EUROPEAN
COMMISSION

Brussels, 31.1.2019
COM(2019) 35 final

2019/0016 (NLE)

Proposal for a

# COUNCIL DECISION

**on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and the Principality of Liechtenstein 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, of 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, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities**

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

### • Reasons for and objectives of the proposal

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[1] ('the Prüm Decision'), was adopted in order to incorporate into the legal framework of the European Union the substance of the provisions of the previous Prüm Treaty on the stepping up of cross-border cooperation, particularly on combating terrorism, cross-border crime and illegal migration, which was agreed by seven European Countries on 27 May 2005. On the same day, the Council also adopted 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[2] ('the Prüm Implementing Decision'), which lays down the necessary technical provisions for the implementation of Decision 2008/615/JHA.

The Prüm Decision and the Prüm Implementing Decision are designed to improve the exchange of information between the authorities responsible for the prevention and investigation of criminal offences and to enhance cross-border police and judicial cooperation among the Member States of the Union. The Prüm Decision contains, *inter alia*, provisions whereby Member States grant one another, on a mutual basis, access rights to their automated DNA analysis files, automated dactyloscopic identification systems and vehicle registration data. The information obtained by comparing data will open up, indeed, new investigative approaches and thus play a crucial role in assisting Member States' law enforcement and judicial authorities.

On 30 November 2009, the Council adopted Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities[3] ('the Forensic Decision'). This Council Framework Decision lays down the requirements for the exchange of DNA and fingerprint data, in order to ensure that the results of laboratory activities carried out by accredited forensic service providers in one Member State are recognised by the authorities responsible for the prevention, detection and investigation of criminal offences as being equally reliable as the results of laboratory activities carried out by forensic service providers accredited to EN ISO/IEC 17025 within any other Member State.

In October 2015, the Commission submitted the recommendation for a Council Decision authorising the negotiations for the conclusion of agreements with the Swiss Confederation and the Principality of Liechtenstein 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, of 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, including the Annex (Negotiation Directives), to the Council.

On 10 June 2016, the Council authorised the Commission to open negotiations with the Swiss Confederation and the Principality of Liechtenstein on the application of certain provisions of Council Decision 2008/615/JHA, of Council Decision 2008/616/JHA, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service

[1] OJ L 210, 6.8.2008, p. 1.
[2] OJ L 210, 6.8.2008, p. 12.
[3] OJ L 322, 9.12.2009, p. 14.

providers carrying out laboratory activities. The negotiations were successfully finalised with both countries by the initialling of the Agreements on 24 May 2018.

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Agreement is acceptable to the Union.

This international agreement between the EU and Liechtenstein aims to improve and simplify the automated exchange of information and intelligence between law enforcement authorities of the Member States and this associated country, in order to stimulate international police cooperation. The possibility for all the Member States to have access to the national databases of the Swiss Confederation and the Principality of Lichtenstein[4], regarding the DNA, dactyloscopic and vehicle registration data, and the other way around, is undoubtedly of central importance in order to foster and encourage the cross border police cooperation. The improvement of law enforcement information exchange for maintaining the security in the European Union cannot be sufficiently achieved by the Member States in isolation, due to the nature of international crime which is not confined to the EU borders.

- **Consistency with existing policy provisions in the policy area**

The Principality of Liechtenstein has acceded to the Association Agreement of 26 October 2004 by way of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis[5]. Thus, the Principality of Liechtenstein has joined the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union[6], the so-called 'Swedish Initiative', which constitutes a development of provisions of the Schengen *acquis*.

The Swedish Initiative is, to a certain extent, related to the Prüm Decision, since it lays down rules whereby the law enforcement authorities of the Member States and the associated countries may exchange existing information and intelligence effectively for the purpose of carrying out criminal investigations or criminal intelligence operations. According to Article 5(1) of the Swedish Initiative information and intelligence may be requested for the purpose of detection, prevention or investigation of an offence when there are factual reasons to believe that the relevant information and intelligence is available in another Member State. The automated information exchange under the Prüm Decision is suitable to establish such factual reasons.

Moreover, according to Article 20(1) of Regulation (EU) No 603/2013[7], prior to making a law enforcement access request to Eurodac, Member States must first check fingerprint databases

---

4 In practice, Liechtenstein has no separate databases and uses the ones of Switzerland.

5 OJ L 160 p. 21, 18.6.2011.

6 OJ L 386, 29.12.2006, p. 89.

7 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanism for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational

available under national law and compare the fingerprint dataset with the Automated Fingerprint Databases of other Member States under the Prüm Decision. Member States that do not fulfil the pre-condition of undertaking a Prüm check, which is a compulsory pre-requisite, will not be able to make a law enforcement access request to Eurodac.

On 14 December 2015, the Council authorised the Commission to open negotiations on agreements between the Union, on the one part, and Denmark, Iceland, Norway, Switzerland and Liechtenstein, on the other part, on the modalities of the participation by these States to the procedure for comparison and data transmission for law enforcement purposes laid down in the Chapter VI of Regulation (EU) No 603/2013.

The international agreement between the 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, was concluded on 26 July 2010.

In accordance with Article 3 of Protocol No 21[8] on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and these Member States shall notify their wish to take part in the adoption and application of this proposal for a Council Decision within 3 months after its adoption by the Commission.

In accordance with Articles 1 and 2 of Protocol No 22[9] 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.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

The legal basis for this proposal for a Council Decision is Article 82(1)(d) and Article 87(2)(a), in conjunction with Article 218(5) of the Treaty on the Functioning of the European Union (TFEU).

### • Subsidiarity (for non-exclusive competence)

In accordance with the principle of subsidiarity set out in Article 5 of the Treaty on European Union, the objectives of this Agreement can only be achieved at Union level.

### • Proportionality

In order to stimulate international cooperation in this area, it is of fundamental importance that all the participants who exchange data under the Prüm Framework implement the same technical, procedural and data protection standards and requirements in order to allow for fast, efficient and accurate exchange of information. The proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the objectives of the effective participation of the Principality of Liechtenstein in the Prüm Decisions and the Forensic Decision.

---

management of large-scale IT systems in the area of freedom, security and justice (recast) (OJ L 180, 29.6.2013, p. 1).

[8] OJ C 202, 7.6.2016, p. 295.

[9] OJ C 326, 26.10.2012, p. 299.

- **Choice of the instrument**

A Decision of the Council authorising the signature of the Agreement is required under Article 218(5) of TFEU.

## 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The Council has been informed and consulted in the relevant Council Working Group (DAPIX). The European Parliament (LIBE Committee) has been informed.

- **Fundamental rights**

The Agreement is fully in line with fundamental rights and data protection principles stated in the Prüm Decision (Chapter 6).

## 4. BUDGETARY IMPLICATIONS

Recital 8 of the Agreement states that the Principality of Liechtenstein should bear the costs incurred by its own authorities in connection with the application of this agreement. Article 1(1) of the Agreement lists the applicable articles of the Prüm Decision including Article 34, which provides that each Member State shall bear the operational costs incurred by its own authorities in connection with the application of the Prüm Decision. Article 1(4) applies similar obligation for the Member States concerning the Forensics Decision. Thus, there are no budgetary implications for the Union budget.

## 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation, including prior evaluation by the Council and Member States, notifications and declarations are described in the Article 8 of the Agreement.

- **Detailed explanation of the specific provisions of the proposal**

The Agreement lists the provisions of the Prüm Decision, the Prüm Implementing Decision and the Forensic Decision that shall become applicable to the Principality of Liechtenstein after entry into force of the Agreement.

The Agreement also sets the provisions for uniform application (Article 3), dispute settlement (Article 4), amendments (Article 5), notifications and declarations (Article 8). The contracting Parties agree to carry out common review of the agreement no later than five years after its entry into force (Article 6). The Agreement is concluded for an indefinite period whilst one of the Contracting Parties can terminate the Agreement at any time (Article 10).

2019/0016 (NLE)

Proposal for a

# COUNCIL DECISION

**on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and the Principality of Liechtenstein 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, of 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, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(d) and Article 87(2)(a),in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 10 June 2016,the Council authorised the Commission to open negotiations for the conclusion of agreement between the European Union and the Principality of Liechtenstein 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[1], of 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[2], and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities[3] ('the Agreement').

(2) The negotiations were successfully finalised by the initialling of the Agreement on 24 May 2018.

(3) The improvement of law enforcement information exchange for maintaining security in the Union cannot be sufficiently achieved by the Member States in isolation, due to the nature of international crime, which is not confined to the Union borders. The possibility for all the Member States and the Principality of Liechtenstein to have reciprocal access to national databases regarding DNA analysis files, dactyloscopic identification systems and vehicle registration data is of central importance to foster cross-border law enforcement cooperation.

(4) [In accordance with Article 3 of Protocol No 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on

[1] 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).

[2] 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).

[3] Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities (OJ L 322, 9.12.2009, p. 14).OJ L 322, 9.12.2009, p. 14.

European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Decision.]

(5) 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.

(6) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date, and the attached Declaration be approved.

(7) The Agreement caters for the provisional application of certain of its provisions. These provisions should be applied on a provisional basis pending the completion of the procedures for the formal conclusion of the Agreement and entry into force,

HAS ADOPTED THIS DECISION:

*Article 1*

The signing of the Agreement between the European Union and the Principality of Liechtenstein 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, of 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, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities ('the Agreement') is hereby approved on behalf of the Union, subject to its conclusion.

The text of the Agreement to be signed is attached to this Decision.

*Article 2*

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person or persons indicated by the negotiator of the Agreement.

*Article 3*

The Declaration attached to this Decision shall be approved on behalf of the Union.

*Article 4*

Article 5(1) and (2) of the Agreement shall be applied provisionally, in accordance with Article 8(3) of the Agreement, as from the day of its signature, pending its entry into force.

*Article 5*

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

Done at Brussels,

*For the Council*
*The President*