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NOTE

From: General Secretariat of the Council
To: Delegations

No. prev. doc.: 8796/23, 8798/23, 8912/23

Subject: 'Prüm Agreement' with Norway – Draft Council Implementing Decision determining the date from which personal data relating to DNA profiles, dactyloscopic data and vehicle registration data may be supplied by Member States to Norway

Delegations will find in the annex the draft of the abovementioned Council Implementing Decision.

COUNCIL IMPLEMENTING DECISION (EU) 2023/...

of ...

regarding the determination, under Article 8(10) of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, of the date from which personal data relating to DNA profiles, dactyloscopic data and vehicle registration data may be supplied by Member States to Norway

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2010/482/EU of 26 July 2010 on the conclusion of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto¹,

¹ OJ L 238, 9.9.2010, p. 1.

Whereas:

1. The Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto (the ‘Agreement’) provides for reciprocal cooperation between the competent law enforcement authorities of the Member States, on the one side, and Norway, on the other side, concerning the automated comparison of DNA profiles, dactyloscopic data and vehicle registration data. As a prerequisite for such cooperation, Norway first needs to take the necessary implementing measures and undergo an evaluation by the Union.
2. The Agreement is binding on the Union and on its Member States by virtue of Decision (EU) 2010/482, which is based on Articles 82(1)(d) and 87(2)(a) of the Treaty on the Functioning of the European Union as its substantive legal basis.
3. In accordance with Article 8(9) of the Agreement, the supply by Member States of personal data provided for under that Agreement is not to take place until the provisions of Chapter 6 of Council Decision 2008/615/JHA² have been implemented in the national law of Norway. In order to verify whether this is the case for Norway, an evaluation visit and a pilot run is to be carried out in respect to Norway, similar to these concluded in respect of Member States pursuant to Chapter 4 of the Annex to Council Decision 2008/616/JHA³.

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. Article 8(10) of the Agreement confers implementing powers upon the Council with a view to determine the date or dates as from which personal data may be supplied by Member States to Norway pursuant to the Agreement.
5. On 17 November 2021, the Council sent Norway questionnaires relating to data protection and the automatic exchange of DNA profiles, dactyloscopic data and vehicle registration data. On 15 June 2022, Norway provided the Council with its answers to the questionnaires relating to data protection and the automatic exchange of DNA profiles, and on 17 November 2022 its answers to the questionnaires relating to dactyloscopic data and vehicle registration data. On 16 September 2022, the answers relating to data protection were presented to the Council. On 10 November 2022, the answers relating to the automatic exchange of DNA profiles were presented to the Council, and on 1 December 2022 those relating to relating to dactyloscopic data and vehicle registration data. Thereafter, those answers were provided to the responsible evaluation team.
6. On 9-10 March 2023, Norway underwent an evaluation with regard to searching and comparing DNA profiles and dactyloscopic data. On 27-28 April 2023, Norway underwent an evaluation with regard to searching and comparing vehicle registration data.
7. On the occasions of the evaluations with regard to searching and comparing DNA profiles, dactyloscopic data and vehicle registration data, a successful pilot run has been carried out for each such evaluation by Norway with Austria.
8. On 15 May 2023, an overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run, has been presented to the Council. The evaluation report concluded that the implementation of the automated data application and the related automated data information flow could be considered to have been successfully concluded in Norway, both at legal and at technical level.

9. Since Norway fulfilled the conditions set out in Article 8 of the Agreement, Norway should be entitled to receive personal data pursuant to the Agreement.
10. Ireland is bound by Agreement by virtue of Decision (EU) 2010/482 and is therefore taking part in the adoption and application of this Decision, which implements the Agreement.
11. 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 Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of automated searching and comparison of DNA profiles, dactyloscopic data and vehicle registration data, personal data may be supplied by Member States to Norway pursuant to the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto as from ...

Article 2

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

Done at ...,

For the Council

The President