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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION on the automated data exchange with regard to DNA data in Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium and replacing Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU

COUNCIL IMPLEMENTING DECISION (EU) 2016/...

of ...

**on the automated data exchange with regard to DNA data
in Slovakia, Portugal, Latvia, Lithuania, Czech Republic,
Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium
and replacing Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU,
2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU,
2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime¹, and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament²,

¹ OJ L 210, 6.8.2008, p. 1.

² Opinion of ... (not yet published in the Official Journal).

Whereas:

- (1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.
- (2) Article 20 of Council Decision 2008/616/JHA¹ provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.
- (3) The overall evaluation reports, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning DNA data in Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium have been presented to the Council.
- (4) By adopting Council Decision 2010/689/EU², the Council concluded that Slovakia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 8 November 2010, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

¹ 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).

² Council Decision 2010/689/EU of 8 November 2010 on the launch of automated data exchange with regard to DNA data in Slovakia (OJ L 294, 12.11.2010, p. 14).

- (5) By adopting Council Decision 2011/472/EU¹, the Council concluded that Portugal has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 19 July 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (6) By adopting Council Decision 2011/715/EU², the Council concluded that Latvia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 27 October 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (7) By adopting Council Decision 2011/887/EU³, the Council concluded that Lithuania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 13 December 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

¹ Council Decision 2011/472/EU of 19 July 2011 on the launch of automated data exchange with regard to DNA data in Portugal (OJ L 195, 27.7.2011, p. 71).

² Council Decision 2011/715/EU of 27 October 2011 on the launch of automated data exchange with regard to DNA data in Latvia (OJ L 285, 1.11.2011, p. 24).

³ Council Decision 2011/887/EU of 13 December 2011 on the launch of automated data exchange with regard to DNA data in Lithuania (OJ L 344, 28.12.2011, p. 36).

- (8) By adopting Council Decision 2012/58/EU¹, the Council concluded that the Czech Republic has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 23 January 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (9) By adopting Council Decision 2012/299/EU², the Council concluded that Estonia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 7 June 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (10) By adopting Council Decision 2012/445/EU³, the Council concluded that Hungary has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 24 July 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

¹ Council Decision 2012/58/EU of 23 January 2012 on the launch of automated data exchange with regard to DNA data in the Czech Republic (OJ L 30, 2.2.2012, p. 15).

² Council Decision 2012/299/EU of 7 June 2012 on the launch of automated data exchange with regard to DNA data in Estonia (OJ L 151, 12.6.2012, p. 31).

³ Council Decision 2012/445/EU of 24 July 2012 on the launch of automated data exchange with regard to DNA data in Hungary (OJ L 202, 28.7.2012, p. 22).

- (11) By adopting Council Decision 2012/673/EU¹, the Council concluded that Cyprus has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 25 October 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (12) By adopting Council Decision 2013/3/EU², the Council concluded that Poland has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 20 December 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (13) By adopting Council Decision 2013/148/EU³, the Council concluded that Sweden has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 21 March 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

¹ Council Decision 2012/673/EU of 25 October 2012 on the launch of automated data exchange with regard to DNA data in Cyprus (OJ L 302, 31.10.2012, p. 12).

² Council Decision 2013/3/EU of 20 December 2012 on the launch of automated data exchange with regard to DNA data in Poland (OJ L 3, 8.1.2013, p. 5).

³ Council Decision 2013/148/EU of 21 March 2013 on the launch of automated data exchange with regard to DNA data in Sweden (OJ L 84, 23.3.2013, p. 26).

- (14) By adopting Council Decision 2013/152/EU¹, the Council concluded that Malta has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 21 March 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (15) By adopting Council Decision 2014/410/EU², the Council concluded that Belgium has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 24 June 2014, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.
- (16) In its judgment of 22 September 2016 in Joined Cases C-14/15 and C-116/15, the Court of Justice of the European Union held that Article 25(2) of Decision 2008/615/JHA unlawfully lays down a requirement of unanimity for the adoption of measures necessary to implement that Decision. Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU were adopted on the basis of Article 25(2) of Decision 2008/615/JHA and consequently are vitiated by a procedural defect.

¹ Council Decision 2013/152/EU of 21 March 2013 on the launch of automated data exchange with regard to DNA data in Malta (OJ L 86, 26.3.2013, p. 20).

² Council Decision 2014/410/EU of 24 June 2014 on the launch of automated data exchange with regard to DNA data in Belgium (OJ L 190, 28.6.2014, p. 80).

- (17) With a view to ensuring the legal certainty of the receipt and supply of personal data pursuant to Decision 2008/615/JHA with regard to the Member States concerned by Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU, those Decisions should be replaced by this Decision.
- (18) With a view to ensuring continued receipt and supply of personal data pursuant to Articles 3 and 4 of Decision 2008/615/JHA, Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU cease to produce effects as from the date of entry into force of this Decision.
- (19) For the same reason, the entry into force of this Decision should be without prejudice to the validity of automated data exchange carried out by the Member States pursuant to Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU.
- (20) Moreover, the Member States which obtained personal data pursuant to Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU should continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

- (21) Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receipt and supply of personal data provided for under that Decision. As the conditions for triggering the exercise of such implementing powers have been met and the procedure in that regard has been followed, an implementing decision on the automated data exchange with regard to DNA data with regard to Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium should be adopted in order to allow those Member States to continue receiving and supplying personal data pursuant to Articles 3 and 4 of Decision 2008/615/JHA.
- (22) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.
- (23) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of automated searching and comparison of DNA data, Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium shall continue to be entitled to receive and supply personal data pursuant to Articles 3 and 4 of Decision 2008/615/JHA.

Article 2

1. Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU cease to produce effects as from the date of entry into force of this Decision, without prejudice to the validity of automated data exchange carried out pursuant to those Decisions by the Member States.
2. Member States which obtained personal data pursuant to the Decisions referred to in paragraph 1 shall continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at ...,

For the Council
The President
