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LIMITE

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JAI 1852
VISA 193
DATAPROTECT 327
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NOTE

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| From: | Presidency |
| To: | Permanent Representatives Committee |
| Subject: | Enhanced Border Security Partnership (EBSP) |

I. Background

In February 2022, the U.S. announced a **new requirement** to all countries participating in or aspiring to join the Visa Waiver Program (VWP), namely the conclusion of a bilateral “Enhanced Border Security Partnership” (EBSP) with the US Department of Homeland Security (DHS). The EBSP would allow the DHS to access national biometric records for the purpose of immigration screening and vetting activities.

The U.S. expects operational EBSPs to be in place by **31 December 2026**. After this deadline, the DHS is expected to assess each country’s compliance with the EBSP requirement for participation in the VWP.

At the 11 June 2024 COREPER meeting, the **Commission was invited to propose a mandate to negotiate a framework agreement for EU-US information exchange** in the context of EBSP.

On 23 July 2025, the Commission presented a draft mandate to begin negotiations¹. Given the sensitivity, urgency and importance of this file, the Danish Presidency dealt with the proposal as a **matter of priority**: after a first presentation by the Commission at the 23 July 2025 meeting of the Working Party on JHA Information Exchange (IXIM), Member States discussed the draft mandate in IXIM and JHA Counsellors meetings on 18 September, 29 September, 17 October, 27 October, 14 November, 24 November and 1 December 2025.

On 1 December 2025, an agreement was reached on the draft mandate at technical level. The corresponding **draft Council decision and negotiating directives** (hereafter “draft mandate”) can be found in document 16039/25 + ADD 1.

II. Interplay between the framework agreement and bilateral EBSP agreements

The framework agreement aims to provide for an overall **legal framework and the general conditions for Member States’ bilateral information exchange** with the U.S. in the context of EBSP.

The **framework agreement** should enable “information exchange for the **screening and verification of identity of travellers** necessary to determine if their entry or stay would pose a risk to **public security or public order**”. The negotiating directives allow the exchanged information to

¹ 11884/25 + 11884/25 ADD 1.

“subsequently be used, without prejudice to the application of relevant frameworks for information exchange with the U.S., and only when necessary and authorised by bilateral agreement or arrangement between the U.S. and Member States, to support the competent authorities in their ensuing efforts to address irregular migration and to prevent, detect, and combat serious crime and terrorist offences, provided these efforts are taking place in the context of border management and border control”.

The framework agreement **should not affect the functioning of already concluded agreements and arrangements** between the Union or Member States on one side, and the U.S. on the other side, including those linked to law enforcement or criminal matters.

The framework agreement should **allow for the subsequent conclusion of bilateral agreements and agreements between Member States in the U.S. on the matters it covers**. These bilateral agreements or arrangements would need to **be in line with the framework agreement**. If pre-existing bilateral EBSP arrangements or agreements, or parts thereof, are not in line with the framework agreement, they will need to be aligned with the framework agreement upon its entry into force. No specific deadline for this alignment is included in the mandate. The draft mandate contains no assumption that pre-existing bilateral EBSP arrangements or agreements that are fully aligned with the foreseen framework agreement should be deemed incompatible with the framework agreement.

III. Key principles underpinning the draft Council decision and negotiating directives

a) Interest of the Union and reciprocity

By outlining a common framework and general conditions with which Member States will have to abide by as part of their bilateral EBSP agreements and arrangements, the framework agreement aims to **ensure a strong united approach** for Member States in their bilateral negotiations with the U.S..

At the same time, the exchange of information under the framework agreement should be guided by the need to **serve the interest of the Union and its Member States**.

In particular, the negotiating directives **highlight the need for reciprocity in the exchange of information** between the U.S. and Member States. It does so by outlining various ways in which information exchange should be reciprocal, setting a monitoring mechanism to ensure reciprocity as part of the implementation of the agreement, and providing for the possibility for the EU to

terminate the framework agreement in case the U.S. does not respect the principle of reciprocity. As specific examples, the negotiating directives seek to ensure **similarity in the volume of exchanged data** and the **quality, quantity, and types of data** covered by the bilateral agreements or arrangements. Information on Member States' citizens should be exchanged under the framework **only if the U.S. exchanges information on American citizens.**

b) European solidarity towards full visa reciprocity with the U.S.

The authorisation to begin negotiations is guided by the Member States' commitment to **participate in the VWP**, and their acknowledgement of the negative consequences on the overall transatlantic relations if participation were to be terminated. As such, in light of the new requirement for all countries participating in or aspiring to join VWP and the interest to use a common European approach for Member States, it was deemed necessary to have a common framework for Member States' conclusion of bilateral EBSP agreements.

The Union's political objective of achieving **full visa reciprocity** with the U.S. is duly reflected. The Presidency welcomes that this objective is explicitly shared by the Commission². As of today, all Member States participate in the VWP except Bulgaria, Cyprus and Romania.

Additionally, the draft negotiating guidelines refer to possible consequences on information exchange under Member States' bilateral agreements or arrangements with the U.S. **in case of suspension of membership from the Visa Waiver Program (VWP)**, or limitation of the U.S. Electronic System for Travel Authorization (ESTA) validity.

c) Respect of Member States prerogatives and limitations

Exchanges should concern information, including biometric data, stored in **national databases** of Member States. While the framework agreement should outline the types of databases and categories of data falling within its scope that could be subject to data exchange, it will remain a **Member State's prerogative**, in its bilateral agreements or arrangements, to **decide which specific databases and data** would be included in the envisaged information exchange. Those databases should be defined in accordance with Member States' national laws.

² See point 1 of the Explanatory Memorandum accompanying the Commission's Recommendation (11884/25 + 11884/25 ADD 1).

The focus on national databases is **without prejudice to any further reflections** on the possibility for **information exchange with selected third countries from EU databases**. With these being at their initial stage, partially contingent upon the technical roll-out of interoperability, and likely to require the adoption of new EU legislation, information exchange from EU databases is not an avenue possible to pursue in the context of the negotiations at hand given the timeframe by which the U.S. requires the EBSP to be established. Nonetheless, the Presidency considers reflections on the possibility for information exchange with partners from EU databases worth pursuing in the longer term.

Finally, **Member States technical and legal limitations should be respected**. In particular, determination of which data and databases to include in information exchange under bilateral agreements or arrangements should be subject to Member States' national laws, and Member States should have the possibility to refuse a request for information if such request is contrary to their national legislations etc.

d) High data protection standards and respect for fundamental rights

The framework agreement should **reflect the EU's standards on data protection and fundamental rights**. Specifically, the framework agreement needs to be in line with the Charter of Fundamental Rights of the Union, the General Data Protection Regulation, the Law Enforcement Directive, as well as the Artificial Intelligence Act to ensure it caters for the challenges raised by new technologies.

In particular, there should be a **clear purpose limitation** of exchanged data, with very **specific triggers** for information exchange, as well as safeguards to **avoid a mass transfer of data**.

IV. Strategic and competences-related considerations in view of the start of negotiations with the U.S.

It is essential that the Commission begin negotiations on behalf of the EU as soon as the Council decision is in force, given the **very tight timeframe** by which the U.S. requires operational bilateral EBSP agreements and arrangements to be concluded. While the Commission will be negotiating, it will be important for the **Council to remain closely involved**, in view of the following.

The Presidency and the incoming Presidencies stand ready to facilitate discussions within the Council on this file, on a regular basis and whenever necessary.

a) Ensuring reporting, consultation, and information sharing

Member States need to be duly informed and consulted during the negotiations of the framework agreement, given the tight timeline for this file, its potential impact on Member States and the EU, and the need for Member States to conclude bilateral agreements or arrangements based on the framework. It needs to be noted that the **Commission's reporting and consultation obligations as set out in the draft decision** are particularly solid, while not being prejudicial to the necessity for the Commission to advance negotiations swiftly.

At the same time, it is necessary to ensure **transparent information sharing among Member States and with the Commission** in order to inform negotiations. For example, Member States should be encouraged to share any messages or requests on EBSP received bilaterally, as these can bring important background in the context of the negotiations.

b) Loyal cooperation duties

The framework agreement can only serve its purpose if it is made clear that it represents the compulsory basis for Member States' bilateral agreements or arrangements, whether contemplated, in the making or already concluded. As such, the Presidency considers **Member States' commitment to refrain from bilateral negotiations** with the U.S. while material discussions on the framework are ongoing to be of **critical strategic importance**. If bilateral negotiations on EBSP agreements or arrangements were to take place concomitantly with the negotiations for the framework agreement, this would severely weaken the EU's position as part of the negotiations of the framework agreement.

c) Division of competences

The draft Council decision is without prejudice to the **division of competences** between the Union and its Member States. During the negotiation process, the Council will pay particularly careful attention to respecting such division of competences.

d) Adequate communication efforts

It will be important for the EU to **ensure a coordinated approach and communication on the EBSP file**, be it in Member States' bilateral contacts, or as part of EU-US exchange frameworks such as Justice and Home Affairs Senior Official or Ministerial meetings.

Responding to the Member States' interest, the Danish Presidency has prepared **draft lines to take on EBSF that Member States can use at their discretion in their answers to the U.S. letters on the Visa Waiver Program**. The lines were discussed at the 1 December JHA Counsellors meeting and have been revised accordingly. The text is included in Annex to this note.

Permanent Representatives are invited to indicate their position as to the following questions:

- 1) Do you agree to recommend that the Council adopts the draft Council decision and negotiating guidelines as revised by lawyer-linguists (16039/25 and ADD 1)?*
 - 2) Do you agree with the suggested lines to take on EBSF (in Annex) for Member States to use at their discretion when answering the recent U.S. letters on the Visa Waiver Program?*
 - 3) What elements would you consider to be most important for the Union's strategic approach towards negotiations with the U.S. in this field?*
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Lines to take

At EU Member States' level as well as at EU level, it has become manifest that there is need to conclude an EU-US Framework to pave the way for bilateral EBSP agreements or arrangements with the U.S. or ensure their strengthened continuation where such bilateral agreements or arrangements already exist.

On 23 July 2025 the European Commission presented a recommendation for a Council decision authorising the opening of negotiations on the EU-US Framework Agreement. [Denmark] and all other Member States discussed this as a matter of priority. As a result, the Council decision necessary to allow negotiations on the framework agreement to start will be adopted imminently, allowing negotiations to open right after.

At this stage, we look forward to the start of these negotiations. While [Denmark] remains dedicated to comply with the requirements set out as part of the Visa Waiver Program, it will be important to allow for sufficient flexibility on the proposed deadline regarding EBSP to allow sufficient time for these negotiations, of which the timeline will necessarily depend on progress on both the EU and the US sides, and considering the need for consent from the European Parliament on the final text.³ Furthermore, once the Framework Agreement is concluded, bilateral negotiations are needed and subject to national procedures for approval/parliament's approval, and the timeline for the establishment of a fully operational bilateral agreement will also depend on the complexity of the technical work.

Additionally, [Denmark] emphasises that significant efforts already undertaken prove that the European Union remains fully committed to modernize and strengthen the security at its external borders. Consequently, significant progress is being made within key border-management systems, including the progressive launch of the Entry/Exit System (EES) in October 2025 and the launch of Eurodac second quarter 2026, the travel authorization system ETIAS in the fourth quarter of 2026, and more to follow, while efforts are ongoing to strengthen interoperability between these systems.

³ Article 218 of the Treaty on the Functioning of the European Union.