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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be taken on behalf of the Union vis-à-vis the United Kingdom of Great Britain and Northern Ireland regarding the determination under Article 540(2) 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, of the date from which personal data relating to DNA profiles and dactyloscopic data as referred to in Articles 530, 531, 534 and 536 of that Agreement may be supplied by Member States to the United Kingdom

COUNCIL DECISION (EU) 2022/...

of ...

on the position to be taken on behalf of the Union vis-à-vis the United Kingdom of Great Britain and Northern Ireland regarding the determination under Article 540(2) 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, of the date from which personal data relating to DNA profiles and dactyloscopic data as referred to in Articles 530, 531, 534 and 536 of that Agreement may be supplied by Member States to 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 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 ‘Trade and Cooperation Agreement’) 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, summarising the results of a relevant questionnaire, an 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 Trade and Cooperation Agreement.
- (3) The United Kingdom also had 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 L 210, 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 L 210, 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) Article 527 of the Trade and Cooperation Agreement states that the objective of Title II of Part Three (Law enforcement and judicial cooperation in criminal matters) thereof 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.

- (6) By letter of 23 July 2021, the United Kingdom informed the Commission, through the Specialised Committee on Law Enforcement and Judicial Cooperation, that it had implemented the obligations imposed under Part Three, Title II, of the Trade and Cooperation Agreement in respect of DNA profiles and dactyloscopic data. The United Kingdom also made declarations and designations in accordance with Chapter 0, Article 22, of Annex 39 to the Trade and Cooperation Agreement and expressed its readiness to be evaluated for the exchange of data between the United Kingdom and Member States on DNA profiles and dactyloscopic data.
- (7) On 14 October 2021, the Commission sent the United Kingdom questionnaires relating to the automatic exchange of DNA profiles and dactyloscopic data. On 8 November 2021, the United Kingdom provided the Commission with its answers to those questionnaires. On 11 November 2021, those answers were provided to the evaluation team and submitted to the Council Working Party on JHA Information Exchange and to the Council Working Party on the United Kingdom.
- (8) On 9 November 2021, in line with Chapter 4 of Annex 39 to the Trade and Cooperation Agreement, the Council decided that no pilot run was required in respect of DNA profiles and dactyloscopic data.

- (9) On 24 and 25 November 2021, the United Kingdom underwent an evaluation with regard to searching and comparing DNA profiles and dactyloscopic data. The evaluation report regarding DNA profiles concluded that, on the basis of the outcome of the *ex ante* evaluation, the implementation of the automated comparison of DNA profiles and the related information flow could be considered to have been successfully concluded in the United Kingdom, both at legal and at technical level. The evaluation report regarding dactyloscopic data concluded that, on the basis of the outcome of the *ex ante* evaluation, the implementation of the automated dactyloscopic data application and the related automated dactyloscopic data information flow could be considered to have been successfully concluded in the United Kingdom, both at legal and at technical level.
- (10) Pursuant to Chapter 4, Article 5, of Annex 39 to the Trade and Cooperation Agreement, the evaluation reports, summarising the results of the questionnaires and the evaluation visit, were presented to the Council on 17 March 2022.
- (11) Since the United Kingdom fulfilled the conditions set out in Article 539 of and Annex 39 to the Trade and Cooperation Agreement, the Union should, pursuant to Article 540(2) of the Trade and Cooperation Agreement, determine the date or dates from which Member States may supply to the United Kingdom personal data regarding DNA profiles and dactyloscopic data as referred to in Articles 530, 531, 534 and 536 of the Trade and Cooperation Agreement. The Union should notify the United Kingdom of this position in the Specialised Committee on Law Enforcement and Judicial Cooperation. In those circumstances, it is therefore appropriate to establish the position to be taken on the Union's behalf vis-à-vis the United Kingdom regarding the determination of that date.

- (12) 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 of the Treaty on the Functioning of the European Union as its substantive legal basis.
- (13) Denmark and Ireland are bound by Article 540 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 expressed on the Union's behalf vis-à-vis the United Kingdom regarding the determination of the date from which personal data relating to DNA profiles and dactyloscopic data as referred to in Articles 530, 531, 534 and 536 of the Trade and Cooperation Agreement may be supplied by Member States to the United Kingdom is set out in the unilateral declaration of the Union attached to this Decision.

Article 2

The United Kingdom shall be notified of the position of the Union referred to in Article 1 in the Specialised Committee on Law Enforcement and Judicial Cooperation.

Article 3

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

Done at ...,

For the Council

The President
