



Council of the
European Union

Brussels, 3 June 2016
(OR. en)

9370/1/16
REV 1

CH 6
FL 26
JAI 479
CRIMORG 40
ENFOPOL 158
RELEX 427
DAPIX 81

'A' ITEM NOTE

From: General Secretariat of the Council

To: Council

No. prev. doc.: 5988/16 EU RESTRICTED

Subject: Draft COUNCIL DECISION authorising the negotiations for the conclusion of agreements between the European Union, on the one part, and the Swiss Confederation and the Principality of Liechtenstein, on the other part, 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

- Adoption

1. On 30 October 2015, the Commission submitted to the Council the draft Recommendation for a Council Decision authorising the negotiations for the conclusion of agreements between the European Union, on the one part, and the Swiss confederation and the Principality of Liechtenstein, on the other part, on the application of certain provisions of Council Decisions 2008/615/JHA and 2008/616/JHA, the "Prüm Decisions".

2. Subsequent to comments on the draft, in particular with regard to Protocol (No 21) and the UK position, received from delegations after the JHA Counsellors meeting of 1 December 2015, the Council Legal Service examined the proposal. An amended proposal was presented to the Working Party on Information Exchange and Data Protection on 26 January 2016, where delegations were, in particular, informed about the widening of the scope of negotiation to Council Framework Decision 2009/905/JHA (the "Forensic Decision").
3. The United Kingdom notified to Commission and Council by letter on 22 January 2016 (5660/16) its wish to participate in the "Prüm Decisions"¹. On 20 May 2016, the Commission confirmed, in accordance with Article 331(1) TFEU, the participation of the United Kingdom.
4. The United Kingdom notified to Commission and Council by letter on 29 January 2016² its wish to take part in the adoption and application of the above-mentioned Recommendation for a Council Decision.
5. Subsequently, a revised version of the draft Council Decision on the authorisation of the negotiations (5988/16 EU/RESTRICTED CH 3 FL 2 JAI 87 CRIMORG 9 ENFOPOL 30 RELEX 93 DAPIX 21), which reflects the participation by the United Kingdom in the Prüm Decisions and the Forensic Decision, was issued. Delegations were invited to react on the proposal and no comments were submitted to the General Secretariat by Thursday, 26 May 2016.
6. Furthermore, the United Kingdom is making the statement in ANNEX to this note.
7. *The Council is therefore invited to:*
 - *adopt the draft Council Decision as set out in 5988/16 EU RESTRICTED,*
 - *enter the UK statement set out in the annex to this note into the minutes of the Council.*

¹ 5650/16
² 5760/16

Statement from the United Kingdom

The UK supports the substance of this proposal. We think an agreement should be negotiated, if possible, with Switzerland and Liechtenstein to allow them to take part in Prüm. We also welcome the addition of Articles 81(2)(d) and 87(2)(a) as legal bases.

However, in our view Recital (3) of the draft Council Decision is incorrect. It indicates that, because we take part in Decisions 2008/615/JHA, 2008/616/JHA and 2009/915/JHA we are therefore taking part in the measure under consideration here. As this draft Council Decision is pursuant to Title V of the Treaty on the Functioning of the European Union (TFEU) Protocol 21 of the TFEU applies and the Decision will not bind the UK unless we opt in to it. Protocol 21 contains no provision disapplying the opt-in in cases where the EU has exclusive competence to negotiate the proposed agreement and the UK participates in the underlying measure giving rise to that competence.

The UK opted in to this measure on by letter to the President of the Council on 19 January 2016. In our view, Recital (3) should have been amended to state that the UK is participating because of that opt-in decision, and not as an automatic result of our participation in the underlying measures governing Prüm.
