in the Annex (II. 17) refer to the relationship between the framework agreement and bilateral agreements or arrangements. The conditions under which existing bilateral agreements/arrangements on the EBSP can be continued are unclear and therefore need to be specified. In our view, the existing bilateral agreements should be revised to ensure consistency with the proposed framework agreement and should also ensure a suitable level of data protection. In the interest of consistency, we also suggest checking whether it is possible to add provisions concerning the date on which all of the bi-lateral agreements/arrangements are to enter into force.

- The framework agreement should not contain any deadlines for implementing the bilateral agreements/arrangements and should leave this up to the Member States due to their individual legal and technical needs with regard to implementation.

General comments/questions

EE: Today the US expectation is that Member States have operationalized an EBSF by December 31, 2026, and starting in 2027, US will assess whether a VWP partner's operations comply with the EBSF requirement as part of the regular VWP review process. We are concerned that considering current developments these expectations are not realistic to achieve. Thus, the framework agreement should also set out new reasonable deadline for concluding and implementing the bilateral agreements and for start of assessing the EBSF requirement as part of VWP .

EL: No comments regarding the Recommendation. In continuance to our previous correspondence we are in favour of a common European approach, based on a negotiating mandate for the Commission regarding the conclusion of an international agreement with the United States of America that will comply with EU law and respect the principles of reciprocity and proportionality.

FR:

Concernant la répartition des compétences

Les autorités françaises ne partagent pas la lecture de la Commission européenne selon laquelle la négociation d'un accord-cadre entre l'UE et les Etats-Unis, destiné à encadrer la conclusion d'accords de type « *Enhanced Border Security Partnership* » (EBSF) entre les Etats membres et les Etats-Unis à titre bilatéral, relèverait uniquement de la compétence exclusive de l'Union. Au regard des directives de négociation prévues en annexe, **certaines des domaines couverts par l'accord envisagé relèvent de la compétence des Etats membres :**

- D'une part, il est envisagé que l'accord-cadre prévoit à la fois les modalités d'accès et de communication des informations contenues dans les bases de données nationales mais aussi le champ des informations qui pourront être échangées. Or, si les garanties encadrant le transfert de données personnelles sont largement harmonisées par le RGPD et la directive police-justice, la détermination du type de données nationales qui peuvent être communiquées à un Etat tiers relève manifestement de la compétence des Etats membres.
- D'autre part, le champ des accords bilatéraux qui pourront ensuite être conclus par les Etats membres dépendra du contenu de l'accord-cadre, et celui-ci comportera par conséquent des éléments qui relèvent de la compétence des Etats membres.

Par conséquent, pour que la décision du Conseil reflète la mixité du mandat, les autorités françaises sollicitent les ajouts suivants :

- Ajout d'un considérant 4 bis : « L'Union participe aux négociations relatives à cet instrument juridique international pour les questions relevant de sa compétence exclusive. Les Etats membres conservent leur compétence dans la mesure où l'instrument juridique international n'affecte pas de règles communes ou n'en altère pas la portée, y compris leurs perspectives d'évolution prévisible ».

General comments/questions

- A l'article 1^{er}, préciser que « *La Commission est autorisée à ouvrir les négociations, au nom de l'Union, pour les questions relevant de sa compétence exclusive* ».

Les autorités françaises invitent la Présidence à présenter en parallèle un projet de décision permettant aux Etats membres d'endosser les directives de négociation.

Le projet d'accord-cadre revêtant des enjeux techniques complexes, les autorités françaises sollicitent également la constitution d'une équipe de négociateurs composée de représentants de l'Union et d'experts techniques nationaux.

HU: We share the view that the main objective of the framework agreement should be to ensure the principle of reciprocity.

IE: Ireland is supportive of the aims set out and welcomes the consideration the Commission has given to the previously expressed views of Member States in relation to the principles of reciprocity and necessity, for a clear purpose limitation to the information to be exchangeable, and for the inclusion of appropriate data protection safeguards.

The effective and efficient prevention, detection, investigation and prosecution of crimes and terrorist offences is an objective shared by all Member States. Information exchange of biometric and travel document data in line with the principles of Directive (EU) 2016/680 may benefit Member States and the United States in furthering this objective and should be based on a high and consistent level of reciprocity between the United States and individual Member States.

We note that many Member States have signed Preventing and Combatting Serious Crime agreements with the United States as Ireland did in 2011, and that the 'Umbrella Agreement' set out data protection rules on the exchange of information for law enforcement purposes between the European Union and the United States.

We accept that the proposed Enhanced Border Security Partnerships (EBSP) are broader than these older agreements in that they potentially deal with issues of border management and visa policy, but wish to emphasise their core and ultimate aim is to assist the competent authorities in Member States and the United States in combatting terrorist offences and serious crimes, and nullifying risks posed by information gaps in the international movement of criminal elements between the European Union and the United States.

We wish to confirm that Ireland is entering a scrutiny reservation in respect of Recital 7 and the legal basis for the text. (see comments next to Recital 7)

IT: For Italy it is important to maintain the existing framework for cooperation on police and justice matters. We believe that the scope of the agreement should be limited to migration issues with full respect of the reciprocity principle.

It is important that the framework agreement specifies the conditions that determine the initiation of an inquiry into a traveller based on a multi-level "query response model" rather than direct access, as the US wish.

General comments/questions
These conditions should prevent the execution of queries on individuals in all cases, without any prior suspicion. They should therefore exclude systematic and routine queries on all individuals travelling between the EU and the United States. Having regard to the Regulation UE 2016/679, another sensitive aspect is the importance of data protection. The data verification procedure should be initiated on the basis of specific and proportionate justifications as established by the Charter of Fundamental Rights. From this point of view, as emphasised by the European Court of Justice itself, the fight against serious crime and terrorism constitutes a good justification. Another issue concerns the limitation on the storage of passenger data after departure, unless the passenger poses a threat to national security. All other passenger data should be deleted after departure, as its storage should not be considered necessary. It is also important to establish rules on the information to be made available to individuals and to guarantee enforceable rights for individuals whose personal data are processed, in the form of rules on the right to information, access, rectification and deletion, including the specific grounds that may allow for any necessary and proportionate restrictions on those rights. This aspect risks undermining the principle of reciprocity, as in the US, citizens' appeals may not be admissible. LT: The Lithuanian delegation had the pleasure of reviewing the Commission's Recommendation for a Council Decision authorising the opening of negotiations on a framework agreement between the European Union and the United States of America concerning the exchange of information for security screenings and identity verifications in the context of border procedures and visa applications. We wish to express our appreciation for the comprehensive nature of the proposed initiative. At this stage, we have no specific comments or proposals regarding the Recommendation itself. NL: The Netherlands would like to thank the Commission for the publication of the draft mandate and the draft negotiating directives. The Netherlands welcomes the fact that crucial EU principles on data protection, data retention, proportionality, necessity, reciprocity, purpose limitation and limitation of onward transfers have been addressed in the draft negotiating directives. However, adjustments to the draft negotiating directives are required to clarify the exact baseline of these important principles. This will provide an enhanced, stable basis for the negotiations. Although some degree of flexibility must be maintained within the directives, without the amendments explained below the negotiating directives remain too vague. The national political consultation procedure has been initiated, but has not been finalized. Therefore, NL has a scrutiny reservation and these comments should be considered as preliminary remarks. Additional NL comments may follow after the discussion in the IXIM WP later this month. The Commission would like to finalize the negotiations before the end of 2026. As of 2027, the US DHS will assess compliance of Member States with the EBSF requirement for the initial or continued participation in the Visa Waiver Program. NL has concerns regarding this tight timeline, as negotiations will not be easy, the European Parliament needs to provide its consent and bilateral agreements need to be negotiated and concluded as well (in some cases even prior to the entry into force of the framework agreement). Any bilateral agreement needs to be approved by the Dutch Parliament. It is therefore essential that sufficient time be incorporated into this process. For this reason, NL wishes to

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receive additional information about the planning of the negotiations. It is also important to note that the framework agreement contains clear provisions on when and how the US will assess the continued participation of Member States to the Visa Waiver Program. This should be done after a considerable period following the conclusion of the agreement. Therefore, this should be included in the negotiating Directives as well. Member States should be consulted and informed by the Commission on a regular basis during the negotiating process. Instead of designating a special committee, the Netherlands prefers to revert to the relevant JHA communities within the Council (for instance: WP IXIM, JHA Counsellors or the Schengen Council) as a dedicated forum to consult throughout the negotiations. This should be secured in a dedicated clause in the negotiating mandate. The Netherlands would kindly like to ask the Presidency to discuss this during the next IXIM WP taking place on 29 September 2025. SI: we are still studying it but in principle we are ready to support to open negotiations based on the documents prepared by the EC. SK: Slovakia agrees with the content of the document and has no additional comments to submit.

Commission recommendation	Comments
Recommendation for a COUNCIL DECISION	
authorising the opening of negotiations on a framework agreement between the European Union and the United States of America on the exchange of information for security screenings and identity verifications relating to border procedures and applications for visa	

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Commission recommendation	Comments
THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), Article 77(2) and Article 218(3) and (4) thereof,	
Having regard to the recommendation from the European Commission,	
Whereas:	
(1) The United States of America have introduced a new requirement for admission to and further participation in the U.S. Visa Waiver Program, which enables citizens of participating countries to travel to the United States visa-free for maximum 90 days for the purpose of tourism or business. The new requirement entails the conclusion of an 'Enhanced Border Security Partnership' (EBSP) with the U.S. Department of Homeland Security. There is a need for a common framework for information exchange in the context of the EBSP. Negotiations should therefore be opened with a view to concluding a framework agreement between the Union and the United States of America on the exchange of information for the screening and identity verification of certain travellers crossing their respective (FR) external borders of the Member States (FR) necessary to determine if their entry or stay would pose any risk to public security or public order, and necessary to support the competent authorities in the prevention, detection, investigation and prosecution of crimes and terrorist offences. (DE)	DE: in accordance with the wording in the negotiating guidelines. FR: Les autorités françaises soulignent leur attachement au principe de réciprocité des échanges découlant des accords de type « <i>Enhanced Border Security Partnership</i> » (EBSP).

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Commission recommendation	Comments
(2) The framework agreement should respect fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the Union, in particular the right to liberty and security recognised by Article 6 of the Charter, 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 in Article 47 of the Charter, <u>the presumption of innocence and right of defence recognised in Article 48 of the Charter and the Principles of legality and proportionality of criminal offences and penalties recognised in Article 49 of the Charter. (FR):</u> The framework agreement should be applied in accordance with those rights and principles and having due regard to the principle of proportionality in accordance with Article 52(1) of the Charter.	AT: The requirements of the EU data protection legal framework (in particular Chapter V of the GDPR and Chapter V of the Data Protection Directive-PJ) must be complied with. FR: Ces ajouts semblent essentiels au regard des différences de traitement entre les deux parties, et de l'importance de ces clauses pour les Etats membres de l'Union européenne.
(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 and delivered an opinion on [XX].	
(4) The framework agreement should allow for the conclusion of bilateral arrangements between the United States of America and the Member States on matters covered by it, provided that the provisions of such bilateral arrangements are compatible with those of the framework agreement and with Union law.	
<u>(4bis) The Union participates in negotiations on this international legal instrument as regards matters falling within its exclusive competence. Member States retain their competence insofar as the international legal instrument does not affect common rules or alter their scope thereof, including their foreseeable development prospects. (FR)</u>	FR: See general comment on competences.

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Commission recommendation	Comments
(5) The Commission should be nominated as the Union negotiator.	
(6) 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 TFEU, Denmark is not taking part in the adoption of this Recommendation and is not bound by it or subject to its application.	
(7) This Recommendation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC (8); Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.	IE: Ireland wishes to engage further with the Commission regarding this recital as we do not believe that the Framework Agreement is a Schengen-building measure. We accept that the Schengen acquis must be developed in a coherent and cohesive manner but are concerned that this recital precludes Ireland from engaging effectively with the Council negotiation of a Framework agreement intended to apply to Member States who enjoy a visa free status with the United States, which includes Ireland. The Recommendation recognises that continued access to the Visa Waiver Programme is a political goal that is shared by all Member States that currently participate in the programme, which includes Ireland. We note the Explanatory Memorandum outlines that the Framework Agreement is intended to apply to Member States which enjoy a visa free status with the United States, of which Ireland is one. The Framework Agreement is intended to set out the impact of the US Visa Waiver Programme on information exchange between the US and Member States, and to empower Member States to create bilateral agreements or arrangements to implement the information exchange under the EBSP as a requirement under the Visa Waiver Programme. However, the ultimate aim, as outlined above, is to help combat serious crime and terrorism. We are concerned that if Ireland cannot participate alongside other Member States in the negotiation and adoption of the Framework

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Commission recommendation	Comments
	Agreement proposed, that this will have a significant and potentially negative impact on the ability of Ireland to properly conclude a prospective EBSA agreement or arrangement with the United States at a later date, and therefore also on Ireland's continued participation in the Visa Waiver Programme. We note that while Ireland is not part of the Schengen area by virtue of our special position in sharing a land border with the United Kingdom and Northern Ireland, subject to the Common Travel Area, we do participate in some Schengen-related measures. The proposed information exchange that the Framework agreement will facilitate under bilateral arrangements is between Member States and the United States as a third country external to the Union. We note that the United States administration has engaged with Member States on an individual and bilateral basis to implement the EBSPs by linking them to the Visa Waiver Programme, with a deadline of 31 December 2026. Ireland has to date taken the position that any overtures from the US administration on the prospect of introducing an EBSP would be deferred until the EU level negotiation and agreement of this Framework agreement concluded. With respect to how individual Member States may decide to implement the bilateral agreements to follow the Framework Agreement, Ireland wishes to closely align with our European peers on this issue and avoid any issues that may be incompatible with national law or create operational vulnerabilities or difficulties in implementing a later EBSP with the United States that may conflict with or potentially weaken the wider EU position. While it may be possible for Ireland to closely replicate the effects of the Framework agreement, we would not have access to the dispute settlement body proposed for the agreement, or the oversight and evaluation components relative to other Member States. It is our view that it is in the interests of both Ireland and other Member States to present a unified, consistent and standard implementation of bilateral

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Commission recommendation	Comments
	arrangements on EBSPs, as they will involve the exchange of such sensitive and important data with the United States. The Recommendation has a Title V legal basis derived from Article 77(2) of the Treaty on the Functioning of the European Union. In matters of freedom, security and justice, Ireland has a special position under Protocol 21 annexed to the Treaty and may decide to opt-in under Article 3 or 4 of the Protocol to take part in a relevant measure. This is without prejudice to the Schengen Protocol, and Council Decision 2002/192/EC (8) where applicable. In Declaration 56 by Ireland on Article 3 of Protocol 21, Ireland affirmed its commitment to the Union as an area of freedom, security and justice within which citizens are provided a high level of safety. Ireland affirmed its firm intention to exercise its right under Article 3 of the Protocol to take part in the adoption of Title V measures to the maximum extent it deems possible, in particular measures in the field of police cooperation. We accept that the Union has exclusive competence under Article 3(2) TFEU regarding international agreements that may alter common rules, and in matters of visa policy. We note that under Article 4(j) of the TFEU, the Union and Member States have a shared competence in the area of freedom, security and justice. We note that para. i.(2) of the Directives annexed to the Recommendation outlines that the screening or verification of travellers as provided for under the Framework Agreement would be to determine if their entry or stay poses a risk to public safety or order, and to support the competent authorities in the prevention, detection, investigation and prosecution of crimes and terrorist offences. We note that para. i.3 of the Directives outlines that clear and precise rules and procedures for triggering a query on a traveller will be provided for under the Framework Agreement, to preclude systematic, generalised or non-specific processing of data for all travellers, i.e. that a reasonable and justifiable suspicion that the traveller is involved in

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	criminal or terrorist activity will prompt law enforcement officials to direct that the specific checks and exchange of information be sought. We are concerned that the Recommendation and Annex do not accurately reflect the shared competence of Member States in this area generally, and particularly for Ireland, by focusing on the common visa policy aspect as opposed to the law enforcement and counter-terrorism aspect. We note that Ireland participates in similar measures relating to Advance Passenger Information and Passenger Name Record data. It is our view that the exchange of information proposed concerns specific counterterrorism and law enforcement activities in the context of the prevention, detection, investigation and prosecution of crime and terrorist offences, and is not intended for general visa purposes. It is therefore not wholly coherent that the Framework Agreement is being cast as a Schengen-building measure as opposed to a police cooperation measure. It may be that a more appropriate or additional Title V legal basis can be found primarily in Article 87(2)(a) of the TFEU. We note that Ireland participates in Regulation (EU) 2025/12 and Regulation (EU) 2025/13 ('the API (Borders) and API (Police) Regulations') and has transposed Directive (EU) 2016/681 ('the PNR Directive'), which have a legal basis in Article 87(2)(a) and Article 82(1)(d) of the TFEU. Ireland also is a party to the recent PNR agreement with Canada and has opted-in under Article 3 of Protocol 21 to PNR agreements with Iceland and Norway in July 2025, which have a legal basis in Article 87(2)(a) of the TFEU. While these measures are distinct from the proposed exchange of information under the EBSPs, we contend that their aims are similar and note Council Decision 2012/472/EU of 26 April 2012 concluding an agreement on Passenger Name Record exchange between the EU and United States as relevant in this regard. We are therefore requesting that the Commission reconsider: 1) whether it is strictly necessary to cast the Recommendation as constituting a development of the provisions of the Schengen acquis, or

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	2) whether a more appropriate or additional legal basis can be found in Article 87(2)(a) of the TFEU instead of Article 77(2), or possibly Article 82(d) combined with Article 87(2)(a). We therefore wish to enter a scrutiny reservation regarding Recital 7 and the legal bases for the text. We are in the process of obtaining legal advice on Ireland's position regarding Recital 7 as it relates to Protocol 19 and 21 annexed to the TFEU, which will further inform our approach. We are available to meet with the Commission on this issue as needed.
HAS ADOPTED THIS DECISION:	
<i>Article 1</i>	
The Commission is hereby authorised to <u>open (FR) negotiations (FR)</u> e, on behalf of the Union, <u>on matters falling within its exclusive competence, on (FR)</u> a framework agreement between the Union and the United States of America on the exchange of information for security screenings and identity verifications relating to border procedures and applications for visa.	
<i>Article 2</i>	
The negotiating directives are set out in the Annex.	

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Commission recommendation	Comments
<i>Article 3</i>	
The negotiations should be conducted in consultation with <u>the Working Party on Information Exchange in the JHA area (IXIM) which is designated by this Decision as a special committee within the meaning of Article 218(4) TFEU.</u>the name of the special committee to be inserted by the Council. (FR) The Commission shall regularly report to the special committee referred to in the first paragraph on the progress of negotiations and shall forward all negotiation documents to it as soon as possible. (FR)	FR : Les autorités françaises soutiennent la désignation du groupe IXIM en tant que comité spécial, de sorte à garantir l'association et l'information du Conseil tout au long des négociations.
<i>Article 4</i>	
This Decision is addressed to the Commission.	
Done at Brussels,	
<i>For the Council</i>	
<i>The President</i>	

General comments/questions
DE: - The Member States require precise specification of the data to be used in the ex-change of information (e.g.: fingerprints – flat, rolled, thumb, index finger, entire hand). - How exactly are biometric data to be checked during the ongoing operation of the re-vised VWP? - Are they not to be checked until the traveller enters the country and is registered at the airport? - Which steps are to be taken in the event of a hit? HU: For the sake of efficiency, attention must also be paid to the limited capacity of Member States, which may not only be technical in nature. In this regard, and with particular reference to point 11(h) and point 13, it should be clarified as soon as possible which categories of data may require human capacity. NL: - The intended scope of the framework agreement – e.g. identification of the types of databases to be consulted - should already be clarified in the draft negotiating directives (point 10). In any case, it is important that the information covered by this framework agreement is limited to information collected in the border process, as this is directly linked to the visa exemption, also to prevent overlap with other agreements with the US. It is particularly important to clarify that the framework agreement cannot replace agreements between Member States and the VS focused on legal aid. Subjects and procedures related to legal aid cannot be addressed in the framework agreement. - The exchange of information under this framework agreement should be based on the principle of reciprocity (and not only guided by that principle, as currently mentioned in point 5). - The framework agreement should state which information the EU and its Member States can expect to receive from the US in return, and it should specify the timeframes for receiving that information. - The exchange of information should not go beyond the level of information exchange between EU Member States. This means that the procedure of information exchange should be based on a hit / no hit basis after which in case of a hit possible additional information can be shared if agreed upon by designated competent authorities through the appropriate channels. The negotiating directives should clearly state in which cases the US will have automated access to EU databases and for which purposes this information will be used. In case of automated information exchange, this should not be followed by continued automated access to additional information. This does not respect the data protection rules nor the principle of purpose limitation and goes beyond the level of information exchange between EU Member States. - The negotiating directives should also include a clause on the measures the EU is willing to consider in case of violation of the agreement, for example, after point 14. A thorough discussion needs to be conducted to see if the EU is willing to consider visa measures in case the agreement is not respected by the US, or in case of suspension of the agreement.

Commission recommendation	Comments
General Comments	
DIRECTIVES FOR THE NEGOTIATION OF A FRAMEWORK AGREEMENT BETWEEN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA ON THE EXCHANGE OF INFORMATION FOR SECURITY SCREENING AND IDENTITY VERIFICATION RELATING TO BORDER PROCEDURES AND APPLICATIONS FOR VISA	
In the course of the negotiations, the Commission should aim to achieve the objectives set out in detail below.	
I. PURPOSE AND SCOPE OF THE FRAMEWORK AGREEMENT	
1. The purpose of the framework agreement is to provide for a legal structure <u>basis and the conditions (DE)</u> for Member States' bilateral information exchange between their competent authorities and the competent authorities of the United States of America (U.S.) in the context of the U.S. Enhanced Border Security Partnership (EBSP).	
2. The framework agreement should provide clear and precise <u>and reciprocal (LT1)</u> rules on the exchange of information between the Member States and the U.S. <u>for security screenings and</u>	BE1: there seems to be an inconsistency with § 7 mentions where the risk to public security or public order is left out. Why is that? In addition, it should be made clear what a risk to public security or public order entails.

Commission recommendation	Comments
<u>identity verification of on (FR) travellers crossing their respective external borders or applying for a visa (FR) to support the screening and verification of identity of travellers necessary to determine if their entry or stay would pose any (BE) risk to their (FR) public security or public order (LT2), and necessary</u> to support the screening and verification of identity of travellers necessary to determine if their entry or stay would pose any risk to public security or public order, and to support the competent authorities in the prevention, detection, investigation and prosecution of crimes and terrorist offences (LT2) (LT3)	CZ1: This provision authorizes the Commission to negotiate only “on the exchange of information between the Member States and the U.S. on travelers crossing their respective external borders to support the screening and verification of identity of travelers necessary to determine if their entry or stay would pose any risk to public security or public order, and to support the competent authorities in the prevention, detection, investigation and prosecution of crimes and terrorist offences”. First, the Commission should explain why the prevention and combating of crime is added but is not covered by Article 1. Second, while this Directive is broader than in Article 1 of the draft Council decision, the U.S. approach appears to be broader still. Therefore, the Commission should explain how it plans to deal with this discrepancy. In particular, the situations where the Member States would be required to supplement the rules on information exchange for such additional purposes should be avoided. LT1: Lithuanian delegation supports the requirements, but suggest harmonizing terminology with the principle stated in paragraph 5. In our opinion the reciprocity principle should also result in requirements for the rules referred in Art. 2 and Art.3 Accordingly, we propose to formulate "clear, precise and reciprocal rules". LT2: LT Delegation supports the wording, but these categories (public security and public order) may be found to be ambiguous therefore the "scope" of the terms should be clarified in the agreement. LT3: LT delegation is in favour of the proposed provision, but these categories should be clarified in the agreement. The agreement should at least name the characteristics of the unlawful conduct which shall determine it to be considered a crime or a terrorist offence.

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Commission recommendation	Comments
3. The objective of the framework agreement is to provide the legal basis and the conditions for the transfer and exchange of personal data between the competent authorities of the Member States and of the U.S. respectively. In particular, the framework agreement should provide clear and precise rules-conditions (DE) (LT4) and procedures for triggering a query on a traveller in individual cases (DE), to preclude a systematic, generalised and non-targeted processing of data for all travellers without previous suspicion (DE).	LT4: Please see the comment for Art. 2
4. The framework agreement should contain definitions of key terms (LT5), including (DE) a definition of personal data that is compliant with the definitions in Regulations (EU) 2016/679 and 2018/1725 ¹ , and in Directive (EU) 2016/680 ² and definitions of criminal offences and phenomena that fall within the scope of the framework agreement in particular a definition of personal data. (BE2) (FR1)	BE2: proposes to use the wording of § 9, which is identical in content. FR1: proposes to delete the paragraph since duplicating par 9. LT5: This part might partly duplicate the wording stated in Art. 9
5. The exchange of information under this framework agreement should-must (FR) be guided (BE3) by the principles (FR) of proportionality and (FR) reciprocity (CZ2), characterised in	BE3: this issue must be articulated more clearly and forcefully. Reciprocity is a strict requirement and sufficient safeguards for reciprocity should be guaranteed.

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¹ 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 (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

² 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. 89–131.

Commission recommendation	Comments
<u>particular by the similarity of the volume, quality and type of data exchanged. (FR)-</u>	CZ2: Given that United States are not likely to exchange biometric information (including fingerprints) on its citizens, what are the factors that contribute to the principle of reciprocity and that are likely to be fulfilled by the Agreement?
6. The exchange of information under the framework agreement should be based on the exchange of the identity information included in the travel document, and the fingerprints of a traveller <u>(CZ3)</u>. Where relevant and under appropriate safeguards, the <u>Member States and the US Parties- (CZ)</u> should also be able to exchange supplementary information <u>(LT6)</u> relevant <u>in relation (DE)</u> to the given individual. <u>(DE1) (FR2)</u>	CZ3: A situation where a person does not have one of the specified identifiers should be included. DE1: In any case, this is an undefined legal term which would need to be further specified against the backdrop of Chapter V of the General Data Protection Regulation and the Data Protection Law Enforcement Directive (2016/680). It should also be more strongly emphasised that, as in the Prüm legal framework, a multi-stage exchange (hit/no hit) is envisaged, and that additional information can only be requested and transferred in the event of a hit. FR2: La future documentation technique devrait également définir le processus d'interrogation, le canal de communication à utiliser pour ces échanges et les délais de réponse. LT6 : The LT delegation welcomes the initiative; however, this provision requires clarification, specifically by stating that the scope of the supplementary information, corresponding to the purposes of data processing, shall be agreed upon in the framework agreement.
7. The exchange of information under the framework agreement should include <u>information on (CZ4)</u> third-country nationals in relation to the crossing of the external borders of the Member States and of the U.S., and <u>in the context of if necessary for (DE)</u>	CZ4: Alternatively, it could be stated that "The exchange of information under the framework agreement should include information relating to third-country nationals..."

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Commission recommendation	Comments
the prevention <u>and (FR)</u> detection, investigation and prosecution (FR) of crimes and terrorist offences <u>(CZ5)</u> .	CZ5: As the United States wished to cover all persons having connection with a particular country, we believe that we should include also the stateless persons for the sake of completeness.
8. The exchange of information may include exchanges on citizens and their family members (BE4) (DE2) (LT7) , as well as permanent residents, in cases where such exchange of information would be strictly necessary and proportionate for the prevention <u>and (FR)</u> detection, investigation and prosecution (FR) of crimes and terrorist offences and to the extent that such exchange of information is reciprocal <u>(CZ6)</u> .	BE4: the EU should not propose this itself, as it is disproportionate and technically impossible to provide that kind of information. DE2: Including “family members” does not conform to Directive (EU) 2016/680. The Directive does not distinguish between citizens and permanent residents either; it refers instead to “the data subject”. CZ6: <u>The Commission should explain why the exchange of data on EU citizens, their family members, and EU permanent residents is limited for the purpose of combating crime, and to instances of strict necessity. First, does this concern the exchange of “supplementary” information only? Second, it is not clear why the purpose of preventing and combating crime should be limited to cases of strict necessity (how that would even be defined in terms of crime prevention). Third, why are the purposes so limited as to avoid most border and immigration situations?</u> LT7: LT delegation supports the proposed scope of the regulation, but this category should be clarified in the agreement. Definition of “family member” might occur to be ambiguous, thereby rendering it difficult to interpret consistently and prone to divergent application.
II. CONTENT OF THE FRAMEWORK AGREEMENT	
SPECIFIC ISSUES	

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Commission recommendation	Comments
9. The framework agreement should establish definitions of key terms, including a definition of personal data that is <u>compliant in line (FR3)</u> with the definitions in Regulations (EU) 2016/679 and 2018/1725 ³ , and in Directive (EU) 2016/680 ⁴ <u>and definitions of criminal offences and phenomena that fall within the scope of the framework agreement; (BE5) (CZ7)</u>	FR3: Il est essentiel que la définition des données personnelles soit la même pour assurer la protection de toutes les données qui bénéficient aujourd'hui d'une protection au regard du droit de l'Union. BE5: motivated by the fact that definitions of criminal offences and phenomena may differ in the EU and the US. As an alternative, BE proposes to add instead the following: "and a list of the specific categories that are excluded". CZ7: It would be appropriate to add a footnote and also cite the full title of Regulation 2018/1725.
10. The framework agreement should identify the types of databases and the <u>type(s) categories (DE)</u> of data falling within the scope of the <u>agreement (FR) (BE6) (CZ8) (DE3)</u> that <u>will-could</u> be subject to <u>access exchange (BE6) "transfers of data" (FR)</u> in the context of the EBSP <u>and those which must remain excluded from future bilateral agreements. (FR)</u>	BE5, CZ7, DE3: word missing BE6: clarification needed on whether this concerns national databases or EU databases as well. FR: les autorités françaises demandent une formulation moins contraignante pour les Etats membres et la suppression de la référence à « l'accès » aux données et aux bases de données, pour lui préférer la notion de « transferts de données ». Afin de poser des limites plus claires au partage d'informations avec l'administration américaine, il semble également nécessaire de définir les bases de données qui en seront exclues.
11. <u>In order to ensure a level of protection substantially equivalent to that ensured within the Union to data transferred from the EU,</u>	FR4: Les autorités françaises demandent que l'ajout d'une référence à la notion de niveau de protection substantiellement équivalent à celui

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³ 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 (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

⁴ 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. 89–131.

Commission recommendation	Comments
The <u>the (FR4)</u> framework agreement should spell out clearly and precisely the safeguards and guarantees needed with regard to the protection of personal data as well as fundamental rights and freedoms of individuals, irrespective of their nationality and place of residence, in the exchange of personal data with the U.S. in the context of the EBSP. In particular, the following shall apply:	fourni dans l'Union européenne soit introduite pour refléter le niveau de protection attendu, conformément au cadre européen.
(a) The purposes of processing personal data in the context of the framework agreement should be spelt out clearly and precisely by the Parties. Any processing of personal data should be limited to what is necessary and proportionate in individual cases to-for <u>identifying (DE)</u> risks to public security or public order, and <u>for contributing (DE)</u> to prevention <u>and (FR)</u> detection, investigation and prosecution (FR) of criminal and terrorist offences.	FR: les autorités françaises demandent la suppression de la mention des mentions des investigations et des poursuites (<i>also in 11c) and 11i</i>). ▲
(b) Personal data transferred to the U.S. by the Member States should be processed fairly, on a legitimate basis and only for the purposes for which they have been transferred. Any further data processing incompatible with the initial purpose should be prohibited (purpose limitation). The framework agreement should be accompanied by an annex containing an exhaustive list of the competent authorities in the U.S. to which the Member States may transfer personal data as well as a short description of their competences <u>(BE7) (CZ8)</u> . <u>The designation of private companies as competent authorities eligible to receive data transfers must be strictly excluded. (FR)</u>	BE7: agreed, it is imperative that we know who the potential recipients of our information are (see also § 11 (j)), but it should not be up to the Member States to transfer personal data to different authorities, there should be a single point of contact in the U.S. for the Member States. CZ8: We suggest considering adding that the agreement will include a mechanism for amending this list. FR: Les autorités françaises sollicitent l'exclusion explicite des entreprises privées américaines de la liste des autorités américaines compétentes. ▲

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Commission recommendation	Comments
(c) Transferred personal data should be adequate, relevant and limited to what is necessary for the purpose for which it has been transferred. It should be accurate and kept up to date. It should not be retained for longer than is necessary for the purpose for which it has been transferred <u>in accordance with Directive 2016/680, Regulation GDPR 2016/679 and Regulation 2018/1725 (FR)</u> but, in any event, the framework agreement should lay down rules on storage, including storage limitation, review, correction <u>rectification (DE)</u> and deletion-erasure (DE) of personal data. <u>Any personal data received should be erased without delay if a) the data are no longer needed for the purpose for which they were transmitted, b) the data should not have been transmitted and the transmitting Member State has notified the U.S. of this fact, or c) the data are inaccurate and the U.S. does not rectify them without delay. (DE4)</u> In particular, the framework agreement should <u>provide for limit (DE)</u> the retention of travellers' transferred (CZ9) personal data, after their departure from the jurisdiction <u>only when there is objective evidence in the individual case that the traveller poses a continuing risk to public security or public order and that the retention of their personal data is necessary for the</u> that of travellers in respect of whom there is objective evidence from which it may be inferred that there is a continuing risk to public security or public order and a need to retain data to contribute to (DE) prevention, and (FR) detection, investigation and prosecution (FR) of crimes and terrorist offences <u>(DE5)</u>.	CZ9: We believe it is necessary, in line with the first sentence, to distinguish between data routinely processed in case of entry of external border by the Party itself and data more sensitive or less usual, transmitted by another Party or other entities. For example, data from travel documents and data on crossing external borders, which are crucial for enforcement of various visas and stay regimes, could be processed by the relevant Party without further storage limits imposed by the agreement. The approach taken by the Court as regards PNR should not be regarded as universal, because in this agreement, the border protection authorities of the Party are themselves collecting the data in the exercise of national sovereignty. DE4: Furthermore, more detailed instructions on erasure would be desirable, such as: "Any personal data received should be erased without delay if a) the data are no longer needed for the purpose for which they were transmitted, b) the data should not have been transmitted and the transmitting Member State has notified the U.S. of this fact, or c) the data are inaccurate and the U.S. does not rectify them without delay". DE5: The wording in the last sentence is unclear; it should clarify that the objective evidence re-fers to the individual case and the individual traveller. As far as applicable, the final sentence should be replaced with the following wording: "In particular, the framework agreement should provide for the retention of travellers' personal data after their departure from the jurisdiction only when there is objective evidence in the individual case that the traveller poses a continuing risk to public security or public order and that the retention of their personal data is necessary for the prevention, detection, investigation and prosecution of crimes and terrorist offences."

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Commission recommendation	Comments
	FR: Il sera primordial de s'assurer que toute extension de conservation des données soit autorisée par l'Etat ayant partagé et l'Etat propriétaire (initial) de la donnée. En effet, l'accord doit clairement établir des règles en matière de conservation des données, notamment relatives à la limitation dans le temps, à la vérification, à la correction et à la suppression des données personnelles.
<u>(d) Any extension of the data retention period shall be duly justified and authorised by both the authority providing the personal data and the owner of the data, if relevant. (FR)</u>	
(d) The framework agreement should specify the criteria on the basis of which the reliability of the source and accuracy of the data shall be indicated.	
(e) The transfer<u>Processing (FR)</u> of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, <u>or (FR)</u> trade-union membership, <u>and the processing of (FR)</u> genetic data, biometric data for the purpose of uniquely identifying a natural person, and (FR) data concerning a person's (FR) health and or data concerning a natural person's (FR) sex life or sexual orientation, should shall (FR) be allowed only where strictly necessary, <u>subject to appropriate safeguards for the rights and freedoms of the data subject, and only:</u> <u>(a) where authorised by Union or Member State law;</u> <u>(b) to protect the vital interests of the data subject or of another natural person; or</u>	CZ10: This directive should be in line with expectation that information on fingerprints shall be the basis of information exchange (Directives 6 and 12). At least this type of biometric data should be treated differently. The primary purpose of the agreement is to prevent fraud in border (and immigration) context. Therefore, it seems that the proper approach, at least as regards fingerprint information, should be based on ECRIS-TCN or on Article 9(2)(g) GDPR, rather than on generic and vague conditions of the chapeau of Article 10 LED. At the same time, we are flexible as regards possible deletion of the last sentence, which is better suited to exchange of information in the context of investigating crime, than in the context of border protection. FR4: Article 10 de la Directive (EU) 2016/680.

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Commission recommendation	Comments
<u>(c) where such processing relates to data which are manifestly made public by the data subject.</u> and proportionate in individual cases for preventing or combating criminal and terrorist offences as referred to in the framework agreement, and subject to appropriate safeguards addressing the specific risks of processing the data. (FR4) The framework agreement should contain specific safeguards governing the transfer of personal data on minors and on victims of criminal offences, witnesses or (FR) other persons who can provide information concerning criminal offences (CZ10). <u>The framework agreement should lay down rules allowing competent authorities to refuse, on a case-by-case basis, the transmission of personal data, in particular where there is a manifest breach of fundamental rights. (FR5)</u>	FR5 : Il serait également intéressant pour les autorités françaises de prévoir la possibilité de refuser le transfert d'information ainsi que les règles applicables (listes des motifs, justifications, etc.). Les motifs de refus pourraient, peu ou prou, être alignés avec la liste de l'article 6 de la directive 2023/977. FR : Les autorités françaises demandent la suppression de la mention du fait qu'il s'agisse de combattre les infractions. Elles s'interrogent sur la mention des victimes et témoins, qui si elles méritent effectivement protection supplémentaire en cas de transmission, sont des catégories de personnes pour lesquelles la transmission de données pour les finalités visées par cet accord, si l'on a bien exclu les finalités de servir des investigations en cours ou les poursuites, ne serait aucunement utiles
(f) The framework agreement should lay down rules on the information to be made available to individuals and should ensure enforceable rights of individuals whose personal data are processed, in the form of rules on the right to information, access, rectification and erasure, including the specific grounds that may allow for any necessary and proportionate restrictions to those rights. The framework agreement should also ensure enforceable rights of administrative and judicial redress for any person whose data are processed under the framework agreement and should guarantee effective remedies.	

Commission recommendation	Comments
(g) The framework agreement should lay down rules on keeping records for the purposes of logging and documentation as well as on information to be made available to individuals.	FR : les autorités françaises suggèrent d'y inscrire une interdiction des transferts de données de masse.
(h) The framework agreement should provide for safeguards in respect of automated processing (LT8) of personal data, including profiling, and should prohibit decisions based solely on the automated processing of personal data without human involvement (CZ11). (FR6)	CZ11: Considering US tendency to broaden biometric identification of travelers, this directive should be in line with Article 11 LED and Article 22 GDPR and allow automated individual decision making, while insisting on safeguards as provided by those provisions of EU law. FR6: Nous suggérons d'ajouter également dans cette partie l'interdiction des transferts de données de masse. LT8 : Lithuanian delegation would encourage consideration if "automated processing" would cover the usage of AI. In this light additional provisions might be required.
(i) The framework agreement should include the obligation to ensure security of personal data through appropriate technical and organisational measures, including by allowing only authorised persons to have access to personal data. It should also include the obligation to notify the competent authorities and, wherever necessary and possible, data subjects, in the event of a personal data breach affecting data transferred under the framework agreement. The framework agreement should also include the obligation to implement measures for data protection	CZ12: Data protection by design and default is not always a specific negotiation point (such as in case of Umbrella Agreement or agreement Europol-Brazil) and may slow down the negotiations. FR: les autorités françaises saluent la mention relative aux transferts ultérieurs de données. Elles seront particulièrement vigilantes aux garanties en la matière, y compris dans le cadre des négociations de l'accord-cadre et au niveau de protection qui sera assuré à cet égard.

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Commission recommendation	Comments
by default and by design, to implement data protection principles in an effective manner. (CZ12)	
(j) Onward transfers of personal data from the competent authorities of the U.S., to other authorities in the U.S., should only be allowed for the purposes of the framework agreement, <u>including for the purpose of enforcement of immigration rules on the territory of the recipient country (CZ13)</u>, should be made subject to appropriate conditions, including the explicit authorisation of <u>both the owner and (FR)</u> the provider of the information, and should be allowed only with respect to authorities ensuring an essentially equivalent level of protection of personal data as ensured under the framework agreement, unless the onward transfer is necessary for the prevention and investigation of a serious and imminent threat to public security or to protect the vital interests of any natural person <u>(BE 8)</u>. Onward transfers of personal data to third countries or international organisations should be prohibited.	BE8: <u>there is a risk that the U.S will invoke this exception frequently.</u> In the event that this exception is invoked, the Member State concerned must be notified that a transfer of personal data has taken place. We would appreciate it if the latter could be incorporated in the text. CZ13: We propose to clearly allow (considering quite limited Directive 2) also usage of transmitted information also for the purpose of enforcement of immigration rules on the territory of the recipient country. We believe that such situations are clearly compatible with the purpose of the original processing but may well fall short of “necessity to prevent or investigate serious and imminent threat to public security” (exception for onward transfer) or “preventing and combating crime” (alternative purpose under Directive 2). AT: Point 11 of the negotiating guidelines contains comprehensive provisions on data protection security measures and safeguards to be included in the agreement and is therefore to be supported in principle. However, there are concerns regarding point 11(j), which would allow data to be transferred to other US authorities to an (excessively) wide extent: Firstly, in connection with the reservation of authorisation, it is not clear to whom the phrase ‘explicit authorisation of the provider of the information’ refers (the EU Member State that provided the data to a US authority, or the US authority that passed on the data?). In this case, authorisation from the EU Member State should be required; authorisation from the US authority alone would be insufficient. Furthermore, the phrase ‘subject to appropriate conditions, including the explicit authorisation’ can be understood to mean that other conditions may also be used as an alternative to explicit authorisation;

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Commission recommendation	Comments
	however, explicit authorisation should always be required (in addition to other conditions). In the subsequent exception, the phrase ‘unless the onward transfer is necessary for the prevention and investigation of a serious and imminent threat to public security or to protect the vital interests of any natural person’ leaves open which of the aforementioned requirements (“appropriate conditions,” “explicit authorization,” “essentially equivalent level of protection of personal data”) may be deviated from. This should in any case be clarified in the negotiating guidelines; deviating from all of the above requirements would be problematic. With regard to the planned permission to transfer data to ‘authorities ensuring an essentially equivalent level of protection of personal data as ensured under the framework agreement,’ the question arises as to which US authorities are being referred to here and why no direct link to the framework agreement is provided for in this case. Merely ‘essentially equivalent’ appears insufficient (who assesses this and on the basis of which criteria?); in this context, reference is also made to the strict case law of the ECJ (in connection with adequacy decisions for the US) on the requirements for an ‘essentially equivalent’ level of data protection.
(k) The framework agreement should ensure a system of oversight over the use of personal data by one or more independent bodies (LT9) responsible for data protection in the U.S. with effective powers of investigation and intervention. In particular, the body or bodies should have powers to hear complaints from individuals about the use of their personal data. The framework agreement should provide for a duty of cooperation between such oversight bodies, on the one hand, and the relevant Union supervisory authorities, on the other hand.	LT9: The Lithuanian delegation encourages clarification that the "body or bodies" in question should be under an obligation to provide individuals, upon request, with information regarding the use of their personal data prior to the examination of their complaints, as possession of such information constitutes a prerequisite for lodging any meaningful complaint.

Commission recommendation	Comments
FRAMEWORK FOR THE EXCHANGE OF INFORMATION	
12. The framework agreement should outline the general conditions, criteria, databases and categories of data in scope of the exchange of information between the competent authorities of the Member States and of the U.S. as part of bilateral <u>agreements and (CZ14)</u> arrangements. Such information exchange should consist of confirmation of identity information or fingerprints, and additional information associated with the individual under the query and should be limited to what is <u>strictly (CZ15)</u> necessary and proportionate to achieve the required result.	CZ14: Given that point 16 refers to "bilateral agreements and arrangements," it is possible to add "bilateral agreements or arrangements" here. CZ15: The second sentence should not require "strict necessity". At least with regard to personal data falling outside of special categories of personal data, requirement of strict necessity dramatically exceeds the EU law and practically invites litigation. As for fingerprint information, see our comment on Directive 11.e).
13. Under the framework agreement, the Parties <u>Member States and the US (CZ)</u> should ensure that the technical limitations of the Parties with regard to exchange of information would be respected.	
14. The framework agreement should outline the consequences of suspension of membership from the VWP, or limitation of the ESTA validity, (LT10) / consequences of suspension of membership from the VWP, or limitation of the US and European Travel Authorisation Validity (FR) on information exchange under the framework agreement <u>(CZ16) (HU)</u> .	CZ16: Outlining consequences of suspension of membership from the VWP, or limitation of the ESTA validity, on information exchange in the framework agreement will directly link the exchange of information to membership in the VWP. We believe that such wording can make it easier for the US to terminate membership in the program in the period between the conclusion of the framework agreement and the conclusion of bilateral agreements with Member States. Member States could thus be pressured to quickly conclude agreements under unfavorable conditions.

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Commission recommendation	Comments
	HU: we believe that if the US unilaterally restricts VWP membership or ESTA validity for any Member State, all Member States should suspend the exchange of information as part of a unified response. LT10: Lithuanian delegation would like to propose to state that the agreement should outline the consequences of not providing information under the EBSP agreement, without specific link to the VWP (see comment below). FR: un rappel sur la réciprocité des sanctions en cas de non application du règlement serait intéressant.
15. The framework agreement should provide for a layered query response model, which distinguishes between information retrieved automatically obtained (FR7) upon performing a query and additional information which could be shared with the requesting Party (CZ17) only upon the explicit authorisation of that the requested (BE) (FR8) Party. (LT11)	CZ17: Instead of "requesting Party" and "Party," we recommend using "requesting State" and "State," or using the term "authority" instead of "Party." AT: According to point 15, the agreement should also cover 'information retrieved automatically upon performing a query'. In this regard, it should be noted that the automated comparison of biometric data with national databases, as demanded by the US, followed by the automated transmission of the associated personal data and background data of these individuals in the event of a match, without human review, continues to be strictly rejected from a data protection perspective. With regard to the exchange of data (categories), the question arises as to whether visa data, which is also stored in national databases for the purposes of the EU Visa Information System on the basis of the relevant EU legal basis (Art. 30(2) VIS Regulation), would also be covered by the EBSP data exchange with the US (clarification from the EC would be required).

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Commission recommendation	Comments
	FR7: Les autorités françaises souhaitent rappeler qu'elles s'opposent à ce que le transfert des données soit automatisé. Il apparaît indispensable que les autorités compétentes des États membres aient un droit de regard sur les requêtes émises par les autorités américaines, et qu'elles puissent accepter ou refuser la transmission des informations demandées. FR8 : L'identité de la partie autorisant explicitement le partage d'informations doit être corrigée ; il ne s'agit pas de la partie requérante mais de la partie requise. LT11: In the opinion of LT delegation, a time frame for a layered query response model and deadlines should be defined.
16. The framework agreement should include a clause authorising Member States to conclude bilateral agreements or arrangements to implement the information exchange under the EBSP as a requirement under the Visa Waiver Program (VWP) (LT12). The framework agreement should specify the elements to be contained in the bilateral agreements or arrangements operationalising the information exchange and the procedural and substantial conditions with which the bilateral agreements or arrangements are to comply with. (CZ18)	CZ18: The positive specification of elements of bilateral agreements may be risky from the legislative point of view, because those agreements are to be tailored to national specificities of Member State that the EU negotiator may not be able to foresee reliably. We prefer specification of provisions of the framework agreement that have priority over (cannot be diverged from by) bilateral agreements. LT12: LT Delegation would like to draw attention to the fact that the explicit formulation of the EBSP agreement as a formal requirement for participation in the Visa Waiver Program (VWP) may be perceived as politically sensitive. In our view, the objectives pursued by the initiative may be sufficiently achieved through implicit provisions.
17. The framework agreement should set out the circumstances <u>conditions (BE) (DE)</u> under which Member States could maintain the bilateral agreements or arrangements concluded	BE9: there is a risk that the U.S will invoke this exception frequently. In the event that this exception is invoked, the Member State concerned must be notified that a transfer of personal data has taken place. We would appreciate it if the latter could be incorporated in the text.

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Commission recommendation	Comments
with the U.S. prior to the entry into force of the framework agreement <u>(BE 9) (CZ19)</u> .	CZ19: While Czechia does not have such preceding bilateral agreement, we believe that this provision should be more flexible and should not focus on “conditions for maintaining bilateral agreements”. This is not a case where the bilateral agreements are uncalled for and risk undermining EU common policy. On the contrary, in this case the EU is counting on bilateral agreements to complement its framework. Therefore, it would be more suitable to provide for areas where the EU framework complements or supersedes the existing bilateral agreements unless those agreements are modified later.
INSTITUTIONAL PROVISIONS	
18. The framework agreement should establish a governing body responsible for managing and supervising the implementation and operation of the agreement, facilitating the resolution of disputes.	
19. The framework agreement should provide for an effective dispute settlement mechanism with respect to its interpretation and application to ensure that the Parties observe mutually agreed rules.	
20. The framework agreement should include provisions on the monitoring and periodic evaluation of the framework agreement <u>to ensure its implementation and full effectiveness. To this end, statistics should be collected by the parties. (FR9)</u> .	FR9: Un contrôle des échanges et de leur efficacité pourra être démontré et/ou ajusté en cas de difficulté ou de non proportionnalité. Ce point pourrait, par ailleurs, être fusionné avec le <u>point 24</u> sur l'évaluation de la mise en œuvre.

Commission recommendation	Comments
21. The framework agreement should include a provision on the entry into force and validity of the agreement and a provision whereby a Party may terminate or suspend it, in particular where the U.S. no longer effectively ensures the level of protection of fundamental rights and freedoms required under the framework agreement. In the case of termination or suspension, the framework agreement should also specify whether personal data falling within its scope and transferred prior to its suspension or termination may continue to be processed. Continued processing of personal data, if permitted, should in any case be in accordance with the provisions of the framework agreement as applicable at the time of the suspension or termination. <u>(NL)</u>	NL: the framework agreement must include a provision regarding the possibility for a party to terminate or suspend the agreement. Point 21 should also refer to a provision on reciprocity in the framework agreement as a criterion for potential suspension or termination of the agreement.
22. The framework agreement may include a clause addressing its territorial application, if necessary. <u>(IE)</u>	IE: We wish to flag to the Presidency and Commission that the potential clause addressing territorial application mentioned in para. 22 will need to consider Ireland's variable geometry as regards the land border with the United Kingdom between Ireland and Northern Ireland, which is subject to the Common Travel Area.
23. The framework agreement should provide for a mechanism whereby future relevant developments of Union law would, where necessary, be reflected by way of adaptations to the framework agreement. The framework agreement should also include a provision whereby the framework agreement would be terminated by the Union in case such adaptations are not carried out. <u>(CZ20)</u>	CZ20: We have doubts about the ability of EU to introduce some sort of dynamic alignment with further EU rules. At the same time, it is not clear at all what "adaptations" refer to and how such adaptations should be made. (A general principle that an agreement can always be modified by consent of the Parties does not merit a specific point in the negotiating directives.)
24. The framework agreement should provide for a mechanism to evaluate its implementation. <u>(CZ21) and ensure its effective and uniform implementation by the United States and Member</u>	CZ21: This directive likely duplicates Directive 20.

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Commission recommendation	Comments
<u>States on the agreement is concluded. The framework agreement should also include a provision whereby the exchanges would be suspended by the Union in case the evaluation carried out. (FR)</u>	FR: L'idée est de s'assurer du suivi de toutes les étapes par la Commission afin que l'accord soit parfaitement respecté lors des négociations bilatérales.
25. The framework agreement should be equally authentic in all official languages of the Union and should include a language clause to that effect.	
<u>III. PROCEDURE FOR NEGOTIATIONS (FR)</u>	FR : En complément de la <u>proposition d'amendement de l'article 2 du projet de décision</u> , les autorités françaises sollicitent l'ajout d'un titre III précisant la procédure de négociation.
25. <u>The negotiations must be prepared for well in advance. To this end, the Commission shall inform the Council of the schedule anticipated and the issues to be negotiated and shall share the relevant information as early as possible. (FR)</u>	
26. <u>Where necessary or upon request of the Council the negotiating sessions shall be preceded by a meeting of the IXIM Working Party in order to identify the key issues, formulate opinions and establish guidance, as appropriate. (FR)</u>	
27. <u>The Commission shall report to the IXIM Working Party on the outcome of the negotiations regularly or upon request of the Council. (FR)</u>	
28. <u>The Commission shall inform the Council and consult the IXIM Working Party on any important issue that may arise during the negotiations. (FR)</u>	

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