II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2023/368

of 14 February 2023

on the conclusion of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of New Zealand 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 Article 16(2) and Article 88, in conjunction with Article 218(6), point (a), and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament [1],

Whereas:

(1) Regulation (EU) 2016/794 of the European Parliament and of the Council [2] provides that it is possible for the European Union Agency for Law Enforcement Cooperation (Europol) to transfer personal data to an authority of a third country, inter alia, 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.

(2) In accordance with Council Decision (EU) 2022/1090 [3], the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of New Zealand competent for fighting serious crime and terrorism (the 'Agreement') was signed on 30 June 2022, subject to its conclusion at a later date.

(3) The Agreement is in the interest of the European Union, as it aims to enable the transfer of personal data between Europol and the competent authorities of New Zealand with a view to fighting serious crime and terrorism and protecting the security of the Union and its inhabitants.

---

[1] Consent of 17 January 2023 (not yet published in the Official Journal).

[2] 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).

[3] Council Decision (EU) 2022/1090 of 27 June 2022 on the signing, on behalf of the Union, of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of New Zealand competent for fighting serious crime and terrorism (OJ L 176, 1.7.2022, p. 3).

(4) The Agreement ensures full respect of the fundamental rights of the Union, in particular the right to respect for private and family life, the right to the protection of personal data and the right to an effective remedy and to a fair trial recognised in Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union ([4]), respectively.

(5) The Agreement does not affect, and is without prejudice to, the transfer of personal data or other forms of cooperation between the authorities responsible for safeguarding national security.

(6) Pursuant to Article 218(7) TFEU, it is appropriate for the Council to authorise the Commission to approve on the Union's behalf the modifications of Annexes II, III, and IV to the Agreement.

(7) Ireland is bound by Regulation (EU) 2016/794 and is therefore taking part in the adoption of this Decision.

(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 European Data Protection Supervisor delivered its Opinion 11/2022 on 10 June 2022.

(10) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union, of the one part, and New Zealand, of the other part, on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of New Zealand competent for fighting serious crime and terrorism ([5]) (the 'Agreement') is hereby approved on behalf of the Union.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 27 of the Agreement ([6]).

Article 3

For the purposes of Article 28(2) of the Agreement, the position to be taken on behalf of the Union on the modifications of Annexes II, III, and IV to the Agreement shall be approved by the Commission after consultation with the Council.

Article 4

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

([4]) OJ C 326, 26.10.2012, p. 391.
([5]) See page 4 of this Official Journal.
([6]) The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Done at Brussels, 14 February 2023.

For the Council
The President
E. SVANTESSON