COUNCIL DECISION (EU) 2021/2293

of 20 December 2021

on the position to be taken on behalf of the Union in the Partnership Council established by the Trade and Cooperation Agreement with the United Kingdom regarding the extension of the derogation from the obligation to delete passenger name record data of passengers after their departure from the United Kingdom

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), point (a), in conjunction with Article 218(9) thereof,

Having regard to Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information ([1]),

Having regard to the proposal from the European Commission,

Whereas:

(1) The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ([2]) ('the TCA') lays down rules under which passenger name record ('PNR') data may be transferred to, processed and used by the United Kingdom competent authority for flights between the Union and the United Kingdom, and establishes specific safeguards in that regard.

(2) Title III of Part Three of the TCA lays down rules under which PNR data may be transferred to, processed and used by the United Kingdom competent authority for flights between the Union and the United Kingdom, and establishes specific safeguards in that regard.

(3) Article 552(4) of the TCA provides that the United Kingdom is to delete the PNR data of passengers after their departure from the country unless a risk assessment indicates the need to retain such PNR data.

(4) Article 552(11) of the TCA provides that the United Kingdom may derogate from Article 552(4) of the TCA on a temporary basis for an interim period, pending the implementation by the United Kingdom of technical adjustments as soon as possible. During that interim period, the United Kingdom competent authority shall prevent the use of the PNR data that is to be deleted in accordance with Article 552(4) of the TCA by applying the additional safeguards to that PNR data listed in Article 552(11), points (a) to (d), of the TCA.

(5) Article 552(10) of the TCA states that Article 552(11) of the TCA applies due to the special circumstances that prevent the United Kingdom from making the technical adjustments necessary to transform the PNR processing systems which the United Kingdom operated whilst Union law applied to it into systems which would enable PNR data to be deleted in accordance with Article 552(4) of the TCA.

(6) Article 552(13) of the TCA provides that where the special circumstances referred to in Article 552(10) of the TCA persist, the Partnership Council is to extend the interim period referred to in Article 552(11) of the TCA for 1 year.

([1]) OJ L 149, 30.4.2021, p. 2.
([2]) OJ L 149, 30.4.2021, p. 10.

(7) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime ([3]) applies within the Union in accordance with the Treaties.

(8) On 1 October 2021, the United Kingdom submitted to the Specialised Committee on Law Enforcement and Judicial Cooperation established by the TCA the assessment referred to in Article 552(12), point (b), of the TCA.

(9) In its assessment, the United Kingdom concluded that the special circumstances referred to in Article 552(10) of the TCA persist, referring to the specific situation faced by the United Kingdom in having to adapt PNR data processing systems configured for compliance with Union law as a Member State into a system configured to meet the requirements of the TCA as regards international transfers of PNR data from the Union to third countries. The United Kingdom described its efforts to transform its PNR processing systems into systems which would enable PNR data to be deleted in accordance with Article 552(4) of the TCA. The United Kingdom noted that it was carrying out an analysis of the legal, technical and operational requirements, including both functional and non-functional requirements, with a view to ensuring that the United Kingdom's PNR data processing systems will comply with Article 552(4) of the TCA. In accordance with Article 552(13) of the TCA, the Specialised Committee on Law Enforcement and Judicial Cooperation considered the United Kingdom's assessment on 19 October 2021.

(10) On 1 October 2021, the United Kingdom also submitted to the Specialised Committee on Law Enforcement and Judicial Cooperation the report from the independent administrative body referred to in Article 552(12), point (a), of the TCA, including an annex by the United Kingdom supervisory authority as referred to in Article 525(3) of that agreement, as to whether the safeguards provided for in Article 552(11) of that agreement were applied effectively.

(11) In accordance with Article 552(13) of the TCA, the Specialised Committee on Law Enforcement and Judicial Cooperation considered the United Kingdom's report on 19 October 2021. At that occasion, the United Kingdom stated that it intended to complement the annex to that report and that it would be done in November 2021, before the Partnership Council takes a decision on the extension of the interim period pursuant to Article 552(13) of the TCA.

(12) It is therefore considered that the special circumstances referred to in Article 552(10) of the TCA persist, and that, pursuant to Article 552(13) of the TCA, the Partnership Council should extend the interim period referred to in Article 552(11) of the TCA by 1 year, until 31 December 2022.

(13) The Trade and Cooperation Agreement is binding on all the Member States by virtue of Decision (EU) 2021/689, which is based on Article 217 TFEU as its substantive legal basis.

(14) Denmark and Ireland are bound by Part III of the Trade and Cooperation Agreement by virtue of Decision (EU) 2021/689 and are therefore taking part in the adoption and application of this Decision, which implements the Trade and Cooperation Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Partnership Council pursuant to Article 552(13) of the Trade and Cooperation Agreement shall be to agree to extend the interim period during which the United Kingdom may derogate from the obligation to delete the PNR data of passengers after their departure from the United Kingdom by 1 year, until 31 December 2022.

([3]) OJ L 119, 4.5.2016, p. 132.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 20 December 2021.

For the Council
The President
A. VIZJAK