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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be taken on behalf of the European Union in the Specialised Committee on Law Enforcement and Judicial Cooperation established by 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, regarding the extension of the period referred to in Article 540(3) of that Agreement during which DNA profiles and fingerprints can be exchanged with the United Kingdom

COUNCIL DECISION (EU) 2021/...

of ...

**on the position to be taken on behalf of the European Union
in the Specialised Committee on Law Enforcement and Judicial Cooperation
established by 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,
regarding the extension of the period referred to in Article 540(3) of that Agreement
during which DNA profiles and fingerprints can be exchanged with 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 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 information¹,

Having regard to the proposal from the European Commission,

¹ OJ L 149, 30.4.2021, p. 2.

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 part¹ ('the TCA') provides for reciprocal cooperation between the competent law enforcement authorities of the Member States, on the one side, and the United Kingdom, on the other side, concerning the automated comparison of DNA profiles, dactyloscopic data and vehicle registration data. As a prerequisite for such cooperation, the United Kingdom first needs to take the necessary implementing measures and undergo an evaluation by the Union.
- (2) On the basis of an overall evaluation report on the evaluation visit and, where applicable, a pilot run, the Union is to determine the date or dates from which such data may be supplied by Member States to the United Kingdom pursuant to the TCA.
- (3) The United Kingdom also has to undergo an evaluation with regard to searching and comparing DNA profiles and dactyloscopic data, for which the connections with the United Kingdom have already been established in accordance with the Union's 'Prüm' *acquis*, as set out in Council Decisions 2008/615/JHA² and 2008/616/JHA³.

¹ OJ L 149, 30.4.2021, p. 10.

² Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L210, 6.8.2008, p. 1).

³ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L210, 6.8.2008, p. 12).

- (4) By means of Decision 2008/615/JHA, the basic elements of the Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration, were transposed into the legal framework of the Union. Decision 2008/616/JHA implements Decision 2008/615/JHA and lays down the necessary administrative and technical provisions for the implementation of Decision 2008/615/JHA, in particular as regards the automated exchange of DNA data, dactyloscopic data and vehicle registration data. These decisions form the Prüm *acquis* and are binding in accordance with the Treaties and these decisions.
- (5) Under Article 540(2) of the TCA, the Union is to determine the date or dates from which personal data may be supplied by Member States to the United Kingdom on the basis of an overall evaluation report on the evaluation visit and, where applicable, a pilot run.
- (6) Pending the outcome of the evaluation and the decision referred to in Article 540(2) of the TCA, in order to avoid a gap in ongoing cooperation concerning DNA profiles and dactyloscopic data, Article 540(3) of the TCA provides that Member States may supply such data to the United Kingdom until 30 September 2021.

- (7) The process referred to in recitals 3, 5 and 6 is unlikely to be finalised by 30 September 2021. Therefore, there is a significant risk that a gap in cooperation concerning DNA profiles and dactyloscopic data would arise from 1 October 2021. This would present concrete risks for the internal security of the Union.
- (8) The Union has already evaluated the United Kingdom as regards the exchange of DNA profiles and dactyloscopic data in the context of the Union's Prüm framework when the United Kingdom was still a Member State. The Union is not aware of any legislative or regulatory measures taken by the United Kingdom since those evaluations that would affect the outcome of the ongoing evaluation under the TCA.
- (9) In these circumstances, it is appropriate to establish the position to be adopted on the Union's behalf in the Specialised Committee on Law Enforcement and Judicial Cooperation. That position should be to agree to an extension until 30 June 2022 of the period during which Member States may continue to exchange data as referred to in Articles 530, 531 and 534 of the TCA and, in the event of a match, supply further available personal data as referred to in Article 536 of the TCA.
- (10) Article 527 of the TCA states that the objective of Title II of Part Three (Law enforcement and judicial cooperation in criminal matters) of the TCA is to establish reciprocal cooperation between the competent law enforcement authorities of the United Kingdom, on the one side, and the Member States, on the other side, on the automated transfer of DNA profiles, dactyloscopic data and certain domestic vehicle registration data.

- (11) The TCA 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. Article 540(3) of the TCA empowers the Specialised Committee on Law Enforcement and Judicial Cooperation to extend the period to supply personal data to the United Kingdom once by a maximum of nine months, i.e. until 30 June 2022.
- (12) Denmark and Ireland are bound by Article 540 of the TCA by virtue of Decision (EU) 2021/689 and are therefore taking part in the adoption and application of this Decision which implements the TCA,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Specialised Committee on Law Enforcement and Judicial Cooperation pursuant to Article 540(3) of the TCA shall be to agree to an extension until 30 June 2022 of the period during which Member States may continue to exchange personal data as referred to in Articles 530, 531 and 534 of the TCA and supply further available personal data as referred to in Article 536 of the TCA with the United Kingdom.

Article 2

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

Done at ..., ...

For the Council

The President
