Council of the European Union

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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
No. Cion doc.:	17073/24 + ADD 1; 17074/24 + ADD 1
Subject:	Council Decision the signing, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil on cooperation with and through the European Union Agency for Law Enforcement Cooperation (Europol) and the Federal Police of Brazil – adoption Council Decision on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil on cooperation with and through the European Union Agency for Law Enforcement Cooperation (Europol) and the Federal Police of Brazil – agreement in principle – request for the consent of the European Parliament

1. On 15 May 2023, the Council adopted a Decision authorising the opening of negotiations with the Federative Republic of Brazil for an agreement between the European Union and the Federative Republic of Brazil on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Brazilian authorities competent for fighting serious crime and terrorism (the '2023 Decision') (document 8525/23).

2. On the basis of this decision, the Commission carried out negotiations with the competent authorities of the Federative Republic of Brazil between July 2023 and October 2024.

3. On 24 October 2023, the Commission updated the Law Enforcement Working Party (Police) on the status of the negotiations between the European Union and the Federative Republic of Brazil. The discussion focused on broadening the scope of the negotiations to include the exchange of non-personal data (document 4305/23).

4. The negotiations on the Agreement between the European Union and the Federative Republic of Brazil on cooperation with and through the European Union Agency for Law Enforcement Cooperation (Europol) and the Federal Police of Brazil ('the Agreement') were successfully finalised and the text of the Agreement was initialled on 18 October 2024.

5. The text as provisionally agreed, which included the exchange of personal and non-personal data, was discussed at the meeting of the Law Enforcement Working Party (Police) on 7 November 2024. At the meeting, Member States asked the Commission about the inclusion of the exchange of non-personal data in the Agreement. While no changes to the Agreement were requested, the Hungarian Presidency noted that by including the exchange of non-personal data in the Agreement the Commission did not respect the scope of the 2023 Decision and called the Commission to ensure that future negotiations are conducted in accordance with Article 218 of the Treaty on the Functioning of the European Union (TFEU) and within the scope of Council decisions authorising the opening of negotiations.

6. On 18 December 2024, the Commission submitted to the Council:

   a) a proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil on cooperation with and through the European Union Agency for Law Enforcement Cooperation (Europol) and the Federal Police of Brazil (document 17073/24 + ADD 1) ('Decision on the signing'); and

b) a proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil on cooperation with and through the European Union Agency for Law Enforcement Cooperation (Europol) and the Federal Police of Brazil (document 17074/24 + ADD 1) ('Decision on the conclusion').

7. On 23 January 2025, the Law Enforcement Working Party (Police) discussed these proposals and the text of the Agreement that was attached to them as an annex (ADD 1). At this meeting, as well as in writing, Member States proposed some changes. All Member States indicated that they could agree with, or at least did not oppose to, the texts as modified during this meeting (i.e. adding one EU agency to Annex III of the Agreement). As regards the scope of the Agreement and the inclusion of the exchange of non-personal data, the Polish Presidency reiterated that in the future the Commission should remain within the scope of Council decisions authorising the opening of negotiations.

8. Subsequently to this agreement at technical level, the lawyer-linguists revised the texts. The revised texts of the Decisions and the Agreement are set out in document 5618/25 (Agreement), document 5616/25 (Decision on the signing), and document 5617/25 (Decision on the conclusion) (together, the 'Decisions')[1].

9. Once the Decision on the signing of the Agreement will have been adopted, it will be published in the Official Journal, without the Agreement. Once the Decision on the conclusion of the Agreement will have been adopted, it will be published in the Official Journal, together with the Agreement.

10. The European Parliament will be informed in accordance with Article 218(10) TFEU and the Decision on the signing will be forwarded to the European Parliament.

11. The consent of the European Parliament is a precondition for adopting the Decision on conclusion of the Agreement, in accordance with Article 218(6) TFEU.

[1] Ireland is bound by Regulation (EU) 2016/794 and is therefore taking part in the adoption of these Decisions. 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 these Decisions and is not bound by them or subject to their application.

12. In view of the above,

the Permanent Representatives' Committee is invited to:

- confirm agreement on the text of the Agreement, as set out in document 5618/25;
- confirm agreement on the text of the draft Decision on the signing of the Agreement, as set out in document 5616/25;
- confirm agreement on the text of the draft Decision on the conclusion of the Agreement, as set out in document 5617/25;
- recommend the Council to request the European Parliament for its consent on the draft Decision on the conclusion of the Agreement, as set out in document 5617/25;

the Permanent Representatives' Committee is invited to recommend to the Council to:

- adopt, as an "A" item, the Decision on the signing of the Agreement, as set out in document 5618/25;
- decide that the text of the Decision on the signing of the Agreement be published in the Official Journal;
- agree in principle on the draft Decision on the conclusion of the Agreement, as set out in document 5617/25, to which the Agreement is attached;
- decide to forward the draft Decision on the conclusion of the Agreement, as set out in document 5617/25, to the European Parliament for its consent;
- agree in principle, that after receiving the consent from the European Parliament, the text of the Decision on the conclusion of the Agreement, together with the text of the Agreement, will be published in the Official Journal.