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NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Council Decision authorising the opening of negotiations for an Agreement between the European Union and Canada for the transfer and use of Passenger Name Record (PNR) data, and the Addendum thereto

Following preliminary discussions on the Commission Recommendation¹ by JHA counsellors on 27 October 2017, and subsequent information provided by Ireland and the United Kingdom with regard to Article 3 of Protocol No 21, the Presidency hereby submits the draft Council Decision authorising the opening of negotiations for an Agreement between the EU and Canada for the transfer and use of Passenger Name Record (PNR) data, ("EU Canada PNR Agreement") and the Addendum thereto containing the Directives for the negotiation for said Agreement. Changes to the Commission document are set out in **bold**.

¹ Recommendation for a Council Decision authorising the opening of negotiations on an Agreement between the European Union and Canada for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime (13490/17).

COUNCIL DECISION

authorising the opening of negotiations for an Agreement between the European Union and Canada for the transfer and use of Passenger Name Record (PNR) data (...)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16(2) and 87(2)(a), in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) **In its Opinion of 26 July 2017² the Court of Justice of the EU stated that the Agreement between Canada and the EU for the transfer and use of Passenger name Record (PNR) data signed on 25 June 2014 may not be concluded in its current form.** Negotiations should **therefore** be opened with a view to concluding an Agreement between the European Union and Canada for the transfer and use of Passenger Name Record (PNR) data **compatible with the Charter, as specified in the Court's Opinion.**
- (2) The Agreement should respect fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to private and family life recognised in Article 7 of the Charter, the right to the protection of personal data recognised in Article 8 of the Charter, **the prohibition of discrimination recognised in Article 21 of the Charter** and the right to effective remedy and fair trial recognised in Article 47 of the Charter, **subject to the principle of proportionality set out in Article 52(1) of the Charter.** The Agreement should be applied in accordance with those rights and principles,

² Opinion 1/15 of the Court of Justice of 26 July 2017 (EU:C:2017:592).

- (3) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified, by letter of **5 December 2017** its wish to take part in the adoption and application of this Decision.
- (4) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (5) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised (...) **to open negotiations for** an Agreement between the European Union and Canada on the transfer and use of Passenger Name Record (PNR) data (...)

2. The negotiations shall be conducted on the basis of the negotiation directives **of the Council** set out in **Addendum** to this Decision.

Article 2

The Commission is hereby nominated as the Union negotiator.

Article 3

The negotiations shall be conducted in consultation with the **relevant Council Working Party and in accordance with the directives contained in the addendum, subject to any directives which the Council may subsequently issue to the Commission. The Commission shall regularly report to the Working Party on the progress of negotiations and shall forward all negotiating documents to it without delay.**

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*
