



Council of the
European Union

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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	12803/23
Subject:	Draft Council Decision authorising the opening of negotiations for an Agreement between the EU and Switzerland for the transfer and use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

Delegations will find in annex the draft Council Decision authorising the opening of negotiations for an Agreement between the EU and Switzerland for the transfer and use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

Changes to the initial Commission document are set out in **bold underline** and ~~strikethrough~~.

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and the Swiss Confederation on the transfer of Passenger Name Record data from the EU to the Swiss Confederation for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Negotiations should be opened with a view to concluding an Agreement between the Union and the Swiss Confederation for the transfer of Passenger Name Record (PNR) data from the Union to the Swiss Confederation for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.
- (2) The Agreement should respect fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the Union, as interpreted by the Court of Justice of the European Union, in particular the right to private and family life recognised in Article 7 of the Charter, the right to the protection of personal data recognised in Article 8 of the Charter and the right to effective remedy and fair trial recognised in Article 47 of the Charter. The 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.

(3) The provisions of the Agreement should be in furtherance of the applicable international Standards on PNR, as contained in the International Convention on Civil Aviation, namely on its Annex 9 (Facilitation), Chapter 9 (Passenger Data Exchange System), Section D (Passenger Name Record (PNR) data)¹.

(4) 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 Council² and delivered an opinion on ...

(5) [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, Ireland has notified (, by letter of ...) its wish to take part in the adoption and application of this Decision.

OR

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.]

(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 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.

¹ Annex 9, Chapter 9, Section D to the International Convention on Civil Aviation.

² **Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).**

HAS ADOPTED THIS DECISION:

Article 1

1. ~~The European~~ Commission is hereby authorised to open negotiations, on behalf of the Union, of an Agreement between the Union and the Swiss Confederation on the transfer of Passenger Name Record (PNR) data from the Union to the Swiss Confederation for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.
2. **The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the addendum to this Decision.**

Article 2

The negotiating directives are set out in the Annex **Commission is hereby nominated as the Union negotiator.**

Article 3

1. The negotiations **referred to in Article 1** shall be conducted in consultation with ~~{name of special committee to be inserted by the Council}~~ **the Working Party on JHA Information Exchange (IXIM), subject to any guidance which the Council may subsequently issue to the Commission.**
2. **The Commission shall report to the Council on both the conduct and the outcome of the negotiations on a regular basis and whenever requested by the Council, and shall forward the relevant documents to it as early as possible in order to allow the members of the Council reasonable time to prepare themselves properly for the forthcoming negotiations.**

Where appropriate, or where requested by the Council, the Commission shall produce a written report.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

