

COUNCIL DECISION**of 26 April 2012****on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security**

(2012/472/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(d) and Article 87(2)(a), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) On 2 December 2010, the Council adopted a decision, together with negotiation directives, authorising the Commission to open negotiations between the Union and the United States of America on the transfer and use of passenger name records (PNR) to prevent and combat terrorism and other serious transnational crime.
- (2) In accordance with Council Decision 2012/471/EU ⁽²⁾, the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security ('the Agreement') was signed on 14 December 2011, subject to its conclusion.
- (3) The Agreement respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to private and family life, recognised in Article 7 thereof, the right to the protection of personal data, recognised in Article 8 thereof and the right to effective remedy and fair trial recognised in Article 47 thereof. This Agreement should be applied in accordance with those rights and principles.
- (4) 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, the United Kingdom has notified its wish to take part in the adoption and application of this Decision.

(5) 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 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 the Agreement or subject to its application.

(7) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the Union, to the exchange of the notifications provided for in Article 27 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 26 April 2012.

For the Council
The President
M. BØDSKOV

⁽¹⁾ Consent of 19 April 2012 (not yet published in the Official Journal).

⁽²⁾ See page 1 of this Official Journal.