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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

No. prev. doc.: 12512/19; 9273/20

Subject: Prüm Decisions - Implementing Decision on the launch of automated data exchange with regard to dactyloscopic data in the United Kingdom
- *Agreement on the text*
- *Decision to use the written procedure for the adoption*

1. The Working Party on Information Exchange and Data Protection (DAPIX) discussed at its meeting on **8 November 2019** the evaluation visit report on **dactyloscopic data** exchange for the **United Kingdom** (12511/19 DAPIX 273 CRIMORG 131 ENFOPOL 417 ENFOCUSTOM 159 JAI 986) as well as the overall evaluation report (12512/19 DAPIX 274 CRIMORG 132 ENFOPOL 418 ENFOCUSTOM 160 JAI 987) based on the questionnaire, an evaluation visit and a pilot run.
2. Due to the late submission of the draft overall evaluation report, the draft Council conclusions (12513/19 DAPIX 275 CRIMORG 133 ENFOPOL 419 ENFOCUSTOM 161 JAI 988) and the draft Council Implementing Decision, the Presidency invited delegations to submit observations on the above documents in writing by Friday, 15 November 2019. No reservations and no objections were notified by that date.

3. Accordingly, it was acknowledged that each Member State bound by Decision 2008/615/JHA agrees that the conditions are fulfilled for the Council to conclude that for the purposes of automated data exchange with regard to **dactyloscopic data**, the **United Kingdom** has fully implemented the general provisions on data protection of Chapter 6 of Decision 2008/615/JHA.
4. Consequently, the Council adopted on **2 December 2019** the draft Council Conclusions on the implementation of the general provisions on data protection of Chapter 6 of Council Decision 2008/615/JHA concerning the **United Kingdom** with regard to automated exchange of dactyloscopic data (14744/19 DAPIX 359 CRIMORG 164 ENFOPOL 525 ENFOCUSTOM 199 JAI 1289).
5. As required by the applicable Treaty provisions, the Council decided on **12 December 2019** to consult the European Parliament on the draft Council Implementing Decision on the launch of automated data exchange with regard to dactyloscopic data in the **United Kingdom**, as finalised by the Legal/Linguistic Experts and set out in 14247/19 (DAPIX 345 CRIMORG 160 ENFOPOL 507 ENFOCUSTOM 193 JAI 1212).
6. By letter of 5 March 2020, the Chairman of the Committee on Civil Liberties, Justice and Home Affairs asked the Council to extend the time limit set by the Council.
7. Further to the European Parliament's request, the Council agreed to extend the time limit for the European Parliament to deliver its opinion until 15 May 2020. The European Parliament provided its opinion on **13 May 2020** on the draft Implementing Decision as set out in 14247/19.
8. Among the concerns expressed by the European Parliament was that 'the issue of including data from suspects should be solved before enabling the exchange of data with the UK, so as to ensure that the exchanges of automated data fully respect the reciprocity principle of the Prüm system, applied by other Member States participating in it'.

9. By letter of **15 June 2020** (8879/20 UK 13 IXIM 62), the United Kingdom notified the European Union of its Government's 'decision to include suspects' profiles in its automated biometric data exchanges within the shareable Prüm dataset' and informed that it 'will now begin the necessary action to implement this decision in England, Wales and Northern Ireland.'

By letter of **19 June 2020** (8879/20 ADD 1 UK 13 IXIM 62), the European Union was informed by the United Kingdom that its 'Government has decided to include suspects' data in its automated biometric (DNA and, as appropriate, fingerprints) data exchanges within the shareable Prüm dataset', and that following consultations with the Scottish government, the UK 'will now proceed to implement this decision for all of the United Kingdom: England, Scotland, Wales and Northern Ireland.'

10. Following these letters, the Commission, upon request by the Working Party on the United Kingdom, sought clarifications from the United Kingdom on these letters, in particular with regard to the timing for the start of exchanges including suspects' data, and the manner in which this will be carried out in practice. The United Kingdom provided the following information:

- *Automated exchange of suspects' profiles with regards to DNA data will start on **3 August 2020**. In order to ensure the successful inclusion of this data within the shareable dataset, this will follow a phased approach which will be completed as expeditiously as possible. The usual Prüm operating procedures at Steps 1 and 2 will apply.*
- ***As regards fingerprints data, exchanges will cover both convicted and suspected persons data from the beginning.***

11. The members of the Working Party were satisfied that no dactyloscopic data is excluded from biometric data exchanges to be carried out pursuant to the Prüm legal framework. Thus, the United Kingdom respects the principle of availability with regard to dactyloscopic data.

12. The members of the Working Party examined the revised draft Implementing Decision (9273/20 IXIM 68 CRIMORG 56 ENFOPOL 162 ENFOCUSTOM 83 JAI 550 UK 16) on the launch of dactyloscopic data exchange in the United Kingdom, which reflects the events since the adoption of the Council conclusions and the understanding of the United Kingdom's conformity with the Prüm legal framework.¹
13. In accordance with the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, and without prejudice to the future relationship with the United Kingdom, at the end of the transition period Union law will cease to be applicable to and in the United Kingdom, and the United Kingdom will no longer be entitled to, nor access the Prüm databases.
14. In accordance with the withdrawal agreement, the United Kingdom, however, does not participate in the adoption of the draft Council Implementing Decision.
15. *On this basis, COREPER is invited:*
 - *to confirm its agreement on the text of the draft Council Implementing Decision on the launch of automated data exchange with regard to dactyloscopic data in the **United Kingdom**, subject to finalisation by the Legal/Linguistic Experts and set out in 9295/20,*
 - *to take note of the intention to proceed with the adoption of the draft Council Implementing Decision without re-consulting the European Parliament,*
 - *to decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430, that the Council uses the written procedure for the adoption of the draft Council Implementing Decision on the launch of automated data exchange with regard to dactyloscopic data in the **United Kingdom** as set out in document 9295/20.*

¹ See also doc. 9310/20 concerning the UK's conformity with the Prüm legal framework for DNA data.