

COUNCIL DECISION (EU) 2023/1010**of 15 May 2023**

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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16(2) and 88, in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Regulation (EU) 2016/794 of the European Parliament and of the Council ⁽¹⁾ was adopted on 11 May 2016, is applicable as of 1 May 2017, and was amended by Regulation (EU) 2022/991 of the European Parliament and of the Council ⁽²⁾.
- (2) The provisions of Regulation (EU) 2016/794, in particular those concerning the transfer of personal data from the European Union Agency for Law Enforcement Cooperation (Europol) to third countries and international organisations, provide that Europol may transfer personal data to an authority of a third country on the basis of an international agreement concluded between the Union and that third country pursuant to Article 218 of the Treaty on the Functioning of the European Union (TFEU) adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.
- (3) Negotiations should be opened with a view to concluding an agreement between the European Union and the Federative Republic of Brazil on the exchange of personal data between Europol and the Brazilian authorities competent for fighting serious crime and terrorism (the 'Agreement').
- (4) As stated in Recital 35 of Regulation (EU) 2016/794, the Commission should be able to consult the European Data Protection Supervisor (EDPS) during the negotiations of the Agreement and, in any event, before the Agreement is concluded.
- (5) The Agreement should respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union (the 'Charter'), 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 an effective remedy and to a fair trial recognised by Article 47 of the Charter. The Agreement should be applied in accordance with those rights and principles.
- (6) The Agreement should not affect, and should be without prejudice to, the transfer of personal data or other forms of cooperation between the authorities responsible for safeguarding national security.
- (7) Ireland is bound by Regulation (EU) 2016/794 and is therefore taking part in the adoption of this Decision.

⁽¹⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

⁽²⁾ Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation (OJ L 169, 27.6.2022, p. 1).

- (8) 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 Decision and is not bound by it or subject to its application.
- (9) The EDPS has been consulted on this Decision and the addendum thereto, and issued an opinion on 3 May 2023,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorized to open 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.
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 Commission is hereby nominated as the Union negotiator.

Article 3

1. The negotiations referred to in Article 1 shall be conducted in consultation with the Law Enforcement Working Party – Police (LEWP-Police), 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, 15 May 2023.

For the Council
The President
J. FORSSMED
